



EDUCATION JURISDICTION: AN OVERVIEW

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FIRST NATIONS EDUCATION
STEERING COMMITTEE



Overview

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2. Education Jurisdiction – what is it?
3. Education Advancements
4. Where are we now?
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6. Education Jurisdiction Resources

Context

BC First Nation Education System

- **Current Framework**
- **Rationale for Jurisdiction**

Current Framework – First Nation Schools

There is a legislative and policy gap at this time:

- First Nations schools are under federal jurisdiction and subject to national Federal Policy making 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 First Nations communities.
- There is no recognized legislation that provides a foundation for First Nation schools.

Implementing education jurisdiction is an important step towards filling that gap. It will also give First Nations control and law-making authority over their education systems that will be recognized by both Canada and BC.

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
- Graduation Requirements 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.”
- Participating First Nations can be shielded from negative impacts of new federal initiatives
 - There was an exemption from the federal legislation proposed by the previous Conservative Government for those with self-government agreements.
- 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

Education Jurisdiction – What is it?

- ❑ Key documents
- ❑ Key players
- ❑ The First Nations Education Authority

Key Documents

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

Key Players

Interested First Nations (IFNs): Are those First Nations who are interested in the jurisdiction initiative and invited to 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 to the federal supporting legislation.

First Nations Education Authority (FNEA): Is a regulatory body established through the Education Jurisdiction Agreements and the federal supporting legislation. It is made up of PFN representatives and is intended to serve the interests of BC First Nations exercising jurisdiction over education.

Community Education Authority (CEA): Is the equivalent of a local school board that may be established by a PFN. A PFN can establish a CEA on its own or with other PFNs. PFNs should clarify the relationship between the CEA and the First Nation's Government through its law.



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

About the First Nations Education Authority

The directors of the First Nations Education Authority (FNEA) will be appointed by the PFNs – two from each PFN.

- Each PFN 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 people 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 PFNs in providing education, and also to act as a regulatory body directed by PFNs. It will only exercise jurisdiction over those matters that have been delegated to it by PFNs.

The powers that will be delegated to the FNEA include:

- Teacher Certification;
- School Certification;
- Graduation Requirements; and
- Establishing criteria for evaluating curriculum and exams required for graduation.

If requested by a PFN, the FNEA will also take on other duties as well.

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

Education Advancements

- BC Tripartite Education Agreement (BCTEA)
- BC Jurisdiction-Related Advances
- Education Jurisdiction Terms of Reference
- Other Advancements
- Timeline

Highlights of BCTEA

BC First Nations have always been committed to ensuring all BC First Nation schools are resourced appropriately to provide quality education to First Nation learners.

- BC First Nations do not want funding to become the primary incentive for signing jurisdiction agreements.

We are very pleased to have signed a renewed BC Tripartite Education Agreement (BCTEA) with BC and Canada, which came into effect 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

BCTEA also provides new and strengthened processes to support First Nation students, including:

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

BCTEA also provides increased accountability for BC and Canada. This includes data sharing and reporting requirements for First Nation Students 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 - No authority to establish a Community Education Authority under BCTEA, but can establish a society under Societies Act.	Yes – A Participating First Nation can establish a Community Education Authority under its own law.

Comparison – Jurisdiction & BCTEA

Teacher Certification	No - 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 – There is no authority to certify schools under BCTEA. (The FNSA monitors schools under its own school certification initiative.)	Yes – The FNEA will have authority to certify Participating First Nations’ schools.
Second and third level services	Yes – FNEA/FNSA provide second and third level services to First Nations.	Yes – Participating First Nations will be able to access FNEA/FNSA services on a fee for service basis. Participating First Nations should be eligible to access new services for which they are not already funded by Canada.
Relationship between 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

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).

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.

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 funding education governance
- A process for how PFNs will access centralized services is included in the revised Funding Agreement
- Provisions to review funding levels have been built into the Funding Agreement
- Policy work and language for the Education Jurisdiction Agreement have been completed to provide PFNs with a permanent exemption from federal OSR policy

Canada Negotiations Timeline



May, 2019	<ul style="list-style-type: none">• CIRNA officials notify NFNs they cannot get cabinet approval required for the minister to initial or sign and ratify education jurisdiction or funding agreements before the election.
June, 2019	<ul style="list-style-type: none">• CIRNA officials advise that Privy Council has agreed that cabinet approval not required for Minister Bennett to sign the agreements.
July - August 2019	<ul style="list-style-type: none">• Steps taken to organize signing and initialing ceremony in August 2019 for the jurisdiction agreement.
Mid - August 2019	<ul style="list-style-type: none">• CIRNA officials advise that support from other departments is required before the updated jurisdiction agreement can be approved.
September 2019	<ul style="list-style-type: none">• Attempts to obtain approval before election prove unsuccessful.
November 2019	<ul style="list-style-type: none">• CIRNA officials advise that they are working towards a June 2021 effective date for the education jurisdiction and funding agreements.

Where are we at now with Jurisdiction?

Currently, a number of agreements and processes are being negotiated and determined by the Negotiating First Nations in order to implement jurisdiction.

- Pre-jurisdiction Priorities
- Internal Processes
- British Columbia Negotiations
- Canada Negotiations
- Next Steps

Pre-Jurisdiction Priorities

Before becoming a Participating First Nation, the Negotiating First Nations must collectively finalize all negotiations and internal processes. Individually, NFNs must:

- Determine whether to maintain Independent School status
- Finalize their Law-Making Protocol
- Prepare for self-governance over education
- Draft Education Laws
- Each NFN to determine their readiness to initial Canada-First Nation Education Agreement and Funding Agreement – Fall 2020.



Internal Processes

Negotiating First Nations must collectively finalize a number of internal processes before jurisdiction can be implemented including:

- Teacher Certification
- Establish Standards for Graduation including: graduation requirements and criteria for courses required to graduate
- FNEA School certification process
- PFN – FNEA Co-Management Agreement
- PFN – FNEA Co-Management Agreement
- FNEA – FNEA Co-Management Agreement

Certain FNEA responsibilities must be in place so it is ready to start operating on the effective date. Since representatives of NFNs will make up the FNEA (once they are PFNs), it is their responsibility to ensure these processes and agreements are in place.

BC Negotiations

The BC – First Nation Education Steering Committee Agreement was originally signed by BC and FNEESC on behalf of First Nations in 2006 and set out the responsibilities of BC and FNEESC, as well as the FNEA and PFNs.

During recent negotiations to update the agreement, two issues arose that made it practical to separate the updated agreement into three separate agreements:

- FNEESC, PFNs, and FNEA will each have different roles and responsibilities under jurisdiction and therefore a distinct relationship with BC; and
- NFNs will not become PFNs - and the FNEA will not come into full operation - until on or after the federal OIC naming at least 3 PFNs has been passed, so they are not capable of being a party to and signing an updated agreement until then.

Overview of BC Agreements

1. BC-FNESC Agreement

It is proposed that the BC-FNESC Agreement would take effect upon signing. The agreement would cover an “interim” role for FNESC, as parts of this role would come to an end once the FNEA is in full operation (with at least 6 directors), or as tasks are completed.

FNESC would have a continuing role after the FNEA is in full operation with regard to: (a) broader issues that affect First Nations beyond jurisdiction; and (b) representing Interested First Nations (IFNs) and NFNs on jurisdiction-related matters.

Overview of BC Agreements Cont.

2. BC-FNEA Agreement

The BC-FNEA agreement would take effect on the effective date after a federal OIC has been passed. This Agreement would focus on BC's and the FNEA's obligations to one another in respect of the following "big three" issues of the education jurisdiction initiative: (a) teacher certification; (b) school certification; and (c) graduation requirements and evaluation of courses required to graduate.

3. BC-PFN Agreement

The BC-PFN agreement would take effect on the effective date after a federal OIC has been passed. This Agreement focuses on PFN relationships with boards of education, including local education agreements (LEAs), reciprocal tuition, graduation credentials, and consultation and information-sharing.

Outstanding Issues in BC Agreements

These agreements are currently being negotiated and a number of key issues are being finalized including:

- A First Nations Schools Teacher Certification processes;
- Steps to have First Nations Authorized Courses count towards Dogwood;
- Consultation requirements and information and data sharing responsibilities;
- Representation on provincial bodies;
- A model Local Education Agreement (LEA) specific to jurisdiction;
- Template Reciprocal Tuition arrangements; and
- Legislative Amendments required for the various issues.

Canada Negotiations

Negotiating First Nations are working with Canada to finalize the:

- Canada – First Nation Education Jurisdiction Agreement; and the
- Canada – First Nation Education Jurisdiction Funding Agreement.

Once the content of the agreements is approved by NFNs and Canada negotiators and legal counsel they will go through review by central federal agencies to ensure they align with federal policy. Upon approval from central agencies the Minister of Crown Indigenous Relations and Northern Affairs Canada (CIRNAC) will be able to approve the agreements. Then the next steps would be for both parties to:

- Initial the agreements and thereby signify that they are sufficiently satisfied with the agreements and prepared to move to the ratification process; then
- Ratify and sign the agreements.

Negotiations are also underway to develop:

- Supporting LOUs; and the
- Canada – FNEA Funding Agreement.

Next steps

- NFNs and Canada must agree upon final draft language of the template agreements for approval
- The Minister of Crown Indigenous Relations and Northern Affairs needs to sign the Agreement to Amend the Education Jurisdiction Templates
- The Minister and NFN must initial the Education Jurisdiction Agreement and the Funding Agreement
- The NFN must confirm its Law-Making Protocol, establishing the process under which it will pass its own education law
- The NFN's Chief and Council must review and approve the Funding Agreement
- The NFN's members must vote on its Education Jurisdiction Agreement and Law-Making Protocol ("ratification process")

Next steps

- If ratification vote is successful (i.e. 50% plus 1 of those who cast a ballot, vote in favour):
 - The NFN and the Minister must sign the Education Jurisdiction Agreement and the Funding Agreement
 - The NFN and the FNEA will sign an Education Co-Management Agreement,
 - The NFN and BC will sign an education jurisdiction agreement, and
 - Canada will pass an order in council adding the NFN to list of Participating First Nations in the Schedule to the federal supporting legislation
- Canada and the NFN would jointly agree on an effective date

Getting Involved in Jurisdiction

- ❑ **Process for becoming an IFN or NFN**
- ❑ **Funding and Education Jurisdiction**
- ❑ **Post-Jurisdiction Considerations**

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 to finalize an agreement (the form for the BCR is set out in the Terms of Reference), and
- provide formal notice to FNEESC that it wants to become a Negotiating First Nation.

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, and 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)

Post-Jurisdiction Considerations

When an NFN becomes a Participating First Nation and assumes its responsibilities on the *effective date* specified in the Order in Council, then it must:

- Select two individuals to sit on the board of the FNEA
- Designate a senior official to oversee the implementation of the agreement
- Pass its Education Law
- Fulfill its obligations set out in the implementation plan



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)

Thank You

**If you have any further questions,
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QUESTIONS & DISCUSSION