

SUMMARY
CANADA-FIRST NATION EDUCATION JURISDICTION FUNDING AGREEMENT
(version approved by NFNs April 20, 2021)

NOTE: Insert electronic link to actual text of Funding Agreement

Parties:

- The parties to the Canada-First Nation Education Jurisdiction Funding Agreement (“Funding Agreement”) are:
 - Canada, represented by the Minister of Crown-Indigenous Relations (“Canada”), and
 - the Participating First Nation, represented by Chief and Council (“PFN”).

Whereas provisions:

- The whereas provisions situate the Funding Agreement in the context of the Canada-First Nation Education Jurisdiction Agreement (“Jurisdiction Agreement”), but are not legally binding.

Part 2 – Term

- The term of the Funding Agreement starts on the Effective Date and may be terminated by agreement of the parties, or through a process described in the agreement.
 - A party that wishes to terminate the Funding Agreement must provide the other party with a notice of intent to terminate.
 - The notice must set out the reasonable grounds for terminating the Funding Agreement and a proposal to replace it that addresses the funding commitments in the Jurisdiction Agreement.
 - If the other party does not agree with the termination, the parties will engage in negotiations.
 - If the negotiations are unsuccessful, the party that wants to terminate the Funding Agreement must refer the decision to the Minister of Crown-Indigenous Relations (in the case of Canada) or to Chief and Council (in the case of the PFN).
 - *The process is described in more detail in the attached chart.*

Part 3 – Participating First Nation’s Responsibilities

- The PFN is responsible for providing, or paying for, education in accordance with its obligations under the Jurisdiction Agreement.

Part 4 – Canada’s Responsibilities

- Canada will provide payments to the PFN in accordance with the funding methodology set out in Schedule A (Education Funding for Eligible Students), Schedule C (Funding for First Nation Sectoral Education Governance Activities), and Schedule D (Methodology for Governance Funding).
- Payments for centralized education services will be made in accordance with Schedule B (Centralized Education Services).

- The PFN is entitled to retain any surpluses, and is responsible for any expenditures that exceed the payments received from Canada.

Part 5 – Periodic Review and Collective Engagement

- The parties will start their first periodic review of the Funding Agreement within 3 years and will conduct subsequent reviews every 5 years (or sooner at the request of either party).
- The parties will meet to confirm the process for conducting the review: (a) at least 6 months before the start of a scheduled periodic review, or (b) if a review initiated by request, as soon as practicable.
- The purposes of the periodic review are to: ensure the PFN has the funding required to meet its obligations under the Funding Agreement and the Jurisdiction Agreement, ensure it is getting no less funding than it would have had it not entered a Jurisdiction Agreement, etc.
- If the BC Tripartite Education Agreement (BCTEA) – which is the foundation for the program funding amounts in the Funding Agreement) – is terminated, the parties will meet to decide whether to continue to use the funding methodology in the Funding Agreement or renegotiate the methodology.
- Canada will provide at least 30 days’ notice to the PFN of any review of BCTEA to ensure the PFN may meaningfully participate in that review.
- If a dispute arises during a periodic review, the parties will seek to resolve it under the dispute resolution process set out in Part 8.
- At the request of the PFN, reviews will be undertaken on a collective basis with other PFNs that wish to participate. At the request of the PFN, Canada will negotiate amendments to the Funding Agreement or a replacement agreement on a collective basis as well. If another PFN requests a review on a collective basis, the PFN may choose to participate in that process.
- Canada will provide prior notice to the PFN of any review of Canada’s Collaborative Fiscal Policy that may result in changes to support for governance activities or the calculation of expenditure needs to enable the PFN to participate in that review process.
- Where exceptional circumstances arise that would significantly impact the PFN’s ability to meet its obligations under the Funding Agreement, at the request of the PFN, the parties will meet and determine what steps may be required to address the impact.

Part 6 – Accountability

- The PFN is accountable to its members for the delivery of education. The PFN must provide reports to Canada as set out in Schedule E (Reporting).
- Where the PFN engages an agent or contractor to deliver education on its behalf, the PFN remains responsible for meeting its obligations under the Funding Agreement.

