



EDUCATION JURISDICTION: AN OVERVIEW

NOVEMBER 2019



FIRST NATIONS EDUCATION
STEERING COMMITTEE



Overview

1. Context – BC First Nation Education System
2. Education Jurisdiction – what is it?
3. Education Advancements
4. Where are we now?
5. Getting involved in jurisdiction
6. Education Jurisdiction Resources, including glossary of key terms

BC First Nations Education System

For over 20 years, First Nations in BC have worked collectively to build a comprehensive and responsive education system to meet the needs of their communities –an education system that supports economic and cultural viability and sustainability.

- We have developed a regional model that is endorsed by BC chiefs and recognized in existing agreements with Canada and BC.
- We have a wide range of second and third level services for schools and communities and dedicated funding to support them.
- We have recently concluded the BC Tripartite Education Agreement (BCTEA) with Canada and BC.
- BC First Nations' jurisdiction over education has been recognized in jurisdiction agreements and legislation (but is not yet fully implemented).

Current Framework – First Nation Schools

- First Nations schools are subject to the Indian Act and Federal Policy which makes them vulnerable to political change.
- First Nations schools must follow provincial curriculum which is subject to the provincial government and legislation.
- This education system does not always meet the needs of the First Nations communities.
- Jurisdiction will give First Nations control and law making authority over their education systems which will be recognized by both Canada and BC.

Education Jurisdiction – What is it?

- ❑ Rationale for Education Jurisdiction
- ❑ Key documents
- ❑ Key players
- ❑ Key milestones

Rationale for Education Jurisdiction

A First Nation with jurisdiction will be able to make decisions in the best interests of their learners (rather than having those decisions made by others).

It will have the authority to pass an education law and *establish its own school system*. Among other things, it can create distinct processes for:

- Teacher Certification
- School Certification, and
- Curriculum

It would also have the ability to establish a Community Education Authority – the legal equivalent of a school board – on its own or together with other First Nations.

Rationale for Education Jurisdiction

- An Education Jurisdiction Agreement is considered a “sectoral self-government agreement” and would likely be protected from future federal legislative initiatives.
- Participating First Nations can be shielded from negative impacts of new federal initiatives (e.g. exemption from the federal legislation proposed by the previous Conservative Government).
- First Nations’ jurisdiction over First Nations education will make “First Nations control over First Nations education” a reality.



Signing of the Jurisdiction Agreement – July 2006

Key Documents

- First Nations Education Jurisdiction Framework Agreement (Framework Agreement)
 - Canada-First Nation Education Jurisdiction Agreement (Education Jurisdiction Agreement)
 - Canada-First Nations Education Jurisdiction Funding Agreement (Funding Agreement)
 - BC-First Nation Education Jurisdiction Agreement
- Federal and Provincial Supporting Legislation

Framework Agreement

The Education Jurisdiction Framework Agreement signed in 2006 and committed Canada and BC to pass supporting legislation:

- Sets the road map for implementing First Nations' jurisdiction over education in BC.
- Was extended for five years in 2013 to 2018, and for a further three years in 2018 to 2021.
- Includes four appendices:
 1. British Columbia-First Nation Education Agreement
 2. Education Jurisdiction Agreement
 3. Funding Agreement
 4. Template Implementation Plan

Education Jurisdiction Agreement

It is an agreement between a Participating First Nation and Canada, based on the agreed template (attached to the Framework Agreement). Every PFN will be signing the same form of agreement.

- It brings a First Nation's exercise of jurisdiction to life, and sets the scope of its law-making powers.
- It recognizes a First Nation's jurisdiction over education on First Nation Land (i.e. First Nation reserve).
- This jurisdiction will extend to Members of the First Nation and to Non-Members whose children attend the First Nation's school.

Funding Agreement

It is an agreement between a Participating First Nation and Canada, based on the agreed template (also attached to the Framework Agreement). Every PFN will be signing the same form of agreement.

It provides funding to support the implementation of an Education Jurisdiction Agreement, including:

- Education governance funding
- School operational grants (using the BCTEA formula as a starting point)

BC Education Agreement

It is an agreement with BC that establishes the relationship that BC and First Nations will have through jurisdiction.

- It recognizes First Nations jurisdiction over education on First Nations Land. This includes recognition of First Nation's ability to establish First Nations: curriculum and graduation requirements; teacher certification process; and school certification process.
- It sets the groundwork for other agreements with BC that support education at the request of Participating First Nations including:
 - Local Education Agreements (LEAs)
 - Reciprocal Tuition Arrangements

Supporting Legislation

Canada and BC have both passed supporting legislation.

