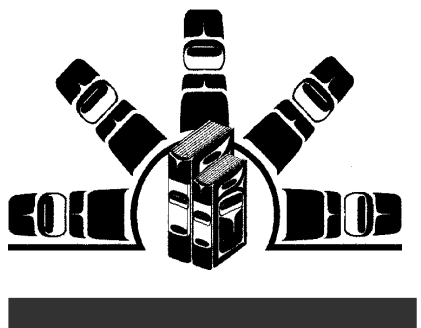

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Education Agreements Handbook

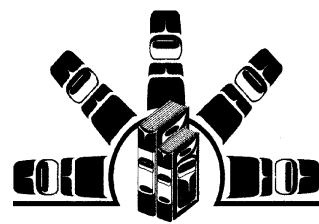
Prepared for the
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1.0 Background

The current Handbook is based on the First Nations Education Steering Committee publication *Education Agreements Best Practices Handbook* (Kavanagh, 1997). The above document includes more information about Education agreements and samples of existing agreements.

Education Agreements, provided for by Section 104 of the *B.C. School Act*, are agreements between First Nations and School Boards which describe mutually agreed upon goals aimed at supporting First Nations students attending public schools. In these agreements, First Nations and district personnel commit themselves to a variety of strategies which focus on overcoming the barriers faced by First Nations students in school, while building on approaches which both parties agree will result in greater student success. Education Agreements are also the mechanism through which federal funding for identified First Nations students is distributed to school districts through First Nations Band Councils.

2.0 Context for the Creation of Education Agreements

Formal schooling for First Nations began in the nineteenth century, with the establishment of residential schools. When the 1876 *Indian Act* placed schooling of First Nations children under the jurisdiction of the federal government, this body began assisting with funding of residential schools and created a number of schools on-reserve. After revisions to the *Indian Act* in 1946, provision was made for First Nations students to begin attending public schools.

The federal government then funded First Nations children through payments to the province. Constitutionally, education is in the provincial realm. Accordingly, the federal government placed responsibility for the education of students in the hands of the province; the federal government's involvement became strictly financial, and they paid a fee for services provided by the province.



First Nations children's attendance in public schools quickly increased. In 1969, the bilateral Master Tuition Agreement was signed, outlining the federal agreement to pay tuition and some capital costs for specified First Nations children in return for education services from the province.

In the 1970s, the last of the residential schools closed in British Columbia and the National Indian Brotherhood had its *Indian Control of Indian Education* document accepted as federal policy for First Nations education. This policy created opportunities for First Nations to open schools within their communities, permitting a shift toward more parental/community control in decision-making over education, which was a foundation principle in the *Indian Control of Indian Education* paper. In the following decade, the national First Nations Assembly argued in *Tradition and Education: Toward a Vision of Our Future* (1988) that, in spite of policy, First Nations were still restricted in their ability to exercise jurisdiction in educational matters. They advanced the position that it was critical for communities to secure a greater measure of input into and control over their children's education; without it, First Nations students would continue to face insurmountable challenges in public schools.

The need to overcome these barriers was recognized in the provincial Royal Commission report, where Sullivan (1988) urged the public system to make "every effort to accommodate to the extent possible the desire for [First Nations] educational self-determination." In response the British Columbia Ministry of Education developed a Strategic Initiative that resolved to "increase Aboriginal control of Aboriginal education and [encourage the establishment of local education agreements and ensure community school board consultation with the Aboriginal community]" (Kavanagh, 1997).

It was evident that both First Nations and people working in the public system recognized a need to work together to improve educational experiences for First Nations children. In the 1988 Master Tuition Agreement, the federal government included a mechanism for cooperative approaches through the signing of Local Education Agreements. The following year an amendment was made to the British Columbia *School Act* so that school districts could enter into these agreements with First Nations communities.

A variety of arrangements exist for the payment of tuition for on-reserve First Nations students to the districts. Bands without Agreements can forward payment directly to districts, with funds flowing through their administration under their Comprehensive Funding Agreements or Financial Transfer Agreements. It should be noted, however, that bands who have multi-year Financial Transfer Agreements may not be provided with funds to cover increases in nominal roll over the course of their agreements. In the event of increased enrolment, these bands will be billed by the district for funds that have not been allotted to them



from the federal government. All tuition payments are fixed at the block funding rate which is set by the provincial government and varies from district to district.

A tripartite Memorandum of Understanding, signed in 1999 by federal, provincial and First Nations organizations, “acknowledge(s) that Aboriginal learners are not experiencing school success in British Columbia” and confirms their “intention to work together within the mandates of [their] respective organizations to improve school success for Aboriginal learners” (DIAND, 1999). Currently, Education Agreements provide one of the most effective mechanisms for putting this commitment into practice.

