

BC First Nations Education Authority DRAFT Terms of Reference

1.0 Background

1.1 On July 5, 2006, the Education Jurisdiction Framework Agreement (Framework Agreement) was signed by the Minister of Indian Affairs Jim Prentice, Premier Gordon Campbell and Nathan Matthew on behalf of the First Nations Education Steering Committee (FNESC). There are four schedules attached to the Framework Agreement:

- (a) Schedule A is the British Columbia First Nation Education Agreement between British Columbia and FNESC;
- (b) Schedule B is the template Canada-First Nation Education Agreement to be entered into by specific First Nations and Canada, which will recognize those First Nations' jurisdiction;
- (c) Schedule C is the template Canada-First Nation Education Jurisdiction Funding Agreement; and
- (d) Schedule D is the template Implementation Plan to be used by individual First Nations.

1.2 Under the Framework Agreement, Canada committed to passing enabling legislation that would establish the First Nations Education Authority (FNEA) and set out its powers, duties, functions and composition.

1.3 Canada implemented its commitment under the Framework Agreement to establish FNEA by enacting the *First Nations Jurisdiction over Education in British Columbia Act (Federal Act)* in 2006. In particular, section 11 of the *Federal Act* provides:

“There is hereby established in British Columbia the First Nations Education Authority, to be managed by a board of directors that consists of a minimum of six directors, including a President and a Vice-President.”

1.4 Section 12 of the *Federal Act* provides:

“The Authority has the capacity, rights, powers and privileges of a natural person, including the capacity

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of property or an interest in property;
- (c) to raise, invest or borrow money; and
- (d) to sue and be sued in its own name.”

1.5 Jurisdiction rests with each First Nation. First Nations who choose to participate in this process have agreed to exercise certain areas of their jurisdiction collectively through the FNEA. This will be done by individual First

Nations incorporating the standards and requirements established by the FNEA into their own First Nation Education Laws. The three areas of jurisdiction that will be developed collectively through the FNEA include, but are not limited to:

- (a) teacher certification (except for language and culture teachers);
- (b) school certification; and
- (c) standards for curriculum and examinations for courses necessary to meet graduation requirements.

1.6 The United Nations Declaration on the Rights of Indigenous Peoples recognizes the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child. Article 14 recognizes that Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning; and that Indigenous individuals, particularly children, have the right to all levels and forms of education of the state without discrimination. The Government of Canada announced in its 2010 Speech from the Throne that it is prepared to endorse the Declaration.

1.7 The United Nations Convention on the Rights of the Child, which Canada has ratified, is a legally binding international convention affirming human rights for all children. The Convention sets out the basic human rights of children everywhere, including the right to survival, to develop to the fullest, to education, to protection from harmful influences, abuse and exploitation, and to participate fully in family, cultural and social life. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services. Governments commit themselves to protecting and ensuring children's rights, to hold themselves accountable and to develop and undertake all actions and policies in the light of the best interests of the child.

2.0 Purpose

2.1 The purpose of the FNEA is to support BC First Nations in the implementation of jurisdiction over First Nations education. The FNEA does not have inherent jurisdiction and will only exercise jurisdiction in areas that have been delegated to it by First Nations. Section 18 of the *Federal Act* provides:

“The purpose of the Authority is to assist participating First Nations in developing the capacity to provide education on First Nation land and to provide for any other matters related to education that may be agreed to by the Authority and a participating First Nation in accordance with an individual agreement.”

3.0 Structure of the FNEA

3.1 The directors of the FNEA (“Directors”) will be appointed by the First Nations that have signed Canada-First Nations Agreements and have become full Participating First Nations. Each Participating First Nation will have the right to appoint two Directors, one of whom must be a member of the First Nation.

3.2 The FNEA will be the vehicle through which First Nations exercise some of their jurisdiction and authority, however, this jurisdiction and authority originates with the First Nations.

4.0 Relationship to the First Nations Education Steering Committee and the First Nations Schools Association

4.1 Since 1992, FNEESC, an overarching First Nations education organization that is directed by BC First Nations, has provided general education support for both on and off reserve First Nations learners in BC. This organization was incorporated as the First Nations Education Steering Committee Society in 1999.

4.2 A second organization, the First Nations Schools Association (FNSA), was created in 1996 to provide support to BC First Nations schools. A representative of the FNSA sits on the FNEESC Board to ensure that there is no duplication between the two organizations’ activities and that the limited funding available for support activities is maximized.

4.3 During the consultations regarding First Nations jurisdiction and authority over education, BC First Nations indicated that they did not want to see the creation of a third entity when they were satisfied with the services and organization of the existing bodies and after much deliberation and contemplation a compromise was proposed.

