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Northern Development Canada

Affaires autochtones et
Développement du Nord Canada

Working Together for First Nation Students

A Proposal for a Bill on
First Nation Education
October 2013



Canada

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INTRODUCTION

As First Nations and Canada mark the 250th anniversary of the Proclamation of 1763 and the fifth anniversary of the Prime Minister's historic apology to former Indian Residential School students, the Government of Canada has committed to working with First Nations to develop a First Nations Education Act to support improved quality of education and better results for First Nation students on-reserve. This is the result of a number of efforts by First Nations following the path set out the 1972 AFN/National Indian Brotherhood paper *Indian Control of Indian Education*, through joint efforts such as the Canada–First Nation Joint Action Plan, the National Panel on Elementary and Secondary Education on Reserve, and the Crown - First Nations Gathering Outcome Statement, and Government of Canada reports such as those from the Office of the Auditor General and from the Standing Senate Committee on Aboriginal Peoples.

Since December 2012 the Government of Canada has consulted First Nations and other stakeholders through eight face-to-face regional consultation sessions with First Nation leaders, community members including parents, students, educators and administrators (e.g. First Nation education organizations); over 54 technical briefings and information sessions via video or teleconference sessions; and an online survey which received 631 responses. To support these processes, the Government circulated a *Discussion Guide* in December 2012 and a *Blueprint for Legislation* in July 2013, and has now incorporated input from First Nations in a draft of a proposed First Nations Education Act. As committed to in Budget 2013, the government is now sharing this first draft with all First Nations and other stakeholders to seek comments, feedback and further engagement before making a decision to introduce a bill in Parliament.

As outlined below, the proposed First Nations Education Act will respect any existing Aboriginal and treaty rights of First Nations and provide a structure for the exercise of First Nation control of First Nation education. It will also recognize the responsibility and ability of First Nations to provide access to education for elementary and secondary students who live on their reserves. Building on best practices in education built by First Nations, it will outline base standards and services required to support success for students and schools.

First Nations will continue to be able exercise their rights over education by running community-operated schools. First Nations will also have the option to work together to form First Nation-led institutions called First Nations education authorities. The ability to form a larger organization creates an opportunity to provide a broader range of services to students and schools, and may be an important means of overcoming some of the challenges of isolation and fragmentation that have been identified by First Nations, First Nation organizations, and reports such as those of the Office of the Auditor General. First Nations would also be able to enter into agreements with provincial school boards (or their equivalent, depending on province) to have First Nation students attend school off-reserve or to manage an on-reserve school. First Nations will continue to have the option to negotiate self-government arrangements over education, at which point the proposed Act would no longer apply to them.

The proposed Act will respect treaties. The government recognizes the importance of the provisions relating to education in historic treaties, in land claims and in self-government agreements. By establishing a legislative base for education, clarifying service levels, improving

the funding mechanism, and supporting regional delivery organizations for education, the Act enables First Nations to strengthen access to quality education for students in all First Nation communities, including those who have treaties, and those who do not.

Through consultations to date, the government has heard about the importance of First Nations being able to include the teaching of traditional languages and cultures in their curricula. The proposed Act offers the opportunity for communities to develop and implement language and culture programs suited to their needs. The proposal also provides First Nations the opportunity to structure their schools in a way that respects community and cultural concerns. For example, within the bounds of the number of days of instruction for which education will be funded, First Nations or First Nation education authorities would be able to set a school calendar that responds to local needs. The draft legislation also proposes community education committees as a means by which local and parental concerns will be expressed within the system, including connecting cultural and linguistic issues to community views.

The Government also heard about the need for inclusive curriculum choices. The achievement of a recognized high school diploma is a key to future success and to choices with regard to continuing education at the post-secondary level or to entering the workforce. Across Canada, this is done through a certificate or diploma issued by a province or territory. Most provincial curricula include options for language courses, native studies credits and school-initiated courses that can help bring together the cultural aspirations of First Nation educators and the recognized graduation credential. The Act will also provide for an international option or for a First Nation diploma, where those options can be shown to be equally strong as provincial diplomas and give graduates access to post-secondary education and the workforce. These choices open up additional options for First Nations with regard to elementary and secondary curriculum.

