

# **“MODEL” FIRST NATION EDUCATION LAW**

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## GENERAL

### Definitions and interpretation

1. In this Act:
  - (a) “appeal” means an appeal brought under section 90;
  - (b) “appellant” means a student or parent of a student who is directly affected by an administrative decision of the CEA or its employees and who files an appeal under section 90;
  - (c) “CEA” means the [First Nation] Community Education Authority established under section 38;
  - (d) “CEA board” means the board of directors of the CEA;
  - (e) “Council” means the Chief and Council of the [First Nation];
  - (f) “director” means a director of the CEA, except in the context of sections 105 and 106;
  - (g) “education program” means education programs and services for kindergarten to grade 12 students;<sup>1</sup>
  - (h) “employee” means an employee of the CEA;
  - (i) “First Nation school” means the \_\_\_\_\_ School, operated by the [First Nation];
  - (j) “FNEA” means the First Nations Education Authority established under the *First Nations Jurisdiction over Education in British Columbia Act* (Canada);
  - (k) “First Nation land” means the reserve of the [First Nation] within the meaning of the Indian Act and includes [First Nation] land administered under the *First Nations Land Management Act* (Canada);<sup>2</sup>
  - (l) “kindergarten” includes kindergarten programs for children who have reached the age of four by December 31 of that school year;
  - (m) “Member” means a member of the [First Nation];

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<sup>1</sup> This definition may need to be varied in schools that use a different grade system.

<sup>2</sup> Only include the words “includes [First Nation] land administered under the *First Nations Land Management Act* (Canada)” where the First Nation is part of the First Nations Land Management Initiative.

- (n) “non-Member” means a person who is not a member of the [First Nation];
- (o) “parent” means:
  - (i) the guardian of a student;
  - (ii) the person legally entitled to custody of a student; or
  - (iii) the person who has the usual care and control of a student;
- (p) “parents’ committee” means a parents’ committee established under section 13;
- (q) “principal” means the principal of the First Nation school;
- (r) “reviewer” means an impartial person appointed by Council under section 92; and
- (s) "special needs student" means a student who has a disability of an intellectual, physical, sensory, emotional or behavioural nature, has a learning disability or has special gifts or talents.

## **Principles**

- 2. The [First Nation]’s education system recognizes and acknowledges the importance of incorporating traditional teaching methods and knowledge as part of its students’ educational development.
- 3. The [First Nation] wishes to establish a learner-centred education program that addresses the unique needs of individual students.
- 4. The [First Nation] recognizes the value of life-long learning and will strive to incorporate a multi-generational approach as part of the learning environment in the First Nation school.
- 5. The uniqueness of the learning environment in the First Nation school must be respected.
- 6. *[Other principles to be developed by the First Nation.]*

## **Duties of students**

- 7. Students must comply with:
  - (a) the school rules authorized by the principal; and
  - (b) the code of conduct and other rules, policies and procedures of the CEA.

## **Consultation**

8. A student is entitled to consult with a teacher or principal regarding that student's education program.

## **Parents' entitlements and responsibilities**

9. A parent of a student of school age attending the First Nation school is entitled:
  - (a) to be informed of the student's attendance, behaviour and progress in school;
  - (b) to review the school plan, vision or mission statement adopted by the school, the CEA; and
  - (c) to belong to a parents' committee, if one has been established.
10. A parent of a student of school age attending the First Nation school:
  - (a) is entitled to consult with the teacher or principal with respect to the student's education program; and
  - (b) must, at the request of a teacher or principal, meet with the teacher or principal regarding the student's educational program.

## **Parent volunteers**

11. Subject to this Act, the regulations and any rules, policies or procedures of the CEA, a parent of a student is welcome to provide volunteer services at or for the First Nation school.

## **Parents' committee**

12. Parents of students attending the First Nation school may apply to the CEA to establish a parents' committee for the school. If there is a parents' club, it may apply to be designated as the parents' committee.
13. On receipt of an application under section 12, the CEA must establish a parents' committee for the First Nation school.
14. Parents of non-Member students are entitled to participate as full members on the parents' committee.<sup>3</sup>

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<sup>3</sup> Another option for meeting the requirements of paragraphs 2.5 and 2.14 of the CFNEJA is to allow parents of non-Member students to have a designated seat on the CEA.

15. The parents' committee, through its [elected] officers, may:
  - (a) advise the CEA and the principal and staff of the First Nation school respecting any matter relating to the school; and
  - (b) at the request of the CEA, assist in the school planning process to ensure that a balance between the First Nation's traditional and contemporary values is incorporated into the school plan.
16. The [First Nation] will consult with the parents' committee on any proposed amendments to this Act.
17. The CEA must provide the parents of any non-Member children who attend the First Nation school with the opportunity to have input, through their participation in the parents' committee, into any decision with respect to a program or service where that decision directly and significantly affects their rights as parents or the rights of their children as students.<sup>4</sup>
18. A parents' committee, in consultation with the principal and the CEA, must establish written procedures governing its meetings, business and conduct of affairs.