4.4 To satisfy the need to differentiate between Participating First Nations (those whose jurisdiction has been recognized through Agreements) and those who are not Participating First Nations, it was necessary to create a third legal entity. This entity has the rights, powers, privileges, and legal capacity of a natural person. However, to satisfy the concerns of First Nations about creating more bureaucracy and incurring unnecessary spending, the FNEA will enter into an administrative agreement with FNEESC to provide the FNEA with services. This fee for service agreement will be reviewed annually to ensure the terms and conditions are serving both parties well.

4.5 The FNEA may also enter into partnerships with FNEESC or the FNSA to jointly conduct work in the interests of both parties or to advocate on behalf of the membership of both parties when they have common interests.

5.0 Directors

5.1 Roles and Responsibilities

5.1.1 Directors shall:

- (a) uphold the purpose of the FNEA set out in section 2.0 and the obligations and responsibilities set out in these Terms of Reference;
- (b) bring forward any concerns which may have implications for the smooth and effective implementation of First Nations jurisdiction and authority over education;
- (c) declare in writing to the FNEA any conflict of interest, as defined in the FNEA Conflict of Interest policy, that may bring into question the integrity of the decision-making processes of the FNEA and work with the FNEA to mitigate that conflict; and
- (d) not be in the employ of the FNEA, FNESC or the FNSA.

5.2 Discipline of Directors

5.2.1 The FNEA may impose discipline, appropriate in the circumstances, on a Director who has been determined by resolution of the FNEA to have breached any provision of these Terms of Reference.

5.2.2 A special meeting of the FNEA will be called to review the matter and make a decision. The Director will be given the opportunity to provide evidence on their behalf but cannot participate in the final decision-making process.

5.2.3 The FNEA will report, in writing, to the Participating First Nation regarding the disciplinary action and rationale and request that the Director be disciplined as the Participating First Nation feels appropriate.

5.2.4 The general responsibility for removing a Director lies with the Participating First Nation. However, section 13(2) of the *Federal Act* provides that the FNEA Board of Directors may remove a director in specific situations:

“A director holds office at the pleasure of the participating First Nation that appointed them, but they may be removed by the board of directors at any time for cause or for a ground set out in the board's rules.”

5.3 FNEA Alternates

5.3.1 In order to maintain consistency and continuity in decision-making, Participating First Nations will be asked to make best efforts to appoint and retain

Directors for the length of the term set out in these Terms of Reference. However, the Participating First Nation may choose to send an alternate and, if so, will confirm this in writing at least one week prior to the meeting. The alternate will not be eligible to cast a vote. A set of expectations for Directors will be made available to all Participating First Nations and Directors.

5.4 Compensation

5.4.1 Directors will not be paid an honorarium for FNEA work, unless specifically authorized by the FNEA at a duly convened meeting. Participating First Nations will cover the costs, other than travel costs, of the participation of the Directors it has appointed. The FNEA will cover the travel costs for Directors attending FNEA meetings.

5.5 FNEA Meetings and Notice of Meetings

5.5.1 The Directors may meet in person or by conference call as required. The Directors must meet in person at least twice within every calendar year.

5.5.2 Not less than 7 calendar days' and not more than 60 calendar days' written notice of a meeting of Directors shall be given to every Director. The notice must specify the place, day and time of the meeting. In the case of meetings held by conference call, the notice shall specify how the Director may join the call.

5.5.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice by, any Director entitled to receive a notice shall not invalidate the proceedings at that meeting. The FNEA may make policies with respect to the requirements regarding the provision of notice to Directors, including the ability to shorten the minimum notice period set out in section 5.5.2 where required to address urgent matters.

5.6 Quorum

5.6.1 The quorum of Directors necessary for the transaction of business shall be at least 60% of the Participating First Nations being represented by at least one of their duly appointed Directors. (e.g. If there are 12 Participating First Nations, the FNEA will have 24 Directors. Quorum will require that there be at least one Director present from at least 8 of the Participating First Nations).

5.7 Voting

5.7.1 Each Director, including the President, Vice-President and Treasurer, shall have one vote.

5.7.2 As the decisions of the FNEA affect the collective exercise of jurisdiction by all Participating First Nations, every effort will be made to make decisions by consensus. In the event that consensus cannot be achieved, a resolution will be considered passed if a majority (50% plus one) of the Directors at a meeting at which there is quorum vote in favour of the resolution.

