



EDUCATION JURISDICTION TOOLKIT



NOVEMBER 2024



FIRST NATIONS EDUCATION STEERING COMMITTEE

#113 - 100 Park Royal South, West Vancouver, BC V7T 1A2
604-925-6087 | Toll-free in BC 1-877-422-3672

info@fnesc.ca | www.fnesc.ca

Education Jurisdiction Toolkit: November 2024

Copyright ©2024, First Nations Education Steering Committee

No part of the content of this document may be reproduced in any form or by any means, including electronic storage, reproduction, execution, or transmission without the prior written permission of FNESC.

PROPRIETARY NOTICE: This document contains information that is proprietary and confidential to FNESC. Any reproduction, disclosure, or other use of this document is expressly prohibited except as FNESC may authorize in writing.

EDUCATION JURISDICTION TOOLKIT

SECTION ONE

INTRODUCTION TO THE INITIATIVE 1

Historical Background	1
FNESC's Role	3
First Nations Education Jurisdiction Initiative General Overview	4
Education Jurisdiction Today	6
Related Links	6

SECTION TWO

AGREEMENTS 7

Foundational Agreements	7
Education Jurisdiction Framework Agreement	9
Model Canada-First Nation Education Jurisdiction Agreement	10
Model Canada-First Nation Education Jurisdiction Funding Agreement	12
Other Agreements	14
Related Links	16

SECTION THREE

OFFER AND RATIFICATION PROCESS 17

Overview	17
Funding	18
Considerations for Accepting an Offer	19
Developing a First Nation Education Law-Making Protocol	21
Timing and Steps to Prepare for a Ratification Vote	22
Related Links	24

SECTION FOUR

EDUCATION GOVERNANCE 25

School Governance	25
Developing an Education Law	29
Related Links	31

SECTION FIVE

POST-RATIFICATION 33

What Comes Next?	33
Effective Date and Onwards	36
Related Links	37



The BC First Nations Education Steering Committee (FNESC) is committed to supporting First Nations in their efforts to improve the success of all First Nations students in BC. FNESC facilitates collaborative services in the areas of research, communications, advocacy, program administration and networking, and strives to share up-to-date information about available programs, government policies and initiatives, and local, provincial and national education issues that affect First Nations learners. See www.fnesc.ca.

SECTION ONE

INTRODUCTION TO THE INITIATIVE

Historical Background	1
FNESC's Role	3
First Nations Education Jurisdiction Initiative General Overview	4
Education Jurisdiction Today	6
Related Links	6

SECTION ONE

INTRODUCTION TO THE INITIATIVE

Education is much more than basic curriculum; it is the passing along of culture, language and our history to one another.

Tyrone McNeil, FNEC President

This Toolkit is designed to support First Nations in learning about the BC First Nations Education Jurisdiction Initiative, how it works, and the various agreements and documents associated with it.

The “Education Jurisdiction Initiative” (also “Initiative”) refers to the processes and mechanisms established to support First Nations’ exercise of self-government over First Nations schools in BC. It includes:

- ▶ a suite of agreements;
- ▶ federal enabling legislation;
- ▶ provincial enabling legislation; and
- ▶ the creation of a First Nations controlled regulatory body called the First Nations Education Authority (FNEA).

Historical Background

First Nations have been seeking recognition of their inherent right to have control over the education of their children for decades.

- ▶ The National Indian Brotherhood (now the Assembly of First Nations, or AFN) 1972 report, “Indian Control of Indian Education,” states:
 - First Nations, not the federal government, should control First Nations education programs.
 - First Nations control and parental responsibility are the cornerstones of First Nations jurisdiction over education.

One of the initial milestones of the BC First Nations Education Jurisdiction Initiative was the signing of a “**Memorandum of Understanding with Respect to First Nations Authority and Jurisdiction over Education**” (MOU) in 2003. The MOU:

- ▶ was signed by Canada, BC, and First Nations represented by the First Nations Education Steering Committee (FNESC); and
- ▶ confirmed the parties’ commitment to work together to support implementation of First Nations’ jurisdiction over education.

To further advance the commitments laid out in the MOU, the Parties signed an **Education Jurisdiction Framework Agreement** (2006), and Canada enacted legislation, the **First Nations Jurisdiction over Education in British Columbia Act** (2006). That legislation:

- ▶ enables Canada to enter into sectoral self-government agreements with Participating First Nations (PFNs), as described in the Framework Agreement; and
- ▶ established the First Nations Education Authority (FNEA) as a regulatory body whose purpose is to support PFNs’ implementation of jurisdiction over First Nations education.

Shortly after the federal legislation was passed, the Province of BC enacted its own enabling legislation, the **First Nations Education Act** (2007), which:

- ▶ recognizes the relationship between Canada and PFNs, and confirms BC’s support for the initiative.

These agreements and legislation solidified the foundation for the Initiative, and formal processes and mechanisms were established to support First Nations who wish to pursue law-making authority (i.e. jurisdiction) over education on their lands.

FNESC's Role

For over 20 years, FNESC has been advocating for and supporting the Education Jurisdiction Initiative at the direction of BC First Nations.

- ▶ Early in the Initiative, FNESC played a significant role in supporting and advancing the negotiation process, which led to the finalization of these key agreements:
 - the 2006 Education Jurisdiction Framework Agreement;
 - the model Canada-First Nation Education Jurisdiction Agreement;
 - the model Canada-First Nation Education Jurisdiction Funding Agreement;
 - various agreements with BC; and
 - a draft Co-Management Agreement between FNEA and PFNs.

Since work on these agreements has been completed and the pathway to becoming a PFN has been established, the role of FNESC has shifted. FNESC's role now is to primarily assist First Nations who are interested in becoming PFNs.

- ▶ This assistance is generally tailored to the needs of a First Nation, depending on their stage in the Initiative. Some of the supports provided include:
 - regular meetings for Engaged First Nations;
 - community presentations;
 - development of supporting resources; and
 - funding grants, subject to budget availability.
- ▶ In addition to the direct supports provided to First Nations, FNESC meets regularly with its education jurisdiction partners, including Canada, BC and FNEA, to discuss matters related to the Initiative.

First Nations can receive capacity funding to support their transition into the Initiative.

Once a year, FNESC sends out contribution agreements (CAs) to First Nations that have formally indicated an interest in the Initiative.

The amount provided under a CA varies according to the stage each First Nation is at in the Initiative.

IS THE INITIATIVE RIGHT FOR YOUR COMMUNITY?

Education jurisdiction is a community-led initiative, and it's important to consider the following questions as a community before joining.

- ▶ Does assuming jurisdiction over education align with your community vision?
- ▶ A First Nation's laws under this Initiative only extend to schools located on its First Nations land. Do you operate a First Nation K4-12 school?
- ▶ Embarking on the Education Jurisdiction Initiative takes a significant amount of time and human resources. Are you prepared to move forward at this time or is it better to wait?
- ▶ A school operated by a PFN cannot maintain its status as an independent school. Is this change feasible for your situation?

First Nations Education Jurisdiction Initiative General Overview

The Initiative consists of formal processes and mechanisms, which lead to the signing of a sectoral self-government agreement with the federal government and to First Nations passing their own education laws.