## **Education Program**

### **Education standards**

19. The CEA will establish education standards for the First Nation school that will recognize and support the importance of the [First Nation's] language, culture and knowledge.

### **Standards for core courses**

*[Need to incorporate by reference curriculum and examination standards for core courses required to graduate established by the FNEA. These must still be developed.]*

### **Language of instruction**

20. Every student is entitled to receive an education program that is provided in the English language and, if in the opinion of the CEA, there are sufficient resources, in the [First Nation] language.<sup>5</sup>

### **Home education**

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<sup>4</sup> The First Nation may determine that it wishes to involve parents of non-Member students in a more inclusive manner.

<sup>5</sup> This provision should be adapted if the CEA will be operating an immersion program.

21. A parent of a child who is required to enroll in an education program under section 25:
  - (a) may educate the child at home or elsewhere; and
  - (b) must provide that child with an education program that meets any criteria established by the CEA.

### **School calendar**

22. On or before June 15 of each school year, the CEA must make a school calendar for the following school year available to every parent of a student in the First Nation school.
23. The CEA may<sup>6</sup> in a school calendar set under section 22:
  - (a) set the number of days in session in a school year;
  - (b) set a minimum number of instructional days within days in session;
  - (c) set a maximum number of non-instructional days within the days in session;
  - (d) set the number of days in a calendar week that are to be school days;
  - (e) set the minimum number of hours of instruction that must be provided in a school year;
  - (f) specify the opening and closing dates for the First Nation school; and
  - (g) specify the dates of vacation periods and holidays within the days in session.

### **Access**

#### **Access**

24. A person is eligible to enroll in an education program provided by the CEA if:
  - (a) the person has reached the age of four on or before December 31 of that school year;
  - (b) the person meets the CEA's enrollment criteria, consistent with the provisions of this Act; and

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<sup>6</sup> A First Nation may choose to make these obligatory by replacing “may” with “must”.

- (c) the CEA determines that space and facilities are available for the person at the First Nation school.
25. A Member must:
- (a) enroll in an education program provided by the CEA, a public school, a school operated by another First Nation, an independent school or an education program otherwise provided by the Province of British Columbia on the first day of the school year, if on or before December 31 of that school year, the Member reaches the age of five; and
  - (b) participate in an education program provided by the CEA, a public school, a school operated by another First Nation, an independent school or an education program otherwise provided by the province of British Columbia until they reach the age of 16.
26. A parent of a child referred to in paragraph 25(a) may defer the enrollment of their child until the first school day of the next school year.

### **Registration**

27. A parent of a child who is required under section 25 to provide the child with an education program must register the child on or before September 30 in each year.
28. If, in accordance with section 24, a parent is entitled and has applied to register their child with the First Nation school, the CEA must ensure that the principal for the school registers the child.
29. The [First Nation] will:
- (a) provide, either directly or indirectly, an education program to Members, and to other Indians and Indian Families, who reside on First Nation land; and
  - (b) provide an education program to non-Indians ordinarily resident on First Nation land, other than lands developed primarily for commercial purposes such as residential developments, if such non-Indians are enrolled to attend the First Nation school.
30. Subject to receiving funding in accordance with the reciprocal tuition funding provisions of the British Columbia First Nation Education Agreement, the [First Nation] will provide an education program to students enrolled to attend the First Nation school who are:
- (a) Members who do not reside on First Nation land;

(b) non-Members; and

(c) non-Indians who are not ordinarily resident on First Nation land, other than lands developed primarily for commercial purposes such as residential developments.<sup>7</sup>

31. Despite sections 29 and 30, the CEA may decline to enroll any person who does not meet the requirements set out in section 24.
32. For the purposes of sections 29 and 30, “Indian” means a person who is registered or is entitled to be registered as an Indian under the *Indian Act* and “Indian family” means married people living together or people living together in a marriage-like relationship, with Indian or non-Indian children, where one of those people is an Indian.

### **Suspension**

33. The CEA will make rules regarding the suspension and review process, applicable to students of the First Nation school.
34. The principal may suspend a student of the school in accordance with the rules established by the CEA.

### **Exclusion and eviction from school**

35. The principal, subject to a review of the decision by the CEA, may refuse to admit onto, exclude or evict from, school property a person whose presence in the school or classroom would, in the principal’s judgment, be detrimental to the physical or mental well-being of students or staff or disrupt the proceedings of the school or school function.