3.0 Creating an Education Agreement

3.1 Enabling Legislation and Policy

There is ample evidence that efforts must be made to increase educational success rates for First Nations students. Education Agreements provide one vehicle through which joint initiatives can be undertaken to address this need. Fortunately, the foundation for advancing shared goals has now been laid and many First Nations and districts have found common ground on which to build productive Education Agreements.

First Nations have authority to sign Education Agreements as their Aboriginal right, which has been affirmed by federal policy based on *Indian Control of Indian Education* and reconfirmed in the *Constitution Act* (1982). School districts also have been given authority to do so through *Section 104* of the *School Act*. *Section 104* provides a legal foundation, with the provision for a binding financial contract, for Education Agreements.

The Section reads:

- (1) A Board may, subject to this *Act*, the regulation and the orders of the Minister,
 - (a) enter into an agreement to purchase managerial or other services with respect to the operation of schools in the district or to purchase education services that will be under the district or to purchase educational services that will be under the general supervision of an employee of the board who is a member of the college, and
 - (b) enter into an agreement concerning the promotion, development or operation of recreational and community services.



- (2) A board may, with the approval of the minister,
- (a) enter into an agreement with Government of Canada with respect to the education of
 - (i) Indian children, or
 - (ii) children of members of the Canadian Forces or other persons employed by the Government of Canada.
 - (3) A board may enter into an agreement with respect to the education of Indian children
 - (a) with a council of a band as defined in the *Indian Act*.
- or
- (b) with the council of an Indian band established by another Act of the Government of Canada.
- (4) A board may operate a Provincial resource program or a distance education school in accordance with an agreement with the minister.

3.2 Initiating Steps - Inform and Involve Key People

Given that the legislative structure is in place for completing agreements, bands and districts can move forward, without encumbrance, to create agreements which fit the specific needs of their First Nations students.

The first step to be taken in developing an Education Agreement is to ensure that the key players to the agreement are informed of the intention to begin negotiations. It is evident that all successful agreements are built on relationships characterized by respectful negotiation and the development of a mutual understanding of the issues brought forward by each party. The agreement is to be signed by the First Nation and the school district, represented by the School Board. To ensure that an agreement will gain approval, it is critical that band council representatives and district level decision-makers are informed and participating in the discussions at an early stage in the process. It is also important to involve those who have some familiarity with First Nations education and are committed to creating an agreement.

Key people from the First Nation may include:

- Education Coordinator



- Band Councillor with the education portfolio
- Education Committee or other community organization on which parents have representation
- Members from a First Nations advisory group to the district, if such a group exists
- Band elders

Key school district personnel may include:

- Superintendent
- Directors or other district staff with responsibility for Aboriginal Education
- School Board trustee(s) with interest/portfolio including First Nations education
- First Nations Education Coordinators
- School District Secretary/Treasurer
- School staff including: administrators, teachers, teaching assistants, and CUPE members

Including several interests in the negotiation may seem cumbersome, but the benefits that arise from giving a wide range of individuals a voice raises the overall commitment to meeting the goals of the agreement.

3.3 Choose a Process for Developing the Agreement

An Education Agreement can be a vehicle that focuses the attention of First Nations and public school personnel on the means of enhancing and maintaining educational opportunities for First Nations learners. This perspective promotes communication between parties about the content of clauses in the agreement that will best achieve the shared goals.

It is important that the agreements be seen as evolving; when they include carefully considered implementation and evaluative measures, this sets the stage for making adaptations in future agreements to ensure greater benefits to students. By recognizing the flexible nature of agreements, the parties need be less concerned about possible shortcomings of the initial agreement, since changes can be made in subsequent years.



The creation of an Education Agreement will include the following steps.

I. Inform and gain the support of key First Nations people and district staff and board members.

II. Involve key people in decision-making about relevant aspects of the agreement. It is important that they develop a shared understanding of the goals of the agreement, the potential content, and the way in which the agreement will affect various stakeholders.

III. Have key people agree about which activities will be undertaken at various stages in the development of an agreement. Preparatory and ongoing activities may include:

- a) completion of a needs assessment to identify the current situation of First Nations learners. Information about First Nations students attending district schools is available in a document entitled: *“How Are We Doing? An Overview of Aboriginal Education Results for: (the district);”*
- b) joint strategic planning between band/community and school (see Kavanagh, 1997); and
- c) information sessions in the community or joint band/district sessions to:
 - discuss the intention to create an agreement;
 - describe the rationale for signing the agreement;
 - describe its content;
 - develop strategies related to issues that the community would like to see addressed in the agreement; and
 - discuss ongoing/maintenance activities associated with the agreement.