As First Nations who are engaged in the Initiative pass certain milestones, they move through different stages. FNEC's goal is to provide support that is targeted to each stage.

The graphic on the following page illustrates how a First Nation moves through the Initiative, and the milestones that transition them to the next stage.

In the context of the Initiative, *education jurisdiction* refers to law-making authority over education for kindergarten for four-year olds to grade 12 (K4-12) by a First Nation on its land. Education laws passed under the Initiative are:

- ▶ able to reflect a First Nation's unique language, culture, and objectives for its students; and
- ▶ recognized both federally and provincially, providing protection from possible changes to federal and provincial legislation.

Process to become a PFN



Education Jurisdiction Today

In 2022, four First Nations took a historic step and became the first to sign Canada-First Nation Education Jurisdiction agreements. The first four PFNs are:

- ɁaqɁam;
- Cowichan Tribes;
- Lil'wat Nation; and
- Sq'ewqel (Seabird Island).

One year later, three additional First Nations became PFNs:

- Ditidaht;
- Skwxwú7mesh Úxwumixw (Squamish Nation); and
- Tsq'escen' First Nation (Canim Lake).

FNEA, which became operational in 2022, is:

- ▶ a regulatory body that assists PFNs in developing capacity to provide education on their land; and
- ▶ directed by its board, which is comprised of two directors appointed by each PFN.

PFNs collectively exercise jurisdiction, through FNEA, over the following areas.

- ▶ Certification and regulation of teachers
- ▶ Certification of schools operated by, or on behalf of, the First Nation
- ▶ Graduation requirements
- ▶ Approval of courses required for graduation from a PFN school

Related Links

- 1.1 [First Nations Jurisdiction Over Education One-Pager](#)
- 1.2 [Jurisdiction Introduction and Overview PowerPoint](#)
- 1.3 [Education Jurisdiction Initiative Terms of Reference \(March 2024\)](#)
- 1.4 [Federal Enabling Legislation, 2006: First Nations Jurisdiction over Education in BC Act](#)
- 1.5 [Provincial Enabling Legislation, 2007: First Nations Education Act](#)
- 1.6 [Schedule - First Nations Jurisdiction over Education in British Columbia Act \(2006\)](#)
- 1.7 [Memo: Relinquishing "Independent school" designation under jurisdiction \(May 2024\)](#)

SECTION TWO

AGREEMENTS

Foundational Agreements	7
Education Jurisdiction Framework Agreement	9
Model Canada-First Nation Education Jurisdiction Agreement	10
Model Canada-First Nation Education Jurisdiction Funding Agreement	12
Other Agreements	14
Related Links	16

SECTION TWO

AGREEMENTS

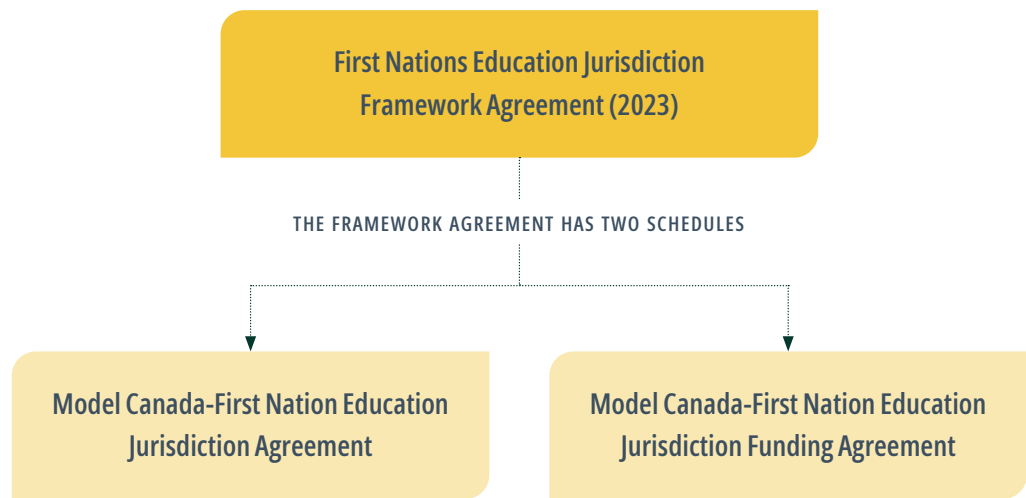
Foundational Agreements

There are several agreements that establish the foundation for the jurisdiction Initiative.

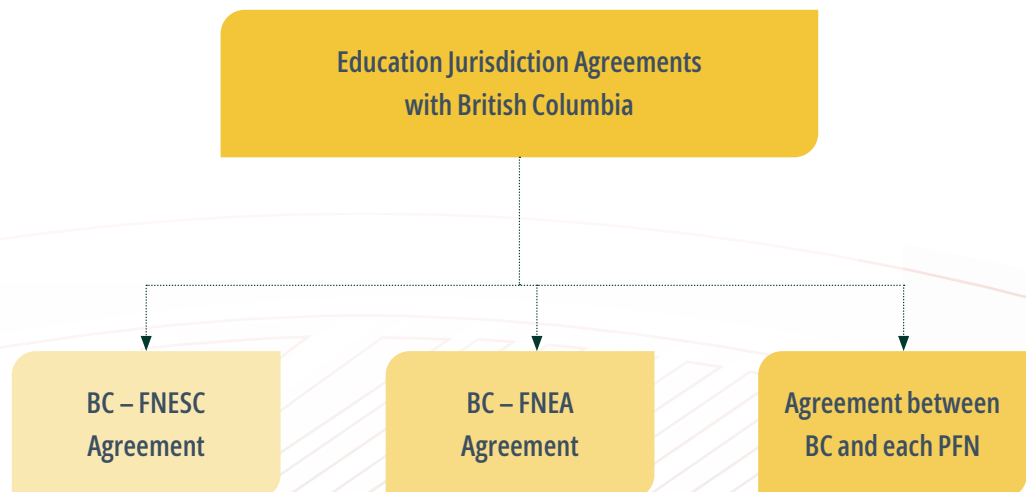
- ▶ The **2023 Education Jurisdiction Framework Agreement** (Framework Agreement) is the overarching agreement, which sets out the responsibilities of the parties, as well as the framework for the implementation of the Initiative.
- ▶ Appended to the Framework Agreement are:
 - the **Model Canada-First Nation Education Jurisdiction Agreement** (Education Jurisdiction Agreement or EJA) between individual First Nations and Canada; and
 - the **Model Canada-First Nation Education Jurisdiction Funding Agreement** (Funding Agreement) between individual First Nations and Canada.

The **Education Jurisdiction Agreement** and the **Funding Agreement** are the two key agreements that First Nations will enter into with Canada. The first recognizes the First Nation as a PFN and sets out the parties' responsibilities. The second provides the funding to enable the PFN to fulfill their responsibilities.

2023 Education Jurisdiction Framework Agreement



- ▶ In addition to the agreements with Canada, there are several agreements with the Province of BC, including separate agreements with PFNs, FNE SC, and FNEA. These agreements set out BC's roles and responsibilities under the Initiative.