- Federal legislation – *First Nations Jurisdiction over Education in British Columbia Act* (2006):
 - brings individual Education Jurisdiction Agreements into effect,
 - recognizes Participating First Nations' authority to pass education laws and to establish Community Education Authorities, and
 - establishes the First Nations Education Authority and sets out its powers.
- Provincial legislation – *First Nations Education Act* (2007)
 - recognizes Participating First Nations' authority to pass education laws, and
 - requires BC to consult with the First Nations Education Authority on changes to provincial education.



BC Education Jurisdiction Legislation Introduced to House of Commons
– November 2006

Key Players

Interested First Nations (IFNs): Are those First Nations who are interested in the jurisdiction initiative and would attend IFN meetings to get updates on the process.

Negotiating First Nations (NFNs): Are those First Nations who are actively involved in the negotiation process and moving towards signing education jurisdiction agreements.

Participating First Nations (PFNs): Are First Nations that have voted on and ratified an Education Jurisdiction Agreement and had their names added to the schedule of the Federal Legislation.

First Nations Education Authority (FNEA): The Education Jurisdiction Agreements and Supporting Legislation provide for the creation of the *FNEA* and define its authority. It is a regulatory body made up of PFNs with the purpose of serving the interests of BC First Nations exercising jurisdiction over education.

Community Education Authority: Is the equivalent of a school board. A PFN has the option of establishing a *Community Education Authority*, on its own or with other PFNs, and clarifying the relationship between it and the First Nation's Government through its law.

About the First Nations Education Authority

The First Nations Education Authority (FNEA) will be made up of Participating First Nations, who will each appoint two members to sit on the FNEA board of directors.

- It will formally come into existence once there are at least three Participating First Nations.
- Each Participating First Nation will sign an Education Co-Management Agreement with the FNEA, which confirms the FNEA's terms of reference.
- The FNEA may create positions and hire any persons needed to fulfill its duties.
- The FNEA will receive operational funds from the Federal Government.

More about the FNEA

The purpose of the FNEA is to support Participating First Nations (PFNs) in providing education, and also to act as a regulatory body directed by PFNs. It will only exercise jurisdiction over matters that have been delegated to it by PFNs.

The powers that will be delegated to the FNEA include:

- teacher certification,
- school certification,
- establishing criteria for evaluating curriculum and exams required for graduation.



Still more about the FNEA

If requested by a Participating First Nation, the FNEA will also take on other duties, such as:

- Certification of language and culture teachers;
- Organizing bulk purchasing initiatives for Participating First Nations;
- Evaluate courses not required to graduate; and
- Issuing First Nation graduation certificates.

Under the BC-First Nation Education Agreement, the FNEA will also Consulting with and be consulted by BC.

Key Milestones in Jurisdiction

- Jul. 25, 2003 • MOU signed (Canada, BC and FNEESC)
- Nov. 26, 2005 • Education Jurisdiction Framework Agreement initialed
- Jul. 5, 2006 • Framework Agreement signed
- Dec. 12, 2006 • Federal Supporting Legislation passed
- Nov. 29, 2007 • Provincial Supporting Legislation passed
- Dec. 2010 • Canada announced that its Own Source Revenue (OSR) policy would apply to this initiative
• Negotiations stalled from 2010 to 2015 as the parties sought to resolve the OSR issue
- June 28, 2013 • Framework Agreement extended until 2018
- July 2015 • Canada released new policy, “Canada’s Fiscal Approach for Self-Government Arrangements” which exempted the jurisdiction initiative from the OSR policy
- June 2016 • Canada re-engages in negotiations

Education Advancements

- ❑ **BC Tripartite Education Agreement (BCTEA)**
- ❑ **BC Jurisdiction-Related Advances**
- ❑ **Terms of Reference for Education Jurisdiction Initiative**
- ❑ **Other Advancements**

Highlights of BCTEA

We are very pleased to have signed a renewed BC Tripartite Education Agreement (BCTEA) with BC and Canada. BCTEA became effective in July 2018

BCTEA includes new and significant funding for BC First Nations education over 5 years, including funding for:

- Language and Culture
- Transportation
- Technology.

Highlights of BCTEA

New and strengthened processes to support First Nation students, including:

- Tripartite arrangement to permanently replace Master Tuition Agreement
- Requirement for Local Education Agreement (LEA) where requested by First Nation
- Process to issue Adult Dogwood in First Nation schools
- 6th Professional Development Day in BC Public Schools

BCTEA also provides increased accountability for BC and Canada. This includes data sharing and reporting requirements for First Nation Student in BC Public Schools.