5.8 Terms of Appointment of Directors

5.8.1 The term of the initial appointment of Directors by Participating First Nations will be two years. However, the FNEA Board of Directors may establish a shorter or longer term for Directors appointed by Participating First Nations after the appointment of their first Director. Section 13(1) of the *Federal Act* provides:

“Each participating First Nation has the right to appoint two directors to the board of directors, at least one of whom shall be a member of the participating First Nation, for an initial term of two years. Directors may be reappointed, for a term fixed by the board, for second or subsequent terms.”

5.8.2 A Director appointed by a Participating First Nation may be removed at any time. Section 13(2) of the *Federal Act* provides:

“A director holds office at the pleasure of the participating First Nation that appointed them, but they may be removed by the board of directors at any time for cause or for a ground set out in the board’s rules.”

5.8.3 Participating First Nations must provide written notice to FNEA if they are changing their representative.

5.8.4 The FNEA Board of Directors may, by resolution, adopt rules setting out the grounds for removal of a Director by the Board under section 13(2) of the *Federal Act*.

6.0 FNEA President and Vice-President

6.1 Roles and Responsibilities

6.1.1 The FNEA President shall:

- (a) chair FNEA meetings;
- (b) act as a spokesperson for the FNEA;
- (c) act as a liaison with other organizations as relevant to the business of the FNEA;

- (d) oversee the implementation of the FNEA workplan;
- (e) monitor, with the FNEA Treasurer, the FNEA financial records;
- (f) monitor and review annually any administrative or other agreements of the FNEA; and
- (g) provide direction to the FNEA staff, as well as FNEESC and FNSA staff that have been assigned to work on FNEA matters, as required.

6.1.2 The Vice-President shall assume the responsibilities of the President in the President's absence.

6.2 Appointment

6.2.1 Directors are responsible for selecting a President and Vice-President from among the Directors. In order to ensure that meetings can proceed effectively and that there is continuity, both the President and the Vice-President must be familiar with the operations of the FNEA. A Director may not assume office as President or Vice-President, unless the Participating First Nation that appointed them provides its consent in writing.

6.3 Term

6.3.1 The FNEA President and Vice-President shall be appointed for an initial two-year term. Beyond the first term, the FNEA Board of Directors will determine the length of subsequent terms.

7.0 FNEA Treasurer

7.1 Roles and Responsibilities

7.1.1 The FNEA Treasurer shall:

- (a) attend FNEA meetings;
- (b) monitor with the President/Vice-President, the FNEA financial records and report on these to the FNEA Board of Directors; and
- (c) serve as the signatory for cheque requisitions that are in excess of the signing authority of the financial administration.

7.2 Appointment

7.2.1 The FNEA Board of Directors is responsible for selecting a Treasurer from among the Directors.

7.3 Term

7.3.1 The FNEA Treasurer shall be appointed for an initial two-year term. Beyond the first term, the FNEA Board of Directors will determine the length of subsequent terms.

8.0 Delegated Law-Making Functions

8.1 Main Function

8.1.1. The main function of the FNEA is to support Participating First Nations as they implement jurisdiction and authority over education. This may involve many diverse roles and responsibilities that cannot be anticipated within the context of these Terms of Reference, so what follows is a process for accepting delegated jurisdiction and authority as well as general parameters for carrying out these functions.

8.2 Law-Making Authority in Three Designated Powers/Responsibilities

8.2.1 Participating First Nations must agree to incorporate the standards and requirements established collectively through the FNEA with respect to three areas of jurisdiction in the Canada-First Nations Education Jurisdiction Agreements:

- (a) teacher certification;
- (b) school certification; and
- (c) standards for curriculum and examinations for courses necessary to meet graduation requirements.

The specific parameters for these powers/responsibilities are included in Appendices A to C to these Terms of Reference. (*to be added later*)

8.3 Other Law-Making Authority

8.3.1 The FNEA may develop and pass laws in areas, other than those set out in section 8.2 if five or more Participating First Nations have delegated the power to do so to the FNEA. Section 20 of the *Federal Act* provides:

“The Authority may exercise the jurisdiction over education that is delegated to it by a participating First Nation in accordance with an individual agreement.”

8.4 Delegating Other Powers/Responsibilities

8.4.1 The Participating First Nations and Community Education Authorities may delegate powers or responsibilities not outlined in the Canada First Nations Education Jurisdiction Agreement according to the following process:

- (a) a Participating First Nation or Community Education Authority will submit a letter to the FNEA requesting specific services accompanied by a Band Council Resolution (in the case of a Participating First Nation) or a resolution of the board (in the case of a Community Education Authority);
- (b) the FNEA will respond to the Participating First Nation or Community Education Authority within 30 calendar days; and
- (c) the FNEA will make reasonable efforts to accommodate requests from Participating First Nations' and Community Education Authorities taking into account the mandate of the FNEA and its capacity to provide the requested services.