Following the Prime Minister's historic apology to former Indian Residential School students, the Government of Canada is committed to moving forward in a spirit of reconciliation. A legislative base that respects Aboriginal and treaty rights, provides a commitment to quality, and enables First Nation control over First Nation education is a tangible demonstration of that commitment.

As framework and enabling legislation, many details to support the proposed Act would be spelled out in regulations. The Government of Canada is committed to developing mechanisms that would involve First Nation representatives in a co-operative process of establishing these regulations.

WALKTHROUGH

The following pages are to provide a plain language summary of the sections of the proposal for a bill on First Nation education and help clarify the points made in the proposal itself. These are summary statements and the proposal itself is the key text. This is a proposal and is subject to change based on consultation and further development.

Preamble

A draft of the preamble is not currently available, as discussions with key stakeholders and organizations are continuing. However, the preamble could affirm the government's respect of treaty and Aboriginal rights, and its commitments to First Nation control of First Nation education, quality education, a co-operative approach to regulation and to reconciliation.

Interpretation

This section includes definitions of key terms as they would apply in the Act, including 'Council of a First Nation', 'education program', 'First Nation', 'First Nation Education Authority', 'First Nation school', 'parent', and 'reserve'.

General

This section reaffirms Canada's commitment to section 35 of the *Constitution Act, 1982*, which recognizes existing Aboriginal and treaty rights. It excludes self-governing First Nations from the Act, and clarifies that Councils of First Nations have legal rights to enter contracts and refer to the courts with regard to this Act.

Access

This section establishes that it is the First Nation council that has the responsibility to provide for access to elementary and secondary education to students between six and 21 years. The education program provided must lead to a recognized high school diploma, such as a provincial high school diploma or an equivalent. Parents (including adoptive parents or guardians) must register their children for school if they are between six and 16 years of age and ensure that they attend school regularly. The First Nation can pass a bylaw to extend the mandatory age to a minimum of 4 years old or a maximum of 18 years old depending on local needs and conditions.

Access to education can be provided by a First Nation council directly through a community-operated school, by a First Nation education authority established by First Nations for that purpose, or by entering into an agreement with a provincial school board or equivalent. The education must be provided to eligible students without tuition charges to students or their families.

Governance

This section deals with the responsibilities of a First Nation council if it operates one or more schools directly. These include setting the education program, budget, policies, hiring a principal and approving a school success plan and school safety plan. A First Nation council may purchase necessary services for students and community-operated schools from other organizations such as a regional education organization, a provincial school board or equivalent, or a private entity. For each school or each community, the First Nation council must form a community education committee to advise the council and the principal on administration and to consult on language and culture programs.

Where a First Nation council enters into an agreement with a provincial school board to provide instruction to students or to manage schools, the Minister will issue directives to make sure these agreements are fair for First Nations and that they will be able to meet the needs of students. If an agreement results in a provincial school board operating a school on reserve the school board would be able to follow the provincial legislation if necessary so that federal and provincial legislation would not overlap and create confusion.

Although First Nation schools cannot charge tuition to eligible students, minor charges for extracurricular activities or deposits on equipment may be charged if necessary. This would be for optional activities, not for required elements of the education program. Regulations will describe how the government will fund students living on-reserve and may provide alternative means for First Nations to fund the education of students residing on leased lands on-reserve.

Instead of operating a school directly, a council could delegate its powers to a First Nation education authority. First Nations would form authorities by legal agreements. The Minister of Aboriginal Affairs and Northern Development would recognize these agreements and could set base standards for what they must include, such as essential clauses on governance, operations, and dispute resolution. The Minister could then fund the education authorities directly to provide services to First Nation schools and students.

A First Nation school will be able to accept students from off-reserve. First Nation councils could pass bylaws to set out conditions on this, provide for their access to the reserve, or cover any other requirements that this arrangement would entail. These students' educations could be funded through agreements with provinces or with the students' families.

Parents would also be able to home school their children. In this case, the student would still register at a school but would not be required to attend. The responsible authority would oversee the home school program and could provide support for the schooling.