- The PFN must provide Canada with audited financial statements and must ensure that any agent or contractor to whom it transfers funds is accountable for the funds it receives. This obligation does not apply in respect of funding transferred to public schools or independent schools for eligible students.

Part 7 – Information Exchange

- The parties will share information for purposes of implementation, monitoring, and periodic review of the Funding Agreement. The PFN must also provide the reports required under Schedule E (Reporting).
- The parties will collect, share and disclose information in a manner that ensures the confidentiality of that information to the same extent as applies when other governments exchange similar types of information in Canada.

Part 8 – Dispute Resolution

- This part sets out a process, including informal discussions, for resolving disputes that may arise under the Funding Agreement.
- If the parties are unable to resolve a dispute through informal discussions, either party may refer the dispute for resolution under the process set out in Part 9 of the Jurisdiction Agreement. However, disputes arising under the Funding Agreement may not be referred to arbitration.

Part 9 – Default and Remedies

- A party will be in default of the Funding Agreement if it breaches any provision or fails to fulfill its obligations under the agreement, or if it makes a representation that is knowingly false, or the party ought reasonably to have known was false, in a material way.
- A party alleging that the other party is in default shall provide notice to that party in writing and, where appropriate, propose steps to remedy the alleged default.
- The party that is alleged to be in default must notify the other party within 30 days that it has remedied the default (or commenced to do so) or that it disagrees that a default has occurred, in which case the issue shall be referred to the dispute resolution process set out in Part 8.
- The party that alleged the default may, at any time, waive the default.

Part 10 – General Provisions

- The six schedules attached to the Funding Agreement form part of the agreement.
- The Funding Agreement is not a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

- The Funding Agreement is not intended to:
 - create, amend, define the nature and scope of, or abrogate or derogate from the PFN's aboriginal or treaty rights recognized under section 35 of the *Constitution Act, 1982*,
 - prejudice, limit or restrict the position that the PFN may take at any time with respect to the aboriginal or treaty rights of the PFN or the exercise of those rights, or
 - restrict or limit the PFN from entering into other agreements with Canada or other parties with respect to any matter.
- Canada's payment obligations under the Funding Agreement will be implemented through the PFN's funding agreement with Indigenous Services Canada (ISC) by incorporating the Funding Agreement into the ISC funding agreement as a funding annex. The provisions of the ISC funding agreement relating to education are superseded by the provisions of the Funding Agreement and will be of no force and effect.
- This Part also contains provisions regarding:
 - general interpretation rules,
 - any amendment to the Funding Agreement must be in writing and signed by both parties,
 - any waiver must be in writing and signed by the party giving the waiver,
 - parties agree to do what is reasonably required to carry out obligations under the Funding Agreement,
 - the parties agree to remedy or amend a provision found by a court to be invalid, illegal or unenforceable and acknowledgement that the remaining provisions will not be affected,
 - a party may only assign its rights under the Funding Agreement with the agreement of the other party,
 - the Funding Agreement is binding on the parties and on any successor or entity to whom either party assigns its rights under the Funding Agreement,
 - any funding provided by Canada under the Funding Agreement is subject to appropriation by the federal Parliament,
 - the Funding Agreement does not create any partnership, agency relationship, etc. between the parties,
 - the PFN acknowledges that certain persons have obligations under the *Lobbying Act*,
 - the PFN acknowledges that current or former federal office holders are bound by and have obligations under various statutes and codes, and
 - notices and communications.

SCHEDULES

There are six schedules attached to the Funding Agreement:

- Schedule A – Education Funding for Eligible Students
- Schedule B – Centralized Education Services
- Schedule C – Funding for First Nation Sectoral Education Governance Activities
- Schedule D – Methodology for Governance Funding
- Schedule E – Reporting
- Schedule F – One-Time Implementation Activities

Termination Process Flow Chart:
Canada – First Nations Education Jurisdiction Funding Agreement