8.5 Rescinding Delegation

8.5.1 In the event that a Participating First Nation or Community Education Authority wishes to rescind the delegation of powers or responsibilities delegated in accordance with section 8.4, it may do so according to the following process:

- (a) the Participating First Nation or Community Education Authority will submit a letter rescinding the delegation accompanied by a Band Council Resolution (in the case of a Participating First Nation) or a resolution of the board (in the case of a Community Education Authority); and
- (b) upon receipt, the FNEA will respond to the Participating First Nation or Community Education Authority acknowledging the rescission of the powers or responsibilities and, if appropriate, conduct follow-up regarding the reasons the FNEA services need to be improved.

This section does not apply to the three areas of jurisdiction outlined in section 8.2.

9.0 Accountability

9.1 The FNEA is accountable to the Participating First Nations. It will fulfill this responsibility by:

- (a) developing annual and long term work plans, budgets and an evaluation process for the approval of the FNEA Board of Directors;
- (b) hosting quarterly meetings to attend to FNEA business and reporting out to the FNEA Board of Directors;

- (c) preparing meeting minutes for approval by the FNEA Board of Directors and made available as requested;
- (d) providing updates to all First Nations in BC through annual education regional sessions conducted by FNEESC;
- (e) producing and distributing a comprehensive annual report, including audited financial statements, in hard copy and online; and
- (f) responding to Participating First Nation's inquiries in a timely fashion as they arise.

10.0 FNEA Funding

10.1 The funding for the operation of the FNEA will be negotiated with Canada and will be expended according to the approved work plan described in section 9.1(a).

10.2 The FNEA will strive to operate in a cost effective manner.

10.3 The FNEA will engage a qualified accountant to prepare audited financial statements every year.

11.0 Legally Binding Agreements

11.1 The FNEA may only negotiate and enter into agreements that bind a Participating First Nation with the written consent of that Participating First Nation. Such agreements could include, but are not limited to, opportunities for:

- (a) bulk purchasing;
- (b) sharing services to maximize cost effectiveness; and
- (c) confirming working partnerships with the Ministry of Education, the FNEESC, the FNSA and the College of Teachers.

12.0 Data Collection and Analysis

12.1 As part of the operation and accountability of the FNEA, the FNEA will develop and implement in partnership with the FNSA a mutually satisfactory database system.

12.2 The data collected in this system will only include data that has been approved by the FNEA Board of Directors and will be used to inform the FNEA regarding progress and areas requiring assistance.

13.0 Liability Insurance

13.1 The FNEA will purchase liability insurance to protect the Directors from personal liability in the event of legal action.

14.0 Interested First Nations

14.1 To ensure that First Nations who have expressed an interest in negotiating a Canada-First Nation Education Jurisdiction Agreement have the opportunity to have input into the creation of laws and/or regulations by the FNEA, they will be able to participate as Interested First Nations (IFNs). IFNs will be able to participate in discussions and make recommendations regarding FNEA decisions; however, they will not have a vote until they become Participating First Nations. IFNs will cover the costs, other than travel costs, of the participation of their representatives. Subject to receiving funding for this purpose, the FNEA will cover the travel costs for attending FNEA meetings for up to two representatives from each IFN.

15.0 Self-Governing First Nations or First Nations with Treaties

15.1 A First Nation with a self-government agreement or treaty that provides for jurisdiction over education may enter into an agreement under section 21 of the *Federal Act with the FNEA as follows*:

- (a) the First Nation will submit a letter to the FNEA, to be accompanied by a resolution from its governing body, stating that it wishes to negotiate an agreement;
- (b) the FNEA will respond to the Participating First Nation within 30 calendar days;
- (c) if the FNEA agrees, the FNEA and the First Nation will negotiate and may enter into an agreement delegating certain jurisdiction from the First Nation to the FNEA and setting out the parties' rights and responsibilities; and
- (d) if the FNEA and the First Nation conclude an agreement, the First Nation will be entitled to appoint two Directors who will have full voting authority.

16.0 Amendments to the Terms of Reference

16.1 These Terms of Reference may be amended from time to time by the Directors. An amendment will be valid if:

- (a) the Directors have been given at least 15 calendar days' written notice of the meeting;
- (b) the language of the proposed amendment is included with the notice of the meeting;

- (c) the proposed amendment is considered at a Directors' meeting where quorum is present at the meeting; and
- (d) at least three-quarters (75% or more) of the Directors in attendance at the meeting vote in favour of the proposed amendment.