Comparison – Jurisdiction & BCTEA

	BCTEA	EDUCATION JURISDICTION
Status of Agreement	BCTEA is a legal contract between Canada, BC and FNESC (on behalf of First Nations).	The Education Jurisdiction Agreements are “sectoral <u>self-government</u> arrangements”.
Law-making authority	There is no law-making authority under BCTEA.	Participating First Nations will have law-making authority.
Term	TEFA 1 was a five-year agreement (2013 to 2017), which was extended for one year. BCTEA is a five-year agreement (to 2023).	Education Jurisdiction Agreements do not have a termination date.
Approval process for First Nation	No formal approval required because BCTEA is a renewal of TEFA 1. (BCRs were required to participate in TEFA 1.)	Education Jurisdiction Agreements will be approved by First Nation members through a ratification vote.

Comparison – Jurisdiction & BCTEA

Funding approach	Funding under BCTEA based on the funding formula used by BC to fund provincial school boards, with specific adaptations.	Education programs and services funding determined by BCTEA methodologies, plus additional funds for governance costs.
Federal Own Source Revenue policy application	No – Federal Own Source Revenue (OSR) policy does not apply to BCTEA funding.	No – Federal OSR policy will not apply to Education Jurisdiction Agreements.
Reciprocal tuition arrangement	Yes – First Nations under BCTEA can sign Reciprocal Tuition Agreements with BC.	Yes – Participating First Nations can enter reciprocal tuition arrangements.
Graduation	In development – interim process allows students at First Nations schools to obtain a Dogwood, if eligible.	Yes – Students may obtain a Dogwood, if eligible.
Establishing a Community Education Authority	No authority to establish a Community Education Authority under BCTEA, but can establish a society under <i>Societies Act</i> .	Yes – A Participating First Nation can establish a Community Education Authority under its law.

Comparison – Jurisdiction & BCTEA

Teacher Certification	No authority for First Nations to certify teachers under BCTEA. Must hire teachers certified by BC or a recognized Canadian authority.	Yes – The FNEA will have authority to certify teachers.
School Certification	No – No authority to to certify schools under BCTEA. (The FNSA monitors schools under its own school certification initiative.)	Yes – First Nations schools will have to be certified. The FNEA will have authority to certify schools.
Second level services	Yes – FNEESC/FNSA provide second level services to First Nations.	Maybe – Participating First Nations may be able to access FNEESC/FNSA services on a fee for service basis or if not already funded by Canada.
Relationship btw BCTEA and education jurisdiction	BCTEA recognizes that First Nations may opt into the education jurisdiction initiative.	BCTEA would no longer apply to a Participating First Nation, as it would be funded under education jurisdiction.



Ottawa Trip with students from Fort Nelson and Bella Bella– November 2006

Education Jurisdiction Terms of Reference

With the resumption of jurisdiction negotiations in 2016, the Negotiating First Nations decided it would be helpful to develop Terms of Reference to guide the conclusion of the jurisdiction negotiations.

Education Jurisdiction Terms of Reference were initially adopted on January 23, 2017 and have been updated several times since then.

These Terms of Reference outline how a First Nation becomes an Interested First Nation or a Negotiating First Nation.

BC Jurisdiction-Related Advances

The British Columbia-First Nation Education Agreement is one of the agreements attached to the Framework Agreement.

Since it was signed, BC has implemented two of the key commitments:

1. Reciprocal tuition (expanded to be available for all First Nations schools); and
2. Worked with FNEESC to develop a course that is equivalent to English 12 – English First Peoples 12 (then went on to develop English First Peoples 10 and 11).

Other Advancements

A great deal of work has been accomplished in 2019.

- The NFNs have worked with a fiscal advisor to develop a methodology for education governance
- A process for how PFNs will access Second and Level Services is included in the revised Funding Agreement
- Funding for the FNEA has been costed
- Provisions to review funding levels have been built into the Funding Agreement