School Operations

Students must receive instruction, materials, transportation and required equipment for their education and schools must have the professional services and learning supports typical of education systems, regardless of which governance option a First Nation decides. A director of education would be responsible for the administration and day-to-day management of schools. That person would establish school policies and implement the education program of the school, and ensure that all students, including those with special needs, are able to take part in an education program. A principal would be the instructional leader of their school and implement the day-to-day activities of the school, prepare and implement a school success plan, and attend to the students' well-being. In some situations (community-operated school, small First Nation education authority, small schools) the duties of the director of education and principal could be combined or one person could be the principal of more than one school. School Success Plans would set out the educational objectives for the school and the measures for students in the final grade at that school to either move on to the next stage of their education, or in the case of graduating students, to enter the workforce.

Each year a responsible authority would conduct an inspection of each school they administer. The First Nation or First Nation education authority would choose a qualified person to assess the achievement of the educational goals set out in the school success plan, and that required policies and procedures are in place for the school. The inspector would make recommendations to improve the educational achievements of the school and to support compliance with the Act. If the school is managed by a First Nation education authority, the inspection report must also be sent to the member First Nations directly.

If the inspection report finds problems with compliance with the Act, the responsible authority must take measures to remedy those problems. If it appears that problems are not being resolved, the Minister could require the responsible authority to hire a qualified advisor (of their choice) to assist in resolving the problems. If inspections are not done, if there are major and persistent problems, or if there is an immediate risk to student well being and success or a risk of financial failure of the responsible authority, the Minister could appoint a temporary administrator to perform the duties of the responsible authority with regard to that school and to take necessary actions to remedy the problems.

Funding

This section establishes that payments for First Nation education will be based on calculations to be described in regulations. The Minister could pay for the tuition agreements entered into by First Nations or First Nation education authorities or make new agreements with a school board, a province or another entity if that was required to implement the Act.

Liability

The government would not be liable for the actions or omissions of a responsible authority, and the Crown and public servants would not be liable for their work under the Act, if they were conducting their duties in good faith.

Bylaws

This section outlines a process for First Nations to publish the bylaws that are recognized in the Act and a requirement to make the bylaws available on the Internet or on request.

Regulations

The Minister can make the regulations that are required for the implementation of the Act. The Government of Canada is committed to developing mechanisms that would involve First Nation representatives in a co-operative process of establishing these regulations.

Review

Every five years the Minister must review the Act and its implementation and report to Parliament.

Transitional Provisions and Related Amendments to the Indian Act

For First Nations and their organizations who take part in the *British Columbia Tripartite Education Framework Agreement*, this Act would not apply until the end of the school year in which the Agreement is scheduled to end. The Minister would be able to continue to administer the seven existing federal schools in Ontario and Alberta until the First Nations on whose reserves those schools are located choose to develop a plan to take them over.

Sections 114-122 of the *Indian Act* would be repealed, but if another agreement such as self-government agreement requires those sections, then they would continue to apply only in those cases.

Coming Into Force

The Governor in Council can set the date that provisions of the Act come into force.

PROPOSED DRAFT OF BILL

Below is the proposed wording that has been developed to date in legislative language for review and feedback.

A proposal for an Act to establish a framework to enable First Nations governance of elementary and secondary education and to provide for related funding and to make related amendments.

SHORT TITLE

1. This Act may be cited as the *First Nations Education Act*.

INTERPRETATION

2. The following definitions apply in this Act.

“council of a First Nation” has the meaning assigned by the definition “council of the band” in subsection 2(1) of the *Indian Act*.

“Department” means the Department of Indian Affairs and Northern Development.

“education program” includes the subjects that are taught at a school as part of a course of study, the learning objectives and the manner of assessing the students’ achievement of those learning objectives.

This definition is meant to encompass the curriculum and/or course of study students follow leading to a high school diploma.

“First Nation” has the meaning assigned by the definition “band” in subsection 2(1) of the *Indian Act*.

“First Nation Education Authority” means a body corporate to which powers and functions in respect of education have been delegated under subsection 17(1).

A “body corporate” is an organization - such as a corporation or a cooperative - created under federal or provincial law.

“First Nation school” means an elementary or secondary school situated on a reserve and administered under this Act by a responsible authority.

“Minister” means the Minister of Indian Affairs and Northern Development.