Education Jurisdiction Framework Agreement

History and Development

In 2006, after several years of negotiations, the Framework Agreement was signed by FNEC (representing First Nations in BC), Canada, and BC, setting out the process and steps for the recognition and implementation of First Nations jurisdiction over education on First Nations land.

To reflect evolving circumstances, the Framework Agreement was replaced in 2023. Under the 2023 Framework Agreement, FNEA was added as a party and the purpose of the agreement was updated. In addition to setting out the responsibilities of the parties, the updated purpose of the agreement is now: “to provide the framework for the implementation of the Education Jurisdiction Initiative that supports the exercise of Jurisdiction by PFNs over Education on First Nation Land as set out in Education Jurisdiction Agreements.”

Under the 2023 Framework Agreement, the parties have the following responsibilities:

- ▶ Canada and BC must engage FNEC and FNEA in co-developing proposed amendments to the enabling legislation and submissions to their cabinets and treasury boards with respect to the Initiative.
- ▶ FNEC is responsible for supporting Engaged First Nations who want to become PFNs by developing supporting materials and providing assistance through the community consultation and ratification process.
- ▶ FNEA is responsible for supporting PFNs in developing their capacity to provide education on First Nations land and carry out additional responsibilities outlined in the various agreements.

Models for the two agreements that First Nations sign in order to become PFNs are attached to the Framework Agreement. These are:

- ▶ Schedule A: Model Canada-First Nation Education Jurisdiction Agreement
- ▶ Schedule B: Model Canada-First Nation Education Jurisdiction Funding Agreement

During negotiations, First Nations involved in the Initiative provided direction to FNEC, ensuring that the initiative was led according to their vision for education jurisdiction.

Model Canada-First Nation Education Jurisdiction Agreement

Overview

The Model Canada-First Nation Education Jurisdiction Agreement (Education Jurisdiction Agreement) provides the basis for a First Nation to implement jurisdiction over education on First Nations land within this Initiative. The agreement:

- ▶ is between:
 - Canada, represented by the Minister of Crown-Indigenous Relations (“Canada”); and
 - an individual PFN, represented by Chief and Council;
- ▶ is a sectoral self-government agreement, respecting jurisdiction over education;
- ▶ recognizes a First Nation’s inherent right to exercise jurisdiction over education;
- ▶ sets out the responsibilities of the parties; and
- ▶ must be approved by the community through a ratification vote.

WHAT IS THE PRINCIPAL BENEFIT OF SIGNING AN EDUCATION JURISDICTION AGREEMENT?

By signing an Education Jurisdiction Agreement, your First Nation can pass laws concerning education that are recognized by Canada and BC. These laws also provide greater protection against possible changes to federal and provincial legislation, which might otherwise impact your school and students.

Key Terms

Definitions for key terms referred to in the Initiative are set out in the Education Jurisdiction Agreement as follows:

- ▶ **Education** is defined as programs and services of a nature generally provided to students enrolled in kindergarten for 4-year olds (K4) through grade 12;
- ▶ **Eligible Students** are defined as students who are:
 - enrolled in a First Nation school, BC public school, BC independent school, or a school operated on behalf of another First Nation;
 - either (a) 4-21 years old and enrolled in K4 through Grade 12, or (b) over 18 and enrolled in an adult education program (see agreement for additional details); and
 - ordinarily resident on First Nation land.

- ▶ **First Nations Education Law (Education law)** is a law passed by the PFN with respect to the operation of their Education system.
- ▶ **First Nation Land** is defined as a “reserve” within the meaning of the term under the Indian Act set apart for the PFN, and includes “First Nation land” administered under the *First Nations Land Management Act*.

Highlights of the Agreement

Under the Education Jurisdiction Agreement, a First Nation has the ability to:

- ▶ create and implement their own laws in relation to education on their land;
- ▶ create a “Community Education Authority” (or CEA) under their own Education Law (*Part 3 of the Education Jurisdiction Agreement*);
- ▶ jointly exercise certain areas of education jurisdiction through FNEA, which serves as a regulatory body under the Initiative (*Part 4 of the Education Jurisdiction Agreement*); and
- ▶ transition from the Initiative to another inherent right implementation process, if the First Nation chooses to (*Section 11.6-11.9 of the Education Jurisdiction Agreement*).

Appendix

Appended to the Education Jurisdiction Agreement is an Implementation Plan, which:

- ▶ sets out the steps a PFN will take to ensure a smooth transition to implementing education jurisdiction;
- ▶ has a term of 10 years, starting on the Effective Date;
- ▶ may be amended, renewed, or extended with consent of both parties; and
- ▶ is not legally binding.

For a First Nation to become a PFN, the Education Jurisdiction Agreement must be ratified by a successful community ratification vote and signed off by Chief and Council. This means at least 50% + 1 of the members **who cast a** vote must vote in favour of the agreement.

The Education Jurisdiction Agreement comes into force on the “Effective Date” (typically July 1 on any given year), at which point a First Nation begins to implement jurisdiction over education.

Model Canada-First Nation Education Jurisdiction Funding Agreement

Overview

The Funding Agreement is intended to support First Nations as they work to meet their obligations under the Education Jurisdiction Agreement. The Funding Agreement outlines how Canada will fund the First Nation to fulfill their obligations in the Education Jurisdiction Agreement, and the associated responsibilities for that funding.

WHERE DOES THE FUNDING FOR IMPLEMENTING EDUCATION JURISDICTION COME FROM?

Governance Funding for the initiative comes from Crown Indigenous Relations and Northern Affairs Canada (CIRNAC).

The Funding Agreement:

- ▶ is between:
 - Canada, represented by the Minister of Crown-Indigenous Relations (“Canada”); and
 - the PFN, represented by Chief and Council;
- ▶ provides conditions and methodologies for the following two categories of jurisdiction funding:
 - Governance Funding; and
 - Education Funding (this includes funding for both Education and Centralized Services);
- ▶ provides First Nations with the initial funding amounts they can anticipate receiving when they become PFNs;
- ▶ describes the timing of when funding will be provided in subsequent years;
- ▶ sets out reporting requirements; and
- ▶ must be approved by Chief and Council (no community ratification vote is required).

Methodologies

Appended to the Funding Agreement are several schedules that lay out the methodologies, activities and reporting associated with the funding in the Funding Agreement.

- ▶ Methodologies for calculating the funding for both Education Services and Centralized Services are consistent with the methodologies set out in the British Columbia Tripartite Education Agreement (BCTEA).
 - PFNs may draw down Centralized Services from FNEESC, if they choose to, in accordance with a specific process and through an agreement with FNEESC.
- ▶ The methodology for determining governance funding is broken into two parts:
 - “Base” governance funding: calculated based on salary amounts for several positions, whose governance responsibilities will increase under the Initiative;
 - Note: Base governance funding can be used as determined by each First Nation; and
 - “Incremental” governance funding: takes into account factors including location, secondary grades offered, and enrollment of students from another First Nations’ reserve.

Note: this funding for education jurisdiction does not include capital. PFNs will continue to access capital funding through existing processes.

Other Agreements

In addition to the agreements signed between PFNs and Canada, PFNs will also be required to sign a BC-PFN Education Jurisdiction Agreement and the Education Co-Management Agreement with FNEA. These agreements do not need to be ratified by the community, but it is recommended that prior to ratification, a First Nation take steps to inform their community regarding these arrangements.