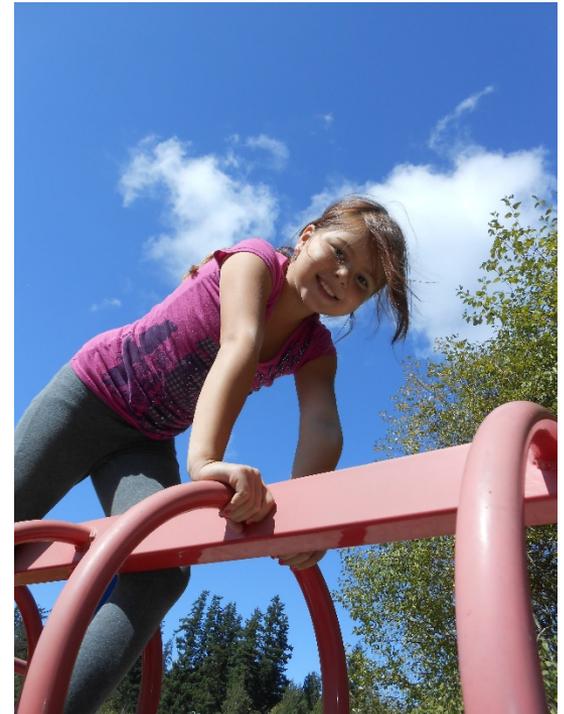
Where are we now?

- Negotiations with Canada
- Negotiations with BC
- Priority Issues

Negotiations with Canada and BC

Negotiating First Nations have finalized an Agreement to Amend the Education Jurisdiction Framework Agreement and are currently working with Canada to have the Minister of Crown-Indigenous Relations sign this amending agreement and prepare to initial individual agreements with Negotiating First Nations.

Negotiating First Nations and BC are currently working to update and finalize the BC-First Nations Education Agreement.



Canada Negotiations Timeline

- May, 2019
 - CIRNA officials indicated the agreement would not be able to get cabinet approval required for the minister to initial or sign and ratify agreements before the election.
- June, 2019
 - We were informed that Privy Council Office had confirmed that Minister Bennett had authority to sign the agreements without cabinet approval.
- July 26, 2019
 - Negotiating First Nations finalized the Agreement to Amend the Education Jurisdiction Agreement, sent it to Minister Bennett, and indicated they were prepared to initial the document.
- Aug. 1, 2019
 - We worked with Canada to plan an event to have the minister sign the amending agreement and initial individual agreements with First Nations.
- Aug. 15, 2019
 - CIRNA informed us that approval from various cabinet offices in Canada was needed before the Minister could sign the documents. They indicated that they thought we would have a better chance of getting approval for the amended Education Jurisdiction Agreement template (but not the Funding Agreement template). Following that call, we revised the Amending Agreement accordingly (attaching only one template.)

Canada Timeline Continued

Aug. 20, 2019

- CIRNA cancelled the initialing event and reported that the agreements were sent to cabinet offices for approval at an ADM level.

Sept. 2, 2019

- Treasury board indicated they had issue with the permanent OSR exemption in the agreement and put the request on hold. They also took issue with not having the whole package, which was missing the Funding Agreement.

Sept. 9, 2019

- CIRNA indicated we would not get approval before the election. We asked for Canada to create a document that shows the critical path forward.

Sept. 10, 2019

- CIRNA indicated that they had received direction to create a strategy that lays out the steps to get from here to implementation.

Sept. 11, 2019

- The election writ was dropped and negotiations came to a stand still.

Nov. 21, 2019

- Negotiations with Canada resume.

Priority Issues

Current priorities of the Negotiating First Nations include:

- Working with Canada to have the agreement to amend the framework agreement with the permanent OSR exemption signed
- Initial individual Education Jurisdiction Agreements with Canada
- Finalize the Co-Management Agreement
- Finalize the BC-First Nations Education Jurisdiction Agreement
- Finalize a FNEA teacher certification process
- Work with BC to achieve legislative amendments required for jurisdiction
- Establish reciprocal tuition arrangements with BC

Governance Priorities

- Capacity building – preparing for self-governance over education (including law-making, review and amendment)
- Further explore relationship between First Nations and the Community Education Authorities or education advisory committees established by First Nations
- FNEA – need to establish the FNEA infrastructure and ensure it works effectively with existing institutions (including FNEESC and FNSEA) to avoid duplication



Aqamnik School

Getting Involved in Jurisdiction

- ❑ Process for becoming an IFN or NFN
- ❑ What happens as an NFN?
- ❑ Becoming a PFN

Process for becoming an IFN or NFN

To become an IFN:

- a First Nation must pass a Band Council Resolution (BCR) indicating its interest in exercising jurisdiction over education (the form for the BCR is set out in the Terms of Reference),
- forward the BCR to FNEESC

To become an NFN:

- a First Nation must pass a Band Council Resolution (BCR) (described above) and a 2nd BCR that appoints a negotiator and provides the negotiator with instructions (the form for the BCR is set out in the Terms of Reference), and
- provide formal notice to FNEESC it wants to become a Negotiating First Nation.

What happens as a Negotiating First Nation?

- ❑ Negotiating First Nations direct the negotiations to revise the template Education Jurisdiction Agreement and Funding Agreement (as well as the BC First Nation Education Agreement).
- ❑ Once the approach to determining program funding and funding for governance has been determined, Canada will provide each Negotiating First Nation with a funding offer.
- ❑ Individual Negotiating First Nations will finalize their Education Jurisdiction Agreements and Funding Agreements, including funding amounts.
- ❑ Canada and each Negotiating First Nation that is ready will initial an Education Jurisdiction Agreement and a Funding Agreement.
- ❑ Each Negotiating First Nation with initialed agreements will carry out community development work over a transition period (of up to 3 years) and prepare for ratification vote.

Funding and Education Jurisdiction

- Negotiating First Nations are eligible for annual Capacity Building Grants in order to ready themselves for initialing and signing their Education Jurisdiction Agreement and Funding Agreement (the “two Agreements”). This includes developing a draft education law, meetings with the education board and/or chief and council, independent legal review of the Jurisdiction Agreement and Funding Agreement.
- Once a Negotiating First Nation has initialed the two Agreements it becomes eligible to receive one-time funding including support for self-government start-up and ratification (new – a portion of this funding is received on initialing and the balance after a successful ratification vote).
- Once a Negotiating First Nation has signed the two Agreements and becomes a Participating First Nation, it will receive the following funding from Canada:
 - Instructional Services funding and Student Support funding (at the same levels as it currently receives under BCTEA)
 - Ongoing governance funding (new)

Becoming a Participating First Nation

- ❑ Each Negotiating First Nation with initialed agreements will hold a ratification vote to approve:
 - its Education Jurisdiction Agreement, and
 - its Education Law-Making Protocol, establishing the process under which a First Nation will pass its own education law.
- ❑ If ratification vote is successful (i.e. 50% plus 1 of those who cast a ballot, vote in favour of the Education Jurisdiction Agreement and the Education Law-Making Protocol):
 - the Negotiating First Nation and Canada will sign Education Jurisdiction Agreement and Funding Agreement,
 - the Negotiating First Nation and the FNEA will sign an Education Co-Management Agreement, and
 - Canada will pass an Order in Council (OIC, a form of cabinet directive) adding the name of the First Nation to Schedule 1 of the federal supporting legislation.

Becoming a Participating First Nation

❑ Once the name of the First Nation has been added to Schedule 1 of the federal act:

- The First Nation becomes a “*Participating First Nation*”.
- The First Nation can pass its own education laws.

This marks the transition to the exercise of a First Nation’s jurisdiction over education.

❑ Once three Participating First Nations are confirmed, the FNEA will formally come into existence.



Chalo School



First Education Jurisdiction Meeting 2007 – post Federal Legislation

Education Jurisdiction Resources

- Community Template PowerPoint Presentation (this presentation)
- Web Resources (jurisdiction videos, template BCRs and letters, checklist, etc.)
- Jurisdiction Webpage:
<http://www.fnesc.ca/about-fnesc/jurisdiction>
- A jurisdiction video file is also available online and is a great resource to provide a historical overview.
- Additional opportunities to learn about education jurisdiction:
 - Attend Jurisdiction Meetings (open to Negotiating First Nations and Interested First Nations)
- Jurisdiction Toolkit (under development)

Glossary of Key Terms

Community Education Authority = a separate legal entity established by a First Nation to operate the First Nation's school (similar to a school board)

Education Jurisdiction Agreement = an agreement between a First Nation and Canada that recognizes the First Nation's jurisdiction over education

Funding Agreement = a funding agreement between a First Nation and Canada that supports the implementation of that First Nation's Education Jurisdiction Agreement

Education Law-Making Protocol = document that establishes the process to be used by a First Nation to pass its own education law (voted on at the same time as the Education Jurisdiction Agreement)

Negotiating First Nation = a First Nation that has agreed to negotiate an Education Jurisdiction Agreement with Canada

Participating First Nation = a First Nation that has ratified an Education Jurisdiction Agreement and whose name has been added to the Schedule attached to the federal supporting legislation

Thank You

**If you have any further questions,
please contact:**

Benjamin Ironstand, Jurisdiction Communications Coordinator

First Nations Education Steering Committee

Suite 113 – 100 Park Royal South

West Vancouver, BC V7T 1A2

Email: jurisdiction@fnesc.ca

Phone: 604-925-6087

Fax: 604-925-6097



QUESTIONS & DISCUSSION