“parent” means the father or mother of a person, including one who legally adopted the child and one who adopted the child in accordance with the custom of

This definition respects the variety of families seen in First Nation communities. This includes custom adoption according to First Nation custom, as well as children who are being cared for by family members other than their biological mother or father through formal or informal care arrangements.

a First Nation, or any other person who has, in law or in fact, the custody of the child.

“reserve” means

- (a) the lands described in the definition “reserve” in subsection 2(1) of the *Indian Act*; and
- (b) the lands referred to in the definition “Kanesatake Mohawk interim land base” in subsection 2(1) of the *Kanesatake Interim Land Base Governance Act*.

“responsible authority” means the council of a First Nation or a First Nation Education Authority, as the case may be.

To make the Act more readable, the term “responsible authority” is used to mean the body that administers a school.

GENERAL

3. For greater certainty, nothing in this Act is to be construed so as to abrogate or derogate from the protection provided for existing Aboriginal or treaty rights of the Aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

This is known as a non-derogation clause. A non-derogation clause respects that this legislation cannot alter or restrict Aboriginal or treaty rights, other than as permitted by the *Constitution Act, 1982*.

4. This Act does not apply to

(a) a First Nation that is a party to an agreement given effect by an Act of Parliament and listed in the schedule;

This section exempts First Nations who are part of existing comprehensive or sectoral self-government agreements that cover education. A schedule to the Act will list all the self-government agreements, and their signatories that will be covered by the exemption under subsection (a).

(b) a First Nation that is named in the schedule to the *Mi’kmaq Education Act* or in the schedule to the *First Nations Jurisdiction over Education in British Columbia Act*; or

(c) the Sechelt Indian Band established by subsection 5(1) of the *Sechelt Indian Band Self-Government Act*.

5. For greater certainty, the council of a First Nation has, for the purposes of this Act, the capacity and the rights, powers and privileges of a natural person.

ACCESS TO EDUCATION

6. (1) The council of a First Nation must, in accordance with this Act, provide access to elementary and secondary education to persons who are ordinarily resident on a reserve of the First Nation and who are between the ages of six and 21 years.

(2) If the council of a First Nation offers an education program to persons who are four or five years of age and who are ordinarily resident on a reserve of the First Nation, the program must be offered to all such persons.

(3) The education to which access must be provided under subsection (1) must enable a student to obtain

- (a) a certificate or diploma issued by the Minister of Education of a province;
- (b) an International Baccalaureate diploma issued by the International Baccalaureate foundation; or
- (c) any equivalent graduation certificate or diploma approved by the Minister.

7. (1) The parents of a person referred to in section 6 who is at least six years of age but not more than 16 years of age on the reference date fixed in accordance with subsection (5) must ensure that the person is registered for the school year at a First Nation school, at a school within the school system of a province or at any other school and must provide the council of the First Nation on whose reserve the person is ordinarily resident with written notice of the registration.

(2) Subject to subsection 19(2), the parents must also ensure that the person regularly attends the school in question for the full school year, except as otherwise permitted by the applicable attendance policy.

Junior Kindergarten and Kindergarten programs are not available in all Canadian schools. This clause acknowledges that some rural and remote communities who have partnered with neighboring school boards may not be able to provide access to these programs.

All students who live on-reserve, regardless of whether they attend a provincial public school, First Nation school, or another type of school must be on track to receive a high school diploma. Right now, First Nation schools are required to offer provincial high school diplomas. The First Nation Education Act could offer more flexibility with these three options.

Parents are responsible for ensuring that their children are registered for school. The council of a First Nation is responsible for ensuring that all children living in their community have access to elementary and secondary education at no cost. However, a parent may choose another option for their child's education, such as homeschooling, or a private school. The council of the First Nation is not responsible for covering the cost of these choices, so long as a no-cost option is available to the child. Regardless of which school a child attends, parents must inform the First Nation of where a child is registered, so council can confirm that they have met their obligation to offer access to education to every child on reserve.

(3) The council of a First Nation may make a bylaw that requires the parents of persons who are four, five or 17 years of age on the reference date and who are ordinarily resident on a reserve of the First Nation to meet the obligations under subsections (1) and (2).

(4) The council of a First Nation may make a bylaw that requires persons who are 18 years of age on the reference date and who are ordinarily resident on a reserve of the First Nation to register for the school year at a school referred to in subsection (1) and regularly attend that school for the full school year, except as otherwise permitted by the applicable attendance policy.