WHAT IS FNEA AND HOW DOES FNEA SUPPORT PARTICIPATING FIRST NATIONS?

FNEA is a regulatory body, which is mandated to support PFNs in their capacity to provide K4-12 education on First Nation land and to provide for any other matters related to education that may be agreed to by FNEA and a PFN in accordance with an individual Co-Management Agreement.

FNEA provides PFNs with workshops and tools to help ensure that they are successful and supported as they work to implement jurisdiction.

WHO DIRECTS FNEA?

FNEA receives direction from a Board of Directors. Each PFN appoints two individuals as directors of FNEA.

Education Co-Management Agreement

The Education Co-Management Agreement (Co-Management Agreement) is signed between an individual PFN and FNEA.

The agreement defines the relationship between FNEA and a PFN, including how FNEA will support the PFN to implement education jurisdiction. The agreement states that:

- ▶ the parties will work together in accordance with the individual First Nation's traditions;
- ▶ PFNs will each appoint two directors to the FNEA Board of Directors.

WHO CAN WE APPOINT TO THE FNEA BOARD OF DIRECTORS?

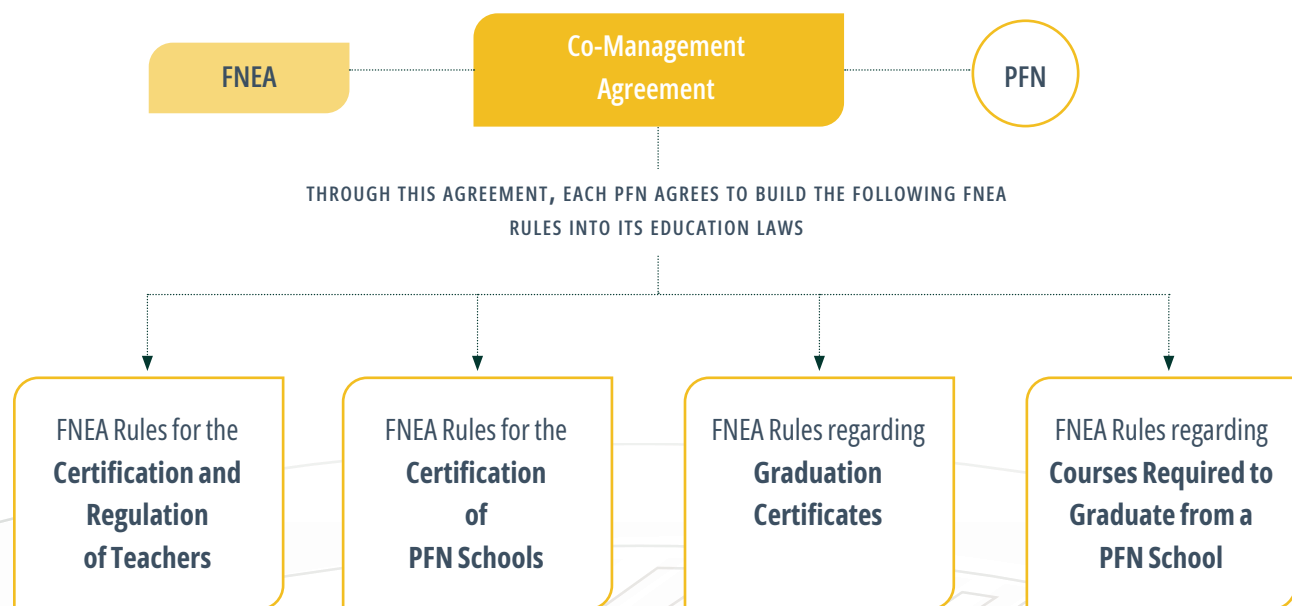
Each PFN appoints two people to sit on the FNEA Board. Each First Nation chooses their representatives, but at least one representative must be a member of the PFN.

► the PFN agrees that areas of jurisdiction, which have been collaboratively developed by First Nations and set out in FNEA's rules, will be jointly regulated through FNEA. These areas include:

- the certification and regulation of teachers other than First Nations language teachers;
- the certification of schools operated by or on behalf of the First Nation;
- graduation requirements and the granting of graduation certificates; and
- approving courses required to graduate.

The Education Co-Management Agreement must be approved by a majority Chief and Council vote and signed by the First Nation. It is recommended that this agreement be signed on, or before, the Effective Date.

Visual Overview of the Co-Management Agreement



BC-PFN Education Jurisdiction Agreement

The BC-PFN Education Jurisdiction Agreement is signed between an individual PFN and BC. The agreement:

- ▶ lays out BC and individual PFNs' obligations related to:
 - sharing certain teacher employment information;
 - reciprocal tuition;
 - graduation requirements and granting credentials; and
 - shared services opportunities.

Additionally, the BC-PFN Education Jurisdiction Agreement:

- ▶ affirms that reciprocal tuition agreements will continue to be used in the Initiative;
- ▶ recognizes a PFN's jurisdiction over education, and that their jurisdiction extends to all students attending the First Nation school; and
- ▶ affirms that BC will consult a PFN on decisions that may affect the First Nation's education system.

A draft BC-PFN Education Jurisdiction Agreement will be provided to a First Nation at their request.

The BC-PFN Education Jurisdiction Agreement must be approved by Chief and Council and signed by a First Nation. It is recommended that this agreement be reviewed prior to the Effective Date of the Education Jurisdiction Agreement, so it can be signed on, or shortly after, the Effective Date.

Related Links

- 2.1 [Education Jurisdiction Agreement PowerPoint](#)
- 2.2 [Education Jurisdiction Framework Agreement \(July, 21, 2023\)](#)
- 2.3 [Canada-First Nation Education Jurisdiction Agreement PowerPoint](#)
- 2.4 [Model Canada-First Nation Education Jurisdiction Agreement \(Schedule A to the Education Jurisdiction Framework Agreement\)](#)
- 2.5 [Canada-First Nation Education Jurisdiction Funding Agreement PowerPoint](#)
- 2.6 [Model Canada-First Nation Education Jurisdiction Funding Agreement \(Schedule B to the Education Jurisdiction Framework Agreement\)](#)
- 2.7 [BC-PFN Form of Agreement \(June 23, 2023\)](#)

SECTION THREE

OFFER AND RATIFICATION PROCESS

Overview	17
Funding	18
Considerations for Accepting an Offer	19
Developing a First Nation Education Law-Making Protocol	21
Timing and Steps to Prepare for a Ratification Vote	22
Related Links	24

SECTION THREE

OFFER AND RATIFICATION PROCESS

Overview

Once a First Nation determines that the Initiative is right for their community, they will need to request a formal offer from Canada for a [Canada-First Nation Education Jurisdiction Agreement \(Education Jurisdiction Agreement\)](#).

- ▶ To request an offer, a First Nation must provide Canada with a letter or Band Council Resolution (BCR) stating that they are committed to implementing jurisdiction over education and requesting a formal offer.

Within the Initiative, once a First Nation requests an offer, they are considered a Committed First Nation.