IV. Prepare a draft agreement for First Nations and district consideration.

3.4 Recognize Possible Jurisdictional Issues

It is necessary to recognize that there are a variety of stakeholders to consider when planning for First Nations learners in attendance at public schools. On the First Nations side, students, parents, and community members are the



stakeholders, and they are represented by Band Council signatures on the agreement. Although the School Board is the signatory to the agreement, teachers, non-teaching staff, principals, district officials, the College of Teachers, and the Ministry of Education also have roles and responsibilities that can conflict with clauses which parties may want to include in the agreement (see Kavanagh, 1997, App. 1). The agreement must be structured to assure that collective agreements, the Labour Code, and Employment Standards requirements are not violated by the agreement. For example, current school employee roles and responsibilities may be affected when the issue of increasing the presence of First Nations people in the school environment is addressed. (Jurisdictional issues are discussed in detail in *Education Agreement Best Practices*, Kavanagh, 1997). The complexity of this issue can cause confusion but should not be a point of discouragement. Several agreements have been made which creatively address jurisdictional matters. Some strategies for dealing with them will be discussed below.

3.5 Consistent Provisions in Education Agreements

Education Agreements currently in place generally include the following (for a full description and samples of Agreements see Kavanagh, 1997).

Preamble

The purpose and goals of the agreement and the principles that underpin the commitment of both parties; usually makes reference to the mutual desire to provide quality education to First Nations students.

Definitions/Interpretations

Definitions of the terms used in the agreement.

Statement of Intent or Objectives

Mutually agreed upon objectives that clauses in the agreement will address.

Responsibilities of the Board

Activities and roles the board will undertake to fulfill its obligations to the agreement.





Responsibilities of the Band

Activities and roles the Band will undertake to fulfill its obligations to the agreement.

Tuition Payment

The terms under which tuition will be paid, including definitions of signatories to the agreement, the manner in which billed amount will be verified, and dates of billing and payment.

First Nations Trust

Involving the establishment of a reserve fund so that, upon a second enrolment date, tuition payments can be adjusted for students who move between public and band schools during the year.

Clauses Related to Specific Issues

First Nations Language Programs
Assessment and Placement of Students
Curriculum Development and Delivery
Access to Resources Specific to First Nations
Cross Cultural Awareness in Hiring and Recruitment Policies
Accountability and Communication
Retention of First Nations Students
Discipline
Capital Projects

Dispute Resolution, Arbitration and Termination

Description and definition of the terms under which any disagreement between the parties with regard to the agreement will be resolved.

Notices and Term of Agreement

Definition of how agreement documentation will be handled and the term of the agreement.

4.0 Useful Clauses Included in Current Education Agreements

Many Education Agreements currently in place include clauses that make them particularly effective tools for enhancing quality education for First Nations learners. Not all clauses apply equally to all bands or districts; however, some of those below, shared by a number of bands, may prove useful.

4.1 Clauses Related to Funding Structures

- Agreement clauses describe payment terms that reflect when these funds become available to the First Nations.
- Agreements include two nominal roll dates so that funds can be redirected to the school delivering service for those students who transfer between the public or band operated systems mid-year. For example:

First Nations Trust

A second enrolment date shall be set to determine the number of students that transferred from the Public School system to the Band Schools and from the Band Schools to the Public Schools. The date of the 2nd enrolment shall be February 15th.

(a) For all students transferring from the Public School System to the Band Schools, the Board agrees to set up a reserve equal to 25% of the amount determined in Article 5.0 (the nominal roll block rate) above.

(b) The reserve referred to in Article 5.1(a) above, shall be held by the Board in a trust. This trust will be used for programs to benefit First Nations students after consultation with the First Nations Education Advisory Committee.

(excerpt from *Coldwater Indian Band* agreement)

- Agreements include provision for a reduction of payment to a school in the event of strikes or lockout:

In the event of a strike or lockout, funds will be returned to the Council or payment will be reduced, equal to the amount withheld or reduced by the Ministry of Education, or the Federal Government.

(excerpt from *Iskut Band Council* agreement, cited in Kavanagh, 1997)



- Agreements include provisions for having tuition funds paid to the public school according to actual enrolment throughout the school year. Clauses for this situation read as follows:

In the case of “early school leavers” and any First Nations student transferring out of School District #78, tuition fees as calculated on a percentage of school year not attended, will remain with the First Nation. In the case of advanced tuition payments, the funds not used as calculated by the percentage of school year not attended will be credited to the First Nation.

The First Nation will pay tuition fees to the School District, on a pro rata basis, for any First Nation student for which the First Nation receives tuition funding if that student enrolls in School District #78 following the September 30 nominal roll date. Payment will be indicated on the first invoice following the enrolment of the student and will be based on the tuition rate received by the First Nation for the student.

(excerpt from the *Fraser Cascade* agreement)

- Agreements include clauses that provide an opportunity for negotiating payment when students leave school early. One such clause, in part, reads:

In the event that the student does not return to school on or before the commencement of the second semester of the same School Year, the Superintendent or designate shall advise the Band Council. If requested by either party, the parties shall meet for consultation on the question of adjustment of payments for that student. In such consultation, the parties shall take into account the continued attendance of the student, but may also consider such additional circumstances as enrolment of unfunded students, or additional support needs of other First Nations students. Any student enrolled after September 30, is entitled to attend school in the district.

(excerpt courtesy of the *Ktunaxa Independent School Society*)

- Agreements include guidelines for the management and expenditure of targeted funds. These resources are not part of the tuition funds, but are separate funds that are granted to school districts to be expended for the benefit of First



Nations students attending public schools (see Kavanagh, 1997 for further details). Strategies for combining Education Agreements with the management of targeted funds are described below.

- Agreements describe funding for educational support activities for expelled or suspended students. For example:

...should a student drop out, be suspended, or expelled from school, and should that student wish to continue with an educational program, whether it be correspondence/distance education or tutoring/tutorial support or other appropriate educational activity, SD #73 agrees to share in financial costs of supporting that student.

(excerpt from the *Skeetchestn Indian Band/School District #73 [Kamloops/Thompson]* agreement)

4.2 Clauses Related to the Management of Agreements

Many agreements include references to education councils or advisory boards (some already in place, others developed as part of the agreement) which are charged with specific roles and responsibilities within the agreements. These bodies are comprised of First Nations and district representatives who share an interest in and understanding of First Nations education issues. They can provide an effective structure for overseeing programs and staff hired to fulfill specific commitments made by both First Nations and School Boards within Education Agreements while they continue to serve the broader objectives of advancing quality education for First Nations students.

- For example, the *Nanaimo First Nation* agreement makes formation of the First Nations Education Advisory Council a clause in the agreement and attaches the Council's mandate as an appendix to the agreement. Both parties to the agreement are committed to supporting the Council (*Nanaimo First Nation* agreement in Kavanagh, 1997).
- Other agreements refer to an advisory body within their agreements. One mandates the Aboriginal Council on Education to "assist, advise, and direct the expenditure of all Targeted Dollars allocated for programming of _____ Band students" (agreement excerpt courtesy *Ktunaxa Independent School Society*).





- Agreement terms vary to reflect individual situations. They may last one year, allowing for evaluation and consequent updating, or may be multi-year arrangements.
- Agreements include provisions for reporting on the degree to which objectives are met and thereby have greater likelihood of making a real impact.
- Agreements include provisions for specific communications between parties, or their representatives, which will ensure that provisions within the agreement are being addressed.
- Agreements include requirements for reporting. For example:

The Board agrees to prepare an annual report on the provision of Education Programs to First Nations students under this Agreement and to present this report at a Special Meeting of the First Nation and the Board. The annual report shall include details as at September 31 and May 31 or each school year in accordance with the *Freedom of Information Act*, concerning:

- the number of First Nations students covered by this Agreement and their programs;
- attendance, graduation and student retention data;
- financial accounts related to this Agreement which are prepared by the Board in the regular course of its operation;
- the number of teaching and non-teaching staff working directly with First Nations students and their duties and responsibilities;
- measures of participation and success of First Nations students, suitable to provide a reliable benchmark and a means of tracking program performance; and
- other issues agreed upon by the School District and the First Nation.

(excerpt from the *Nanaimo First Nation* agreement cited in Kavanagh, 1997)

- Agreements include clauses which provide resources to bands to assist them in supervising and carrying out the commitments written into the agreement. Such funds could be identified from the targeted funds or other administration funds which might generally accrue only to school districts.