### **Special needs students**

36. The CEA will develop a special education policy framework.

### **Tuition for students at provincial schools**

37. The [First Nation] must pay tuition to the provincial school board in respect of any student from the [First Nation] who resides on First Nation land, other than lands developed primarily for commercial purposes such as residential developments, who is enrolled to receive education programs from a provincial public school within that school board’s jurisdiction.<sup>8</sup>

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<sup>7</sup> This provision should be reviewed once the details of the reciprocal tuition arrangements with BC have been finalized.

<sup>8</sup> This provision should be also reviewed once the details of the reciprocal tuition arrangements with BC have been finalized.

## **Community Education Authority (CEA)**

### **Establishment of CEA**

38. The CEA is established to operate education programs and services.

### **Legal capacity of CEA**

39. The CEA has the legal capacity of a natural person of full capacity, including the legal capacity necessary to exercise its powers and to perform its duties and functions and in particular, may:
- (a) enter into contracts and agreements;
  - (b) acquire, hold or dispose of any property or interest in property;
  - (c) be a party to any legal proceedings;
  - (d) raise, spend, invest, or borrow money, and secure or guarantee the repayment of any money borrowed;
  - (e) apply to form corporations or other legal entities in accordance with federal or provincial laws; and
  - (f) do such other things as may be ancillary to the exercise of its rights, powers and privileges.
40. Without limiting section 39, the CEA may, subject to this Act and the regulations, do all or any of the following:
- (a) approve education resource materials and other supplies and services for use by students;
  - (b) make rules, policies and procedures for the effective and efficient operation of the First Nation school, including:
    - (i) establishing a code of conduct for students attending education programs operated by or on behalf of the CEA,
    - (ii) establishing enrolment criteria,
    - (iii) respecting appeals,
    - (iv) respecting the provision of education programs for suspended students,

- (v) respecting attendance of students in education programs provided by the CEA,
  - (vi) respecting the establishment, operation, administration and management of
    - (A) the First Nation school and education programs provided by the CEA, and
    - (B) transportation equipment used for the purposes of the CEA,
  - (vii) respecting the provision of volunteer services,
  - (viii) respecting the management of student housing facilities and the supervision of students accommodated in them, and
  - (ix) respecting any other matter under the jurisdiction of the CEA;
- (c) suspend students, in accordance with the rules under section 33, so long as the CEA continues to make available to those students an education program;
  - (d) if approved by the relevant jurisdiction, provide a system of traffic patrols to assist in the control of motor vehicle traffic on highways or elsewhere in the area close to the First Nation school so far as the traffic may affect students going to or from school;
  - (e) provide housing accommodation for students;
  - (f) permit people other than students to utilize CEA facilities, equipment and personnel;
  - (g) evaluate and recognize education activities of an education program undertaken by a student outside of the school;
  - (h) establish criteria for home education programs;
  - (i) develop and offer local programs for use in the First Nation school;
  - (j) cause an education assessment to be made of students or groups of students;
  - (k) establish loan funds or bursaries for students enrolled in an education program under the CEA and spend money received by donation;
  - (l) establish committees and specify the functions and duties of those committees, provided that Committees of directors or individual directors of the CEA may not exercise the rights, duties and powers of the CEA;

- (m) establish an advisory council comprised of people representing the parents' committee and other organizations in the First Nation; and
  - (n) delegate specific and general administrative and management duties to one or more of its employees.
41. Despite the other provisions of this Act, the CEA may refuse to continue to provide an education program to a student 16 years of age or older if that student has refused to comply with the code of conduct or other rules, policies or procedures referred to in section 40.
42. The CEA may exercise a power with respect to the acquisition or disposal of property owned or administered by the CEA only by resolution.

### **Qualification: who may hold office**

43. A person is qualified to be nominated and elected or appointed to and hold office as a director<sup>9</sup> of the CEA if, at the relevant time, the person meets all of the following requirements:
- (a) the person is, or will be on general voting day for the election or effective date of the appointment, as applicable, 18 years of age or older;
  - (b) the person must have undergone a criminal record check and that check must indicate that they do not have a conviction for:
    - (i) an indictable offence;
    - (ii) an offence defined as a “relevant offence” under the *Criminal Records Review Act* (British Columbia); or
    - (iii) any other offence under Part X of the *Criminal Code* (Canada) or related to the abuse of children;
  - (c) the person must not be disqualified by this Act; and
  - (d) any additional requirements established by resolution of the [First Nation].

### **Disqualification of employees**

44. Unless the requirements of sections 45 and 46 are met, an employee is disqualified from being elected to or holding office as a director of the CEA.

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<sup>9</sup> The First Nation may use a term other than “director”.

45. Within 30 days of being elected as a director of the CEA, an employee must resign from their position with the CEA or take a leave of absence for the duration of their term as director.<sup>10</sup>
46. At the option of the employee, a resignation may be conditional on their election not being declared invalid.