The offer describes the funding that will be available to the First Nation through the [Canada-First Nation Education Jurisdiction Funding Agreement \(Funding Agreement\)](#), as well as additional funding that is intended to support a First Nation working towards education jurisdiction.

- ▶ An offer is needed to formally signal to Canada that a First Nation intends to exercise education jurisdiction, and to allow Canada to begin identifying and setting aside funding to support the offer.

SHOULD OUR COMMUNITY REQUEST AN OFFER, AND IF SO, HOW AND WHEN?

Deciding if and when to request an offer is entirely up to each individual First Nation. A community will need to determine if the Education Jurisdiction Initiative is right for them, and when it would be appropriate to take the next steps and proceed with requesting an offer.

The letter or BCR should be directed to a CIRNAC representative (FNESC's education jurisdiction coordinator can provide you with the up-to-date contact information), with a copy sent to FNESC.

Funding

Funding Overview

The offer contains two main funding categories:

- i. Start-up elements, which includes:
 - a. Ratification Funding Support; and
 - b. Self-government Start-up Implementation Funding
 - ii. Ongoing funding (funding that flows after the Effective Date), which includes:
 - a. Funding for Education Services;
 - b. Funding for Centralized Services; and
 - c. Ongoing Governance Funding
- ▶ Each First Nation's offer contains specific funding amounts showing an estimate of the funding they can expect to receive under education jurisdiction.

Funding Breakdown

RATIFICATION FUNDING SUPPORT

- ▶ A First Nation will receive ratification funding of approximately \$106,000, plus a variable amount based on its population.
- ▶ This funding is provided to support activities related to conducting the community ratification vote, which is required to ratify the Jurisdiction Agreement and approve the Law-Making Protocol.
- ▶ The funding is triggered by a First Nation submitting a Ratification Workplan and is typically provided within 6-10 weeks.

SELF-GOVERNMENT START-UP IMPLEMENTATION FUNDING

- ▶ A First Nation will receive a total of approximately \$322,000 to support their initial self-government activities. This funding is divided as follows:
 - i. Pre-Ratification Amount: \$50,000, provided once a Committed First Nation accepts its offer; and
 - ii. Post Ratification Amount: approximately \$272,000, committed by Canada within seven days of whichever is later – Canada's ratification of the Jurisdiction Agreement, or the date on which one-time funding to CIRNAC is approved.

FUNDING FOR EDUCATION SERVICES

- ▶ The funding for education services is provided to the First Nation for K4-12 program delivery and is calculated using the BCTEA methodology, based on enrolment numbers provided to Canada.
- ▶ Funds will flow through the Funding Agreement with CIRNAC, rather than the First Nation's existing funding agreement with Indigenous Services Canada (ISC).

FUNDING FOR CENTRALIZED SERVICES

- ▶ Funding grants associated with centralized services (also referred to as second and third level services*) are provided by FNEC to support First Nations and First Nation schools.
- ▶ Funding for centralized services will continue to be provided to FNEC, except for School Certification funding which will be provided to FNEA.
- ▶ If a First Nation wishes to draw down funding for centralized services to administer it themselves, they may do so in accordance with an agreed process.

ONGOING GOVERNANCE FUNDING

- ▶ This funding will be provided to the PFN to carry out their ongoing governance responsibilities associated with education jurisdiction. Some of the eligible expenses include:
 - Staffing for governance activities (through Chief and Council and/or a Community Education Authority)
 - The maintenance of a law registry
 - Travel expenses, as required
- ▶ Funding will be provided in accordance with schedule D of the Funding Agreement.

Note: Amounts are subject to yearly changes, and are provided for illustration

***WHAT ARE SECOND AND THIRD LEVEL SERVICES?**

These are the services provided by FNEC to First Nations and First Nation schools, which are designed specifically for First Nations' unique circumstances.

Considerations for Accepting an Offer

Before accepting an offer, there are several matters a First Nation should consider and actions they should take, including:

- ▶ reviewing the funding amounts to ensure that the First Nation is satisfied with the proposal;
- ▶ reviewing the offer document, the Education Jurisdiction agreement, and the Funding Agreement with Chief and Council and the community;

- ▶ understanding the deadlines and timelines associated with the offer document;
- ▶ developing a Ratification Workplan;
- ▶ examining any possible roadblocks that may arise when preparing for the ratification vote; and
- ▶ ensuring that the Education Jurisdiction Initiative is right for your community.

The formal offer is not legally binding. However, by accepting an offer, the First Nation is signalling to Canada that they intend to undertake a ratification vote and, if the vote is successful, implement jurisdiction over education. Also, acceptance of the offer is the trigger for Canada to provide the \$50,000 Pre-Ratification Amount.

Ratification Workplan

It is recommended that a First Nation begin to develop their Ratification Workplan while they are reviewing the offer document, with the intention of providing Canada with the workplan when they accept the offer.

- ▶ The ratification workplan serves a dual purpose. It:
 - i. is the catalyst for a First Nation to receive Ratification Funding Support; and
 - ii. allows a First Nation to create an initial plan for undertaking their ratification vote.
- ▶ The Ratification Workplan must include the following three components:
 - i. a description of how the voters list will be developed;
 - ii. the date(s) of the ratification vote; and
 - iii. a description of how the ratification vote will be conducted.
- ▶ FNEESC has created a template Ratification Workplan that is available for use by Committed First Nations.

Developing a First Nation Education Law-Making Protocol

Along with ratifying the Education Jurisdiction Agreement, a First Nation must also ratify their own First Nation Education Law-Making Protocol (Protocol).

- ▶ The Protocol sets out **how** PFNs will make and pass laws (i.e. the process to be followed).
- ▶ A First Nation cannot pass an education law and exercise jurisdiction over education without first passing their Protocol.
- ▶ Section 2.11 of the Education Jurisdiction Agreement sets out the required elements for the Protocol.

To support First Nations in creating their Protocols, FNEC has developed two models, which include all of the required elements and can be used as a starting point.

- ▶ The model Protocols can be amended and adapted to meet each First Nation's needs, as long as the required elements are included.

HOW DO WE BEGIN TO DRAFT OUR EDUCATION LAW-MAKING PROTOCOL?

FNEC has created two model Protocols, which meet the requirements set out in the Education Jurisdiction Agreement. The [Model A](#) and [Model B](#) Protocols can be found on the FNEC website or requested from FNEC.

Law-Making Protocol Models Overview

The two models are identical, except the process by which the education law is approved.

- ▶ **Model A:** After community engagement and consultation, Chief and Council would vote to approve the education law.
- ▶ **Model B:** After community engagement and consultation, a binding referendum would be used to approve the education law.

Note: A referendum IS required to approve the Education Jurisdiction Agreement, but a referendum IS NOT required to pass an Education Law, unless a First Nation's Protocol determines that it is.

Considerations for the models include:

MODEL A Council Vote	MODEL B Binding Referendum
• Will likely require less time and resources • Provides Chief and Council with discretion to include additional steps to the process of passing an Education Law	• May result in an Education Law that is better supported by community • May be more challenging and time consuming to use a referendum process for passing the Education Law • The First Nation will need to determine their process for holding the referendum (if they don't already have an existing process).