(5) The council of a First Nation may make a bylaw fixing for each school year, for the purposes of subsections (1), (3) and (4), the reference date, within the period starting on September 1 and ending on December 31, by which the age in question must be reached. In the absence of such a bylaw, the reference date is December 31.

(6) A bylaw may be made under subsection (3) in relation to persons who are four or five years of age only if the council of a First Nation provides them with access to an education program.

8. To comply with its obligation under subsection 6(1) to provide access to education, the council of a First Nation must

(a) administer a school situated on a reserve of the First Nation;

(b) delegate its powers and functions to a First Nation Education Authority under section 17; or

(c) enter into an agreement under section 13 or 14 with an entity administering a school that is regulated under this Act or under provincial legislation, as the case may be.

Subsection 7(1) sets the minimum age for compulsory attendance based on provincial averages. Actual ages for compulsory attendance vary from province to province. Some First Nations have asked for the ability to extend the ages for compulsory attendance in their community to ensure that more young children are ready to learn in Grade 1, or that more youth graduate high school.

This provision sets the date by which a student must have had their birthday to December 31. However, some provinces use a different date to determine access to school and mandatory attendance ages. This provision allows First Nations to select a date that matches that used in the province where they are located, or another date that makes sense in their community.

First Nations can only require 4 and 5 year-olds to register for Junior Kindergarten or Senior Kindergarten where those programs exist.

Under this provision, the First Nation would remain responsible for ensuring access to education, but would enter into an agreement to allow a First Nation education authority to operate the schools on its reserve.

A “school that is regulated under this Act” means any First Nation school operated by the council of a First Nation or First Nation education authority on-reserve. A school regulated “under provincial legislation,” is any public school, private school, independent or charter school that follows the rules and regulations in provincial legislation.

9. Subject to this Act, the education provided to individuals referred to in subsections 6(1) and (2) must be provided at the cost of the council of a First Nation or of a First Nation Education Authority, as the case may be, and no fees for tuition, or any other expenses related to attendance at a school, may be charged by those entities.

This section ensures that no tuition fees can be charged to individual students and their families, other than small fees for optional activities (i.e. field trips or extracurricular activities) under section 16.

GOVERNANCE

ADMINISTRATION BY THE COUNCIL OF A FIRST NATION

10. The council of a First Nation may administer one or more schools situated on a reserve of the First Nation.

11. (1) Subject to the regulations, the council of a First Nation must, in respect of each school that it administers,

- (a) establish an annual budget and submit it to the Minister;
- (b) establish policies and procedures related to financial management;
- (c) employ a principal;
- (d) establish the education program, which may include the opportunity to study an Aboriginal language or culture
- (e) establish the school policies, including registration and attendance policies;
- (f) approve the school success plan referred to in paragraph 24(1)(a), submit it to the Minister, make it public and monitor its implementation;
- (g) monitor the quality of education in the school;
- (h) manage the school's property;
- (i) approve the school safety plan referred to in paragraph 24(1)(i); and
- (j) prepare the school's annual report and any other report required by the regulations, submit them to

A principal may be employed on a full or part-time basis. An individual may also be employed as principal for more than one school. A principal may also have other duties under the Act, such as those of the education director.

Property includes the school buildings and vehicles, as well as furnishings. The specific responsibilities related to managing property would be addressed by working with First Nation representatives.

These reports will include an annual report based on the school success plan and financial reporting, as prescribed in regulation.

the Minister and make them available to the public, and also make available any other information required to be made public by the regulations.

(2) Subject to the regulations, the council of a First Nation may perform each of its functions under subsection (1) in respect of all the schools it administers, rather than in respect of each individual school, except its functions under paragraphs (1)(c), (d), (f) and (i).

12. The council of a First Nation may, in relation to any school it administers, enter into contracts for the provision of services referred to in sections 20 and 21.

AGREEMENTS RESPECTING TUITION AND ADMINISTRATION OF SCHOOLS

13. (1) The council of a First Nation may enter into a tuition agreement with a responsible authority administering a First Nation school or an entity administering a school regulated under provincial legislation for the provision by the entity of an education program at the elementary or secondary level to persons referred to in section 6.

(2) A tuition agreement entered into under subsection (1) and any amