

MEMORANDUM

To: Negotiating First Nations
From: Nancy Morgan, legal counsel for FNEESC
Date: October 21, 2021
Re: “Independent school” designation under jurisdiction

It has just been brought to our attention that schools operated by Participating First Nations (PFNs) or their community education authorities (CEAs) will not be able to retain their status as, or apply to become, “independent schools” under the *Independent School Act*.

When the *First Nations Education Act* (BC) was adopted by BC in 2007, it included consequential amendments to existing provincial statutes, including the *School Act*, the *Teachers Act* and the *Independent School Act* to support the implementation of First Nations’ jurisdiction over education. One of the many amendments adopted in 2007 was a revision to the definition of “independent school” to exclude schools operated by PFNs or their CEAs as follows:

“independent school” means a school, including an online learning independent school, that is, or is to be, maintained and operated in British Columbia by an authority ...
but does not include

- (d) a public school, a Provincial school or a school operated by a participating First Nation or a Community Education Authority established by one or more participating First Nations under the *First Nations Jurisdiction over Education in British Columbia Act* (Canada), ...

When this was adopted in 2007, it was not envisaged that PFNs would want to operate under the restrictions of the *Independent School Act* once they were self-governing, as the requirements of that Act are inconsistent with the exercise of jurisdiction.

As this information is important for NFNs that are moving towards jurisdiction, we thought it was critical that we bring it to your attention as soon as we became aware of it.