Timing and Steps to Prepare for a Ratification Vote

After a First Nation has accepted their offer, the First Nation will need to prepare for a ratification vote. This includes:

HOW DOES OUR FIRST NATION RATIFY THE EDUCATION JURISDICTION AGREEMENT AND THE EDUCATION LAW-MAKING PROTOCOL?

Your First Nation will ratify the Education Jurisdiction Agreement and the Protocol by way of a community vote through a secret ballot.

- ▶ Canada presenting final versions of the Education Jurisdiction Agreement and the Funding Agreement to the First Nation.
- ▶ Chief and Council taking steps to inform members of:
 - their right to vote, and how they can vote;
 - the content of the Protocol; and
 - the content of the Jurisdiction Agreement.
- ▶ Determining voting age and approval threshold, establishing:
 - the minimum voting age of members entitled to vote; and
 - whether to increase the threshold required for approval; the default is set at 50% plus one of those members who cast a vote.
- ▶ Conducting the ratification vote by way of secret ballot, where members will be approving:
 - The Canada-First Nation Education Jurisdiction Agreement; and
 - The First Nation's Education Law-Making Protocol.

A template ratification ballot can be found on the FNEESC website or can be requested from FNEESC.

Canada has flagged that for First Nations to become PFNs on July 1st of a given year, the First Nation will need to hold their ratification vote prior to December 31st of the previous calendar year.

Sample 2-year timeline for July 1st Effective Date:

MONTH	ACTIVITY
1 July	Confirm Interest in Initiative - Conduct preliminary community outreach to determine community interest - Review Agreements and Toolkit to confirm interest in Initiative
2 August	
3 September	
4 October	
5 November	Enter Initiative – Request and Accept an Offer From Canada - Request offer document from Canada - Receive and review offer document - Develop Ratification Workplan - Accept offer and deliver ratification workplan
6 December	
7 January	
8 February	
9 March	Prepare for Ratification Vote - Develop Law-Making Protocol - Chief and Council review and confirm their support for the Canada-First Nation Education Jurisdiction Funding Agreement - Conduct community outreach (e.g., meetings; door-to-door outreach; mailed information packages; online resources) to inform community of details of Initiative. Specifically, be sure to inform them of: - their right to vote - the contents of the Canada-First Nation Education Jurisdiction Agreement - the contents of your Law-Making Protocol
10 April	
11 May	
12 June	
13 July	
14 August	
15 September	
16 October	Ratification and Initial Follow-up Activities - Hold ratification vote - Inform Canada of successful ratification and then sign: Canada-First Nation Education Jurisdiction Agreement; Canada-First Nation Education Jurisdiction Funding Agreement; and Law-Making Protocol
17 November	
18 December	
19 January	Prepare for Implementation - Determine which approach to school governance to pursue - Develop your Education Law - Select two individuals to be appointed as directors of FNEA - Review and prepare to sign additional jurisdiction agreements (including a Co-Management Agreement with the FNEA and a BC-PFN Agreement) on effective date
20 February	
21 March	
22 April	
23 May	
24 June	

Related Links

- 3.1 [Template Fiscal Offer – Canada-First Nation Education Jurisdiction Agreement \(2023/2024\)](#)
- 3.2 [Fiscal Offer Process Chart](#)
- 3.3 [Timing of Funding Flow Chart](#)
- 3.4 [Implementation Timeline](#)
- 3.5 [Sample Ratification Workplan](#)
- 3.6 [Memo re: First Nation Education Law-Making Protocol Models](#)
- 3.7 [Model A \(Council Vote\) First Nation Law-making Protocol Draft pdf docx](#)
- 3.8 [Model B \(Ratification Vote\) First Nation Law-making Protocol Draft pdf docx](#)
- 3.9 [Template Ballot Question](#)
- 3.10 [Template Ratification Brochure](#)

SECTION FOUR

EDUCATION GOVERNANCE

School Governance

25

Developing an Education Law

29

Related Links

31

SECTION FOUR

EDUCATION GOVERNANCE

A Participating First Nation's (PFN's) education laws and governance structure provide the framework for how they will implement education jurisdiction, and how their school will be operated.

When developing and implementing a governance structure and education law, consideration should be given to ensuring that both the structure and the law reflect and support the PFN's goals for their education programs.

School Governance

PFNs must decide on a governance structure for implementing jurisdiction over education on their land. This means they must decide what legal entity will operate the school and employ school staff. This decision will, in turn, affect what body will be the School Governing Authority. PFNs must also determine the powers their School Governing Authority will have and their relationship to other bodies. The approach taken must be reflected in the PFN's education law.

It is also important to understand the different roles and responsibilities of the school principal and how they relate to the School Governing Authority. The primary role of the School Governing Authority is to make decisions regarding governance issues related to the school. For that reason, members of the Authority are not required to have extensive expertise in education and running a school. The Authority should be able to rely on the principal to implement its direction and decisions.

WHAT IS A SCHOOL GOVERNING AUTHORITY?

A School Governing Authority is the body responsible for making decisions on behalf of the legal entity responsible for operating the school and employing school staff. The responsibilities of a School Governing Authority include matters such as setting the school's mission, budgeting, and developing policies to guide the school's operations.

Approaches to School Governance

This Toolkit sets out four possible approaches that a PFN could adopt as their governance structure. A PFN can: (a) adopt one of these approaches, (b) build a structure based on one of these approaches with modifications, or (c) choose an entirely different structure.

It is important to recognize that a PFN can change their governance structure from time to time. Depending on how the governance structure has been established, changes to the governance structure may need to be accompanied by amendments to the First Nation's education law.

The following approaches to governance structures are provided for consideration.

1. Chief and Council as school governing authority

Legal Entity operating school & employing school staff	School Governing Authority	Comments
First Nation	Chief and Council	A First Nation could establish an education advisory committee or “board.”* (*The term “board” in this context is not referring to the board of directors of a separate legal entity.)

2. Chief and Council delegate some, or all, authority to an education committee/board

Legal Entity operating school & employing school staff	School Governing Authority	Comments
First Nation	Chief and Council and/or an education committee or board* <i>(If all decision-making authority is delegated to the education committee/board, it would become the school governing authority.</i> <i>If only some authority is delegated, Chief and Council could remain the school governing authority or the role of school governing authority could be shared.)</i>	Chief and Council delegates some, or all, of their decision-making authority to an education committee or board.* It is critical to have a written agreement, terms of reference, or a letter of understanding that clearly outlines the scope of authority that has been delegated to the committee/board and what authority has not been delegated. (*The term “board” in this context is not referring to the board of directors of a separate legal entity.)

3. Community Education Authority (CEA) established under First Nations Education Law

Legal Entity operating school & employing school staff	School Governing Authority	Comments
CEA established solely under First Nation’s education law (not under provincial or federal law)	Board of the CEA	It is critical to have agreement between CEA and the First Nation re: transfer of funding from First Nation to CEA, and reporting and accountability from CEA to First Nation.

4. CEA Established under the Societies Act (BC) or federal law

Legal Entity operating school & employing school staff	School Governing Authority	Comments
CEA established under the <i>Societies Act</i> (BC) or the <i>Canada Not-for-profit Corporations Act</i>	Board of the CEA	The First Nation’s law could provide some direction to the CEA, but the direction could not be inconsistent with the federal or provincial law under which it was established. It is critical to have agreement between CEA and the First Nation re: transfer of funding from First Nation to CEA, and reporting and accountability from CEA to First Nation).

Notes:

- ▶ A CEA can be established from an existing education board or education authority.
- ▶ An **advisory body** that provides input or advice to Chief and Council or to the CEA, but does **not** have decision-making authority, could be established by the First Nation (or the CEA) under any of these 4 approaches. If this occurs, it is critical that the role of the advisory body be confirmed through a written agreement, terms of reference or a letter of understanding.

CEA CONSIDERATIONS

If a First Nation chooses to establish a CEA, or make an existing education board a CEA, there are additional factors that will need to be considered, including:

WHAT ARE THE LEGAL UNDERPINNINGS THAT CAN BE USED TO ESTABLISH A CEA?

Where a PFN chooses to establish a CEA, it is up to that First Nation to decide whether to create the CEA under:

1. the First Nation's own law,
2. the BC Societies Act, or
3. the Canada Not-for-profit Corporations Act

A First Nation that is thinking about establishing a CEA should consult a lawyer to consider the pros and cons of each of these approaches.

- ▶ What legal underpinning will be used to establish the CEA?
- ▶ How will the board of the CEA be structured to ensure that it is reflective of a range of perspectives, but that it is not so large as to make decision making challenging?
- ▶ What approach will be used to recruit and select CEA board members?
- ▶ What skills and experience will be needed to oversee the CEA and establish a mission and goals for the CEA?
- ▶ What capacity will be required to operate the CEA, since it will be taking on the legal and financial obligations of running the school?
- ▶ What structures will be needed to ensure effective communication between the principal and the CEA board?

At the time a CEA is created, it is critical that a PFN and the CEA enter into an agreement setting out their respective roles and responsibilities, including provisions that address the transfer of funding from the PFN to the CEA, and the reporting and accountability obligations of the CEA to the First Nation.

A PFN should also consider whether it would be appropriate to jointly establish a CEA with another PFN.

In addition, a PFN should consider whether they wish to involve neighbouring First Nations in the establishment of their CEA. This would be an important consideration where the PFN wants to establish a collaborative governing structure that includes the active participation of neighbouring First Nations.

Developing an Education Law

Under the Initiative, a PFN will have to develop and pass their own education law. A PFN's education law will set the rules under which they will operate their schools and provide education.

Under the Canada-First Nation Education Jurisdiction Agreement (Education Jurisdiction Agreement or EJA), the following must be included in a PFN's education law:

- ▶ mechanisms that allow for non-members, who receive education, or have their children receive education provided by the First Nation, to provide input into decisions regarding education programs (EJA paras 2.5 and 2.14),
- ▶ if establishing a CEA as a separate legal entity under its own authority, it must establish the CEA, and set out its powers, duties, composition and membership under the law (EJA, Part 3)
- ▶ the delegation of authority to FNEA in respect to:
 - teacher certification;
 - school certification;
 - graduation requirements;
 - courses that are required to graduate; and
- ▶ establish processes for appeal or review of administrative decisions (EJA 5.2)

In developing their education law, a First Nation should consider which school governing approach they intend to implement. If they choose to establish a CEA, they should set out the roles and responsibilities of the CEA in their law.

To support a First Nation in developing their education law, FNEA and FNEC have created a model education law.

Model Education Law

The model education law was developed to provide PFNs with a starting point for developing their own laws. The model law:

- ▶ is built on the basis that Chief and Council has chosen to delegate some authority to an education committee or board, but has decided not to create a CEA to operate the school (see governance structure #2 above);

HOW DO WE BEGIN TO DRAFT OUR EDUCATION LAW?

A Model Education Law has been developed for use by First Nations. The model law can be used:

- ▶ in its entirety
- ▶ as a starting point for adaptations
- ▶ as a general checklist of elements that should be included

A First Nation can also develop their own education law, taking an approach that is consistent with their other laws (e.g., child protection legislation) and rely, as noted above, on the model law as a checklist of items they may want to include.

- ▶ is customizable to each First Nation; the document indicates where the First Nation must input their specific information;
- ▶ has notes throughout to provide some guidance and considerations to PFNs; and
- ▶ is optional. It is up to a PFN to decide whether they want to use it.

If a First Nation has decided not to establish an education committee or board or a CEA (see governance structure #1 above), some of the provisions of the model law may not be applicable.

If a First Nation has decided to establish a CEA (see governance structure #3 and #4 above), additional provisions would be required that are not set out in the model law.

Considerations in Developing an Education Law

Some of the considerations a PFN may want to contemplate while developing their education law include:

- ▶ determining which concepts and elements should be incorporated into their education law, and which are better addressed through policy;
- ▶ once an education law is passed, ensuring that a public registry of laws is kept (note: this is a requirement);
- ▶ developing and passing the law in accordance with their education Law-Making Protocol;
- ▶ aligning their education law with their other laws and policies;
- ▶ being aware that the First Nation's education law will generally prevail over federal and provincial laws; and
- ▶ ensuring that policies are ready to be put in place immediately after laws are passed.

Additional considerations may arise as a First Nation works to develop their education law. If a First Nation has not hired a lawyer to assist with drafting their education law, it is strongly recommended that they hire one to carry out a legal review of their education law before it is passed. That review should consider, among other things, whether the requirements of the Education Jurisdiction Agreement have been met.

Related Links

- 4.1 [Chart of Governance Approaches to Education Jurisdiction \(September 8, 2021\)](#)
- 4.2 [Two-Pager Approaches to Governance under Education Jurisdiction \(August 13, 2021\)](#)
- 4.3 [Transitioning to a Community Education Authority](#)



SECTION FIVE

POST-RATIFICATION

What Comes Next?

33

Effective Date and Onwards

36

Related Links

37

SECTION FIVE

POST-RATIFICATION

Upon completion of a successful ratification vote, a First Nation will need to complete additional steps in order to become a Participating First Nation (PFN) on the Effective Date. This work will be supported by FNEESC, FNEA and Canada.

As part of FNEESC's support, a document entitled "*Pathway to the Effective Date*" has been developed, which can be used as a supplemental overview for this section.

What Comes Next?

After the ratification vote is completed, the First Nation must provide notice to Canada regarding the ratification results. This notice must indicate that:

- ▶ the First Nation has successfully approved the Education Jurisdiction Agreement and the Law-Making Protocol through a ratification vote; and
- ▶ Chief and Council has approved the Funding Agreement.

This notice can be provided by sending Canada an email attaching the ratification results signed by the ratification/electoral officer who oversaw the ratification process.

At this point, the First Nation will be considered a Ratified First Nation.

Note: If there is a period during which members can appeal the results of the ratification vote, Canada will likely wait until that appeal period is over before they consider the ratification process complete.

WHAT HAPPENS IF THE RATIFICATION VOTE IS UNSUCCESSFUL?

If the ratification vote is unsuccessful, then the First Nation may either step away from the Initiative or try to undertake the ratification process again. If the First Nation chooses to try the ratification process again, they may request additional funding from Canada to try a second time, but there is no guarantee that Canada will provide additional funding. If this route is taken, it is recommended that the First Nation take steps to get an understanding of why their community did not approve the Initiative, complete additional communication efforts if necessary, and evaluate whether there is support from the community to try the ratification process a second time.

Overview of Post-Ratification Process

After ratification of the Education Jurisdiction Agreement and the Law-Making Protocol, the First Nation will need to:

- ▶ work with Canada to determine the timeline and process for signing the Education Jurisdiction Agreement and the Funding Agreement;
- ▶ have its authorized representative (e.g., Chief and Council) sign the Law-Making Protocol to formalize its approval; and
- ▶ identify an individual who will sit on the FNEA board as a Ratified First Nation Observer until the Effective Date.

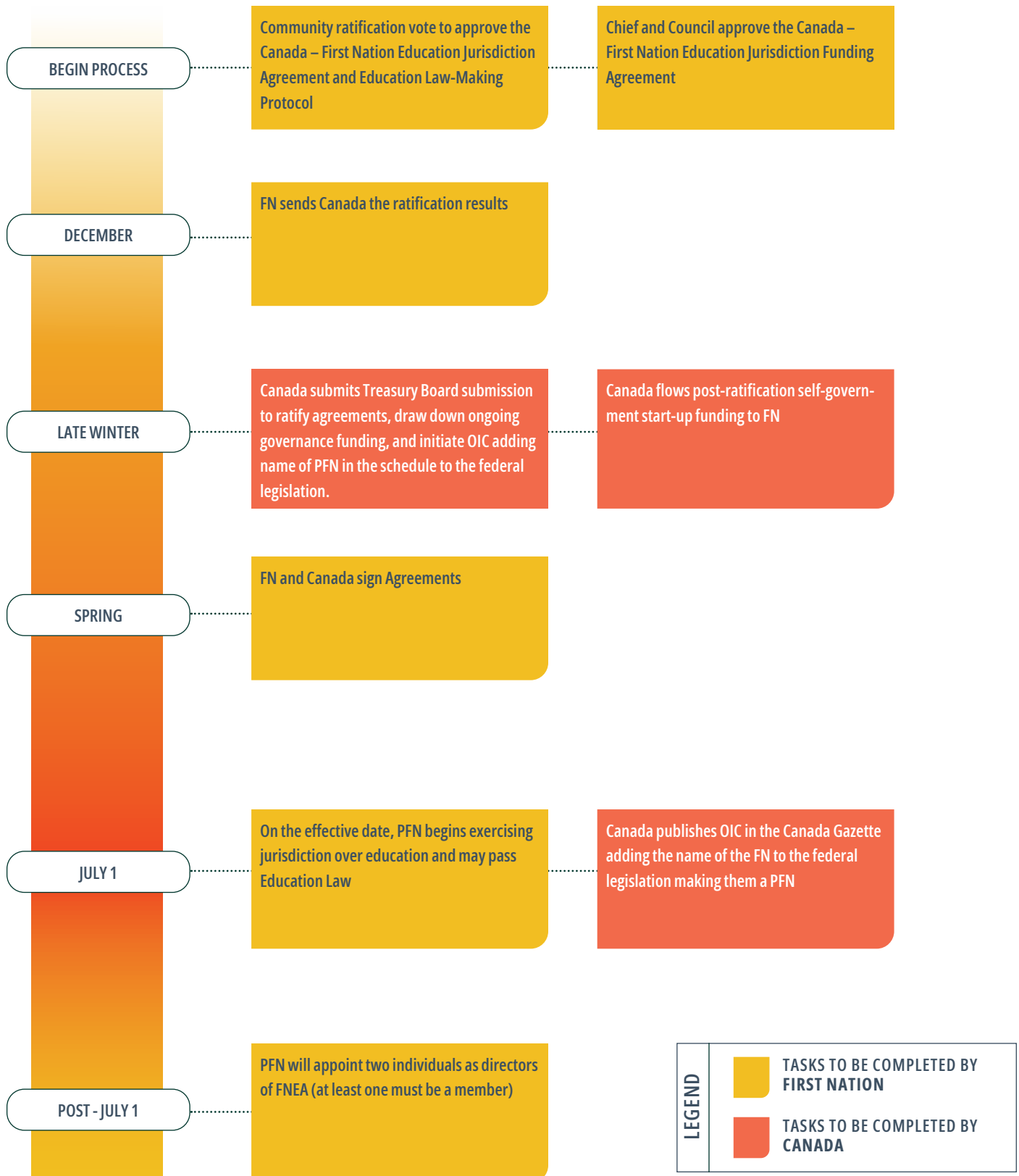
While the First Nation is completing its internal processes, Canada will also be conducting work to:

- ▶ authorize the Minister to sign the agreements;
- ▶ draw down ongoing governance funding amounts; and
- ▶ initiate the Order in Council (OIC) process, to add the new Participating First Nations in the Schedule to the Act.

During this time, Canada will also flow the post-ratification portion of the self-government start-up implementation funding to the First Nation.

The tasks completed are in preparation for Canada publishing the OIC and the First Nation formally becoming a PFN.

Sample Timeline of Post Ratification Milestones



Effective Date and Onwards

Implementing Education Jurisdiction

HOW DOES OUR FIRST NATION PASS AN EDUCATION LAW?

Education laws will be passed in accordance with each First Nation's Law-Making Protocol. See Section 4 for details on developing your education law.

Once the OIC is passed, Canada will publish the OIC in the Canada Gazette and will add the name of the First Nation to the federal enabling legislation. This establishes the First Nation as a PFN that can begin to exercise jurisdiction over education under this Initiative.

The OIC typically contains a “coming into force” date, which has previously been on July 1st. The coming into force date is also referred to as the **Effective Date**. On the Effective Date:

- ▶ the Education Jurisdiction and Funding Agreements come into force; and
- ▶ a PFN can appoint two directors to the FNEA Board of Directors.

FNEA Board of Directors

Each PFN can appoint two directors to the FNEA Board of Directors, as set out in the Co-Management Agreement, one of whom must be a member of the PFN.

Each PFN will:

- ▶ notify FNEA of the names of the two board members, through writing; and
- ▶ provide FNEA a description of the process under which the First Nation will appoint new board members.

The initial term for an FNEA board member is two years. Subsequent terms for appointees are four years. The FNEA Board of Directors oversees FNEA.

What Comes Next?

Following the Effective Date, a PFN may pass its education law(s) in accordance with its Law-Making Protocol.

In addition to exercising education jurisdiction, the PFN will be responsible for:

- ▶ providing education to eligible students attending their First Nation's school;
- ▶ reporting to Canada, as set in Schedule E of the Funding Agreements;
 - Currently, PFNs are reporting using the ISC Nominal Roll, which will continue until a new data collection method has been developed; and
- ▶ purchasing education for eligible students who attend a BC public school, BC independent school, or school operated by another First Nation.

Related Links

5.1 [First Nations Education Authority Website](#)





fnesc

FIRST NATIONS EDUCATION STEERING COMMITTEE

#113 - 100 Park Royal South, West Vancouver, BC V7T 1A2
604-925-6087 | Toll-free in BC 1-877-422-3672

info@fnesc.ca | www.fnesc.ca