4.3 Clauses Related to In-School Programs

- Agreements often include a commitment to deliver First Nations language programming, an initiative supported by 1996 Ministry of Education, Skills and Training, *Language Education in B.C. Schools Policy and Guidelines* (Kavanagh, 1997).
- Agreements can provide for access to public school programs to gain accreditation in a core program that includes language. For example, Musqueam's Adult Learning Centre agreement includes the clause:

The School will provide adult alternate education programs leading to a Dogwood Certificate which includes the following core subjects:

- Math
- English
- Science
- Socials
- Musqueam Language and Culture

- Agreements include clauses which ensure that students with special needs are assessed with due consideration for their educational future and informed consent of parents. For example:

Placement of First Nations students requiring assessment will occur only after the following steps have been completed:

- informed consent has been obtained from the child's parent or guardian prior to the assessment and/or placement;
- an appropriate assessment has been completed, or made available if a recent assessment has been completed, and results made available to the parent, the school-based team, and to the First Nations Education Council;



- a written report stating the reason for the placement, the options considered and the educational opportunities gained and lost by the placement has been received by the parents or guardian and First Nations Education Council;
- an appeal regarding the assessment and placement must be placed by the parent or legal guardian. The First Nations Education Council may support the parent in this appeal process.

(excerpt from the *Cowichan* and *Nanaimo* agreements)

4.4 Clauses Related to Personnel

- The agreement created by the Musqueam First Nation commits the District to supplying staff for their Adult Learning Centre. The staffing clause reads:

The School District shall be responsible for the salary and benefits of all teachers and teaching assistants.

The Band and School District shall collaborate on the hiring, evaluation and review of new teaching staff and teaching assistants. Priority shall be given to the hiring of Native teachers and teaching assistants.

(excerpt from *Musqueam Indian Band* agreement)

- Agreements include references to jointly representative councils to oversee hiring of staff. For example:

Representatives of the AEC (Aboriginal Education Council) will participate in the hiring process for any contract personnel hired to develop curriculum for Aboriginal students.

(excerpt from the *Fraser Cascade* agreement)

To move toward increasing the number of trained Aboriginal teachers, counsellors, and support workers on staff, the School District will take the following steps:

- a) involve members of the AEC in the staff selection for positions that are specifically directed at First Nation students.



b) negotiate with the non-teaching support staff union to establish less restrictive posting and filing language for positions funded by Targeted Dollars.

(excerpt from the *Fraser Cascade* agreement)

5.0 *Useful Components from Other Types of First Nations Education Agreements*

As illustrated above, First Nations are pursuing a variety of arrangements which confirm their legitimate rights as decision-makers in education. However, not all agreements being forged are between Districts and bands. Other innovative agreements have been created which involve the Ministry of Education or authorities outside the public system. The common element amongst these types of agreements is that they tend to occur in jurisdictions where there is a long-standing relationship between First Nations education organizations and school personnel, so that a foundation of trust and mutual respect has been laid from which to build.

- The First Nations Education Council on Vancouver Island has successfully lobbied the Canadian Union of Public Employees, gaining this body's agreement that only First Nations staff will fill positions when personnel are hired using targeted funds. This arrangement does not exist within band Education Agreements, but rather is in the form of letters from CUPE to the First Nations Education Council (telephone conversation with Barbara White, Sept. 16, 1999).
- The Musqueam band has created a tuition agreement for their students who attend a private school, which includes an agreement from the private school to hire a home support worker from their band (*Musqueam/ICS* agreement).
- A provincially endorsed agreement has been created which allows a First Nations Band Operated Independent school to bill the school district and receive the full block rate for any students enrolled who are not eligible under DIAND guidelines (i.e. non-status, off reserve and non-First Nations). This agreement is unique and was achieved through considerable negotiation over a period of years (telephone communication with Jim Angus, Sept. 16, 1999).



- The School District 73 (Kamloops) First Nations Education Council has a Memorandum of Agreement with the Ministry of Education aimed at moving First Nations students toward achievement parity with non-First Nations students in the district. The five year agreement commits the Ministry to maintaining specific levels of targeted funds according to the level of success achieved by First Nations attending public school in the district on six performance goals (Dist. #73/MoE, 1999).

6.0 Conclusions

In recent years First Nations and the Ministry of Education have taken several steps, through communication, legislation and policy development, to increase the likelihood that First Nations peoples' needs will be addressed in the public education system. Education Agreements are becoming the standard mechanism through which school districts and First Nations communities support students by putting specific strategies in place to ensure that the good will expressed around education issues is supported by clear, practical, mutually agreed upon plans which can be implemented and evaluated.

First Nations recognize that such arrangements provide them with minimal jurisdiction. Nonetheless, many of the communities involved in these agreements value the benefits which accrue to their children when, after open communication and careful consideration, the major stakeholders in the public school system respond to the students' needs by providing strategies and supports identified as appropriate by First Nations people. In spite of their limitations, Education Agreements continue to raise awareness of the challenges faced by First Nations students, accelerate the search for solutions to these problems, put identified strategies into practice, and evaluate the results while affirming the rights and responsibilities of parents and communities to be major players in all phases of the process.



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