### **Composition**

47. The CEA will consist of [3, 5, 7 *or* 9] directors.<sup>11</sup>

### **Resignation from office**

48. A director of the CEA may resign from office by giving written notice to the CEA.
49. The chair must notify the other directors of a resignation at its next meeting after the resignation is received and notify Council in writing.
50. A resignation is irrevocable after it is given and is effective from the earlier of:
  - (a) the date a successor takes office; and
  - (b) the date specified in the resignation letter so long as that date does not precede the date the notice of resignation was provided.

### **Removal for failure to attend meetings**

51. If a director is absent from CEA meetings for a period of 3 consecutive months, without written authorization from the CEA board, the board [may/shall], by resolution, remove that director. The person who has been removed may be re-elected or re-appointed.

### **Removal of director following conviction or other event**

52. A director of the CEA ceases to hold office immediately upon:
  - (a) the director's conviction for an offence set out in subparagraphs 43(b)(i) to (iii);
  - (b) a decision of the Supreme Court being rendered, on the application of a Member, confirming that the conviction of the director for any other offence renders the director unsuitable to perform the duties of a director;

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<sup>10</sup> Another option is to require the individual to resign or take a leave of absence when nominated.

<sup>11</sup>Alternative wording: "Council may, by resolution, establish the number of CEA directors, which shall be an uneven number."

- (c) the director is the subject of a continuing court order declaring them incapable of managing their affairs; or
- (d) the director being charged with a criminal offence and not reporting it to the CEA within 10 days of being charged.

### **Removal by resolution**

- 53. A director of a CEA may be removed by resolution passed by 75% of the directors of the CEA.<sup>12</sup>

### **Elections**

- 54. Elections for the CEA board must be held every 3 years.
- 55. The CEA must conduct an election to fill any vacancy on the CEA board within 120 days after that vacancy occurs. The newly-elected director shall hold office for the balance of the term of the director whom they are replacing.
- 56. If an election for a director is not held within 120 days as required by this Act, or if there is an insufficient number of candidates to be elected to the vacancies, Council may appoint people as directors to fill the vacancies.
- 57. The chief electoral officer must give notice of any voting opportunities in any manner the chief electoral officer considers appropriate, including the date, place and voting hours.

### **Electors**

- 58. A [First Nation] elector must meet the following requirements:
  - (a) the person must be 18 years or older on general voting day for the CEA board election; and
  - (b) the person must be a Member.

### **Counting of votes**

- 59. The counting of votes for a CEA board election must not take place until the close of voting at all voting places for that election.

### **Quorum**

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<sup>12</sup> We recommend against this approach. Instead, it should be addressed as a disruption issue (see section 69).

60. A quorum of the CEA is a majority of the directors of the CEA holding office at the time of the meeting of the CEA.

### **Meetings**

61. After a general election for directors of the CEA, the directors must convene a first meeting of the CEA Board as soon as possible and in any event within 30 days from the date that the new directors begin their term of office.
62. At the meeting convened under section 61, the CEA board must elect a chair and secretary-treasurer and may elect a vice-chair from among its directors to hold office at the pleasure of the directors. The directors may, by resolution, establish roles and responsibilities of the chair, secretary-treasurer and vice-chair.
63. The CEA must meet as often as is necessary to transact its business and in any event not less than once every 3 months.
64. The CEA must establish procedures governing the conduct of its meetings and must permit any person to inspect those procedures.

### **Rules**

65. All of the powers of the CEA may be exercised by resolution. Rules, policies and procedures must be adopted by resolution of the CEA.
66. The CEA must give 45 days' notice of any proposed rule, policy or procedure to the parents' committee and the Members. The CEA must provide an opportunity for the parents' committee and Members to provide input on the proposed rule, policy or procedure prior to its passage.

### **Attendance of Members, parents and students**

67. The meetings of the CEA are open to the Members unless, in the opinion of the CEA, the public interest requires people other than directors to be excluded from the meeting.

### **Improper conduct at meetings**

68. The chair or other director presiding at a meeting of the CEA may expel from the meeting a person, other than a director of the CEA, who the presiding director considers guilty of improper conduct.
69. A majority of the directors present at a meeting of the CEA may expel a director from a meeting for improper conduct.

70. The CEA may establish a code of conduct for directors, which will include rules to determine what constitutes improper conduct at meetings.

## **Remuneration**

71. The CEA may:
  - (a) authorize annually the payment of remuneration to the chair, vice-chair and other directors; and
  - (b) authorize annually the payment of a reasonable allowance for expenses necessarily incurred by directors in the discharge of their duties.
72. The CEA is responsible for payments under section 71.
73. The remuneration for the chair and vice-chair may be greater than for the other directors.

## **Minutes**

74. The minutes of the proceedings of all meetings of the CEA must be:
  - (a) legibly recorded in a minute book;
  - (b) certified as correct by the secretary-treasurer or an employee designated by the CEA; and
  - (c) signed by the chair or other director presiding at the meeting or at the next meeting at which the minutes are adopted.
75. Except for minutes of a meeting from which people other than directors or officers of the CEA were excluded, the minutes must be open for inspection at all reasonable times by any person, who may make copies and extracts on payment of a fee set by the CEA.
76. The CEA must prepare a record containing a general statement as to the nature of the matter discussed and the general nature of the decisions reached at a meeting from which people other than directors or officers of the CEA were excluded, and the record must be open for inspection at all reasonable times by any person, who may make copies and extracts on payment of a fee set by the CEA.

## **Accountability**

### **Obligations**

77. A director must:

- (a) act honestly and in good faith and in the best interests of the CEA; and
  - (b) exercise the care, diligence and skill of a reasonably prudent person,
- in exercising the powers and performing the functions as a director.

### **Conflict of interest**

78. If a director has:

- (a) a direct or indirect pecuniary interest in a matter that is to be addressed by the CEA or a committee of the CEA of which they are a member; or
- (b) another interest in the matter that constitutes a conflict of interest,

the director must fully and promptly declare the nature of that interest to the other directors.

79. A director is deemed not to have a pecuniary interest or other interest that may constitute a conflict of interest in a matter if:

- (a) the interest of the director is an interest in common with Members generally;
- (b) the interest relates to an indemnity, expenses or remuneration payable to one or more directors in respect of the matter; or
- (c) the interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the director in relation to the matter.

80. If a director has a direct or indirect pecuniary interest in a matter or has declared that they have another interest in the matter that constitutes a conflict of interest, the director must not:

- (a) remain at or attend any part of a meeting of the CEA during which the matter is under consideration;
- (b) participate in any discussion of the matter at such a meeting, or attempt to influence discussion of the matter at any meeting of the CEA;
- (c) vote on a question in respect of the matter at such a meeting,
- (d) attempt in any way, whether before, during or after the meeting, to influence the opinion or vote of the directors on any question in respect of the matter; or

- (e) attempt in any way to influence the directors, employees or contractors in carrying out their duties in respect of the matter.
- 81. The CEA may, by resolution, suspend a director for a specified period or remove them from office for the balance of their term if the director has contravened section 80. Prior to holding a vote on such a matter, the CEA must assess whether the contravention was done inadvertently or because of an error in judgment made in good faith.
- 82. The CEA may adopt rules, policies and procedures regarding conflicts of interest consistent with this Act.
- 83. A director must comply with any requirements set out in the conflict of interest rules, policies and procedures adopted by the CEA or set out in the [First Nation] Education Law-Making Protocol.

### **Accountability to Members**

- 84. The CEA must prepare and submit to Council reports and statements in the form, with the information and at the time required by Council.
- 85. The CEA will hold an annual general meeting that will be open to all Members and members of the parents' committee.
- 86. At each annual general meeting, the CEA must:
  - (a) provide an audited financial report on the most recent fiscal year;
  - (b) provide updates on the CEA's annual activities; and
  - (c) provide updates on the First Nation school's annual activities.

### **Input of non-Members and adult students**

- 87. If a parents' committee has not been established under section 13 and there are non-Member students enrolled in the First Nation school who are 18 years of age or younger, the CEA will establish an advisory committee made up of parents of those non-Member students.
- 88. If non-Member students 19 years of age or older are enrolled in the First Nation school, the CEA will establish a student council committee made up of such students. The student council committee may make presentations to the CEA and the [First Nation].
- 89. The purpose of the committees referred to in sections 87 and 88 is to allow parents of non-Member students and students who are 19 years of age or older to have input into

the CEA's decision-making process with respect to programs and services which directly and significantly affect their rights as parents or students.

## **Appeal of Administrative Decisions**

### **Filing appeal**

90. An individual who is, or whose child is, directly and significantly affected by an administrative decision of the CEA or its employees may file an appeal with Council.

### **Rejection of appeal**

91. Council may reject an appeal if:
  - (a) the appellant did not first provide the CEA with a copy of the appeal;
  - (b) the appeal does not relate to an administrative decision that significantly affects the health, education or welfare of the appellant or their child, as the case may be; or
  - (c) the appeal lacks sufficient detail to determine the parties involved or the nature of the administrative decision to be resolved.

### **Appointing a reviewer**

92. Unless an appeal is rejected under section 91, Council shall appoint a reviewer who must issue a decision within 45 days of the appeal being properly filed with Council. At the request of the reviewer, Council may extend the time within which the reviewer is required to make their decision.

### **Rules and procedures for appeal**

93. The reviewer may establish rules and procedures for reviewing an Appeal, and may hear, request and receive evidence in an informal manner and shall, at a minimum, ensure that:
  - (a) all affected parties have notice of the appeal; and
  - (b) all affected parties have the opportunity to provide evidence regarding the appeal.

### **Judicial review of reviewer's decision**

94. A reviewer's decision is only subject to judicial review if an application for judicial review is brought within 30 days of the reviewer rendering the decision and if the

grounds for the review are that the reviewer acted beyond their jurisdiction or adopted an appeal process that was unfair.

## **School Property**

### **Maintenance and operation of buildings and facilities**

95. The CEA may:
  - (a) open, close or reopen the First Nation school permanently or for a specified period of time; and
  - (b) temporarily close a First Nation school building if the health or safety of the students is endangered.
96. The CEA may not close a school permanently unless it has first consulted with the Members and Council.
97. The CEA is responsible for the management of the First Nation school and for the custody, maintenance and safekeeping of all property owned or leased by the CEA.

### **Liability for damage to property**

98. If property of the CEA is destroyed, damaged, lost or converted by the intentional or negligent act of a student, that student and that student's parents are jointly and severally liable to the CEA in respect of the act of that student.

## **Conduct**

### **Conduct**

99. The discipline of a student while attending an education program made available by the CEA or the First Nation school must be similar to that of a kind, firm and judicious parent, but must not include corporal punishment.
100. The CEA must develop written policies concerning illicit drug use and bullying.

## **Reporting**

### **Reporting**

101. A person who has reason to believe that a child is in need of protection has an obligation to report the matter in accordance with the Child, Family and Community Service Act, RSBC 1996, c. 46, s. 14.

## **Teacher certification**

*[Need to incorporate by reference the teacher certification process currently being developed for the FNEA.]*

## **School certification**

*[Need to incorporate by reference the FNSA's school certification process, adapted to this context for the FNEA.]*

## **Measuring Progress**

### **Evaluation process for students**

102. The CEA is responsible for evaluating all of the education programs and services provided by the CEA. The CEA must have students assessed and evaluated by a teacher certified in accordance with the teacher certification process adopted by the First Nations Education Authority.

### **Capacity to grant graduation diplomas**

103. The CEA may issue a First Nations Graduation Certificate to:
  - (a) students of the First Nation school who have completed the graduation requirements established by the First Nations Education Authority; and
  - (b) Members who have completed the graduation requirements at provincial public schools if the Members have achieved learning outcomes substantially comparable to those required for graduation by the First Nations Education Authority.
104. The CEA may request that British Columbia issue a Dogwood Graduation Certificate in respect of a student if that student has both completed an education program at the Grade Twelve level at the First Nation school and has achieved learning outcomes substantially comparable to those required for graduation by the Ministry of Education.

## **First Nations Education Authority (FNEA)**

### **Participation of in FNEA**

105. The [First Nation] will appoint two directors to sit on the board of directors of the First Nations Education Authority for an initial term of up to two years, and thereafter for terms of appointment to be established by the board of directors of the First Nations Education Authority.

106. One of the directors appointed by the [First Nation] to the board of directors under section 105 must be a Member.

## **Employment**

### **General duty of CEA**

107. The CEA must establish policies and procedures with respect to conduct, discipline, terms and conditions of employment for its employees.
108. The CEA will ensure that every person who is hired for employment involving work with children and every employee who works with children undergoes a criminal record check.
109. The CEA will ensure that a person is not hired by the CEA or, if hired, is dismissed, if that person:
- (a) is or has been convicted of an offence set out in subparagraphs 43(b)(i) to (iii);
  - (b) is the subject of a continuing court order declaring them incapable of managing their affairs; or
  - (c) after being hired, is charged with a criminal offence and fails to report such a charge to the CEA within 5 days.

### **Applicants for employment**

110. When a person is offered employment that involves working with children, that person must provide a criminal record check authorization to the CEA.

### **New convictions or outstanding charges**

111. If an employee who works with children is charged with or convicted of an offence set out in subparagraphs 43(b)(i) to (iii), subsequent to a criminal record check, the employee must report the charge or conviction to the CEA within 5 days, and provide the CEA with an authorization to conduct a further criminal record check.
112. Once notified under section 111, the CEA must ensure that the employee does not work with children until the employee has provided an authorization for a further criminal record check under the *Criminal Records Review Act* (British Columbia).

### **Report of dismissal, suspension and discipline**

*[Needs to be linked to FNEA's teacher certification process. Will need to determine whether the FNEA has a role in disciplining teachers.]*

## **Teachers' responsibilities**

113. A teacher's responsibilities include designing, supervising and assessing education programs and instructing, assessing and evaluating individual students and groups of students.

## **Teachers' assistants**

114. The CEA may employ people other than teachers to assist teachers in carrying out their responsibilities and duties.
115. People employed under section 114 must work under the general supervision of a teacher or principal.

## **Employee qualifications**

116. Subject to section 117, the CEA must not employ a person as a teacher or principal unless that person:
- (a) holds a continuing FNEA teaching licence or an interim FNEA teaching licence; or
  - (b) holds a British Columbia College of Teachers certificate.<sup>13</sup>
117. The CEA may employ a person who possesses qualifications approved by the CEA, but does not meet the requirements of section 116, if that person is:
- (a) employed for 20 or fewer consecutive teaching days and teaching a particular class or classes where no teacher holding a certificate of qualification is available;
  - (b) instructing a general interest course that is not leading to school graduation; or
  - (c) instructing a course on the [First Nation's] culture or language.

## **Principal**

118. The CEA must appoint a person as a principal to perform the duties and have the powers set out in the CEA's rules, policies and procedures.
119. A principal is not an employee within the meaning of the *Labour Relations Code* (British Columbia) or the *Canada Labour Code* (Canada).

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<sup>13</sup> Does a teacher/principal have to have the FNEA certification or can they just have the BCCT one?

120. A principal who is responsible for evaluating a teacher in a specialized assignment may:
- (a) consult with a resource person who has relevant specialized technical knowledge; and
  - (b) use information obtained from the consultation in the evaluation.

## **Information Management**

### **Maintenance, access and transfer of student records**

121. The CEA must:
- (a) establish written procedures regarding the storage, retrieval and appropriate use of student records; and
  - (b) ensure confidentiality of the information contained in the student records and ensure privacy for students and their families.
122. Despite paragraph 121(b), the CEA must permit a person providing health services access to information in student records required to carry out that service.
123. The CEA must establish and maintain a record for each student registered with the First Nation school.
124. Despite paragraph 121(b), if a student is enrolled:
- (a) in a public school or an independent school, but takes one or more courses through the First Nation school by means of distributed learning; or
  - (b) in the First Nation school, but takes one or more courses through a public school or an independent school by means of distributed learning,

the CEA and authority of an independent school with which the student is enrolled must provide to the other access to information in those student records and permanent student records that is necessary for the other CEA or authority of the independent school to satisfactorily perform its obligations under this Act or the *Independent School Act*, as applicable.

### **Examination of student records**

125. A student and the parents of a student of school age are entitled:

- (a) on request and while accompanied by the principal or person designated by the principal, to examine all student records kept by the CEA or the First Nation school pertaining to that student; and
- (b) on request, to receive a copy of any student record that they are entitled to examine under paragraph (a).

## **Financial Matters**

### **General financial matters**

- 126. The CEA must prepare an annual budget in the form, containing the content and by the date specified by the Council. Once the budget has been prepared, the CEA will provide it to the Council for their approval.
- 127. Subject to section 128, estimated expenditures in the annual budget must not exceed estimated revenues.
- 128. At the request of the CEA, Council may, by resolution, approve a budget that provides estimated expenditures that exceed estimated revenues.
- 129. If the CEA wishes to exceed the total budget approved by Council, it may request that Council vary its budget.

### **Adoption of budget**

- 130. Council:
  - (a) must approve an annual budget for the CEA on or before June 30 of each year for the next fiscal year; and
  - (b) may amend the annual budget adopted under paragraph (a).
- 131. If funding expected to be received by the [First Nation] is withheld or reduced by funders, Council may request that:
  - (a) the CEA propose amendments to its annual budget; and
  - (b) the CEA forward a proposed amended annual budget to Council for its consideration.

## **Agreements**

### **Authority of CEA to enter agreements**

132. The CEA may, subject to this Act:
- (a) enter into an agreement to purchase or provide managerial, administrative or other services with respect to the operation of the First Nation school;
  - (b) enter into an agreement to purchase education services that will be under the general supervision of an employee; and
  - (c) enter into an agreement concerning the promotion, development or operation of recreational and community services.
133. The CEA may, subject to this Act and resolutions of Council, enter into an agreement with one or more boards to provide health and support services, including busing and education resources, to one or more students enrolled with that CEA or board.
134. The CEA may enter into an agreement with the government of British Columbia or any agency of the government of British Columbia with respect to the education matters.

## **Liability**

### **Actions against CEA and First Nation**

135. No action for damages lies or may be instituted in connection with this Act against a director, officer or employee of the CEA for anything said or done or omitted to be said or done by them in the performance or intended performance of their duty or the exercise of their power or for any alleged neglect or default in the performance or intended performance of the duty or the exercise of the power.
136. No action for damages lies or may be instituted in connection with this Act against the Chief, other member of Council or employee of the First Nation for anything said or done or omitted to be said or done by them in the performance or intended performance of their duty or the exercise of their power or for any alleged neglect or default in the performance or intended performance of the duty or the exercise of the power.
137. No action for damages lies or may be instituted in connection with this Act against a volunteer for anything said or done or omitted to be said or done by them in the provision of volunteer services for the CEA, or for any alleged neglect or default in the provision of volunteer services by the volunteer.
138. Sections 135 to 137 do not provide a defence if:
- (a) the director, officer or employee of the CEA, the Chief, Council Member or employee of the First Nation or volunteer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or

malicious or willful misconduct, or

(b) the cause of action is libel or slander.

139. No action may be brought against a director, officer or employee of the CEA, the Chief, member of Council or employee of the First Nation or a student or volunteer in respect of personal or other injuries sustained by a person arising out of the operation by the CEA of traffic patrols.

140. Sections 135 to 137 and 139 do not absolve:

(a) the CEA from vicarious liability arising out of a tort committed by a director, officer, or employee of the CEA, a student or a volunteer for which the CEA would have been liable had sections 135 to 137 and 139 not been in force; or

(b) the First Nation from vicarious liability arising out of a tort committed by the Chief, a member of Council or employee of the First Nation for which the First Nation would have been liable had sections 135 to 137 and 139 not been in force.

#### **Limitation of action and indemnification**

141. The CEA may, by resolution, provide that the CEA will indemnify a director, officer or employee of the CEA:

(a) against a claim for damages against a director, officer or employee of the CEA arising out of performance of their duties; or

(b) if a proceeding involves the administration and conduct of the business of the CEA,

and, in addition, may pay legal costs incurred in proceedings arising out of the claim or inquiry or other proceeding.

142. The CEA may, by an affirmative vote of not less than 2/3 of all its directors, pay:

(a) any sum required to indemnify a director, an officer or an employee of the CEA if a prosecution arises out of the performance of their CEA duties, and

(b) costs necessarily incurred,

but the CEA must not pay a fine imposed on a director, officer or employee as a result of their conviction.

143. The CEA must not seek indemnity against a director of the CEA, an officer or an employee of the CEA in respect of any action of the director, officer or employee that results in a claim for damages against the CEA, but the CEA may seek indemnity:

- (a) against a director of the CEA, officer or employee if the claim for damages arises out of the gross negligence of the director, officer or employee; or
- (b) against an officer or employee if, in relation to the action that gave rise to the claim for damages against an officer or employee, the officer or employee willfully acted contrary to:
  - (i) the terms of their employment; or
  - (ii) an order of a superior.

## **Insurance**

- 144. The CEA must maintain general liability insurance and any insurance required by Council.
- 145. The CEA may maintain such additional insurance, other than insurance referred to in section 144, as the CEA considers necessary.
- 146. The CEA and the [First Nation] must be named beneficiaries of any insurance policy obtained by the CEA under section 144.

## **Regulations**

### **Regulations**

- 147. Council may make regulations pursuant to this Act respecting the following matters:
  - (a) governing the manner, form and amount of insurance that must be maintained by the CEA;
  - (b) defining any expression that is used but not defined in this Act;
  - (c) respecting the procedures for the election of directors to the CEA;<sup>14</sup> and
  - (d) respecting any matter or thing that Council considers necessary or advisable to facilitate the establishment and operation of the CEA.

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<sup>14</sup> Consider what other matters should be addressed by regulation of Council.

## CHECKLIST FOR FIRST NATION EDUCATION LAW

Once a First Nation has ratified its Canada-First Nation Education Jurisdiction Agreement and its First Nation Education Law-Making Protocol, it may pass its own First Nation Education Law or Laws. A First Nation Education Law **must** address the following matters:

- ✓ The law must include mechanisms through which Non-Members, who receive education or have their children receive education provided by the First Nation, will have input into the decisions with respect to a program or service where that decision directly and significantly affects the rights of students who receive education or their parents (CFNEJA, paragraphs 2.5 and 2.14)
- ✓ If the First Nation is establishing a CEA, it must be dealt with in the law (CFNEJA, Part III)
- ✓ The First Nation must incorporate by reference the FNEA's teacher certification process, school certification process and curriculum and exam standards for courses required to graduate (CFNEJA, paragraph 4.6)
- ✓ The First Nation must provide or make provision for education so as to allow the transfer of students without academic penalty to an equivalent grade in another school within the school system of the province of British Columbia (CFNEJA, paragraph 2.6) – this does not necessarily have to be in the law, but it is a requirement under the agreement

As well, the First Nation Law may not interfere with the ability of a person to decide where to enroll, or of a parent to decide where to enroll their child, to receive education (CFNEJA, paragraph 2.2).

Finally, the First Nation must establish processes for appeal or review of administrative decisions taken by the First Nation Council or the CEA and if there is a right of appeal to a court, the Supreme Court of British Columbia will have jurisdiction to hear those appeals (CFNEJA, paragraph 5.2). While the CFNEJA does not specify that the appeal/review process must be set out in the law, it makes sense to address this issue by placing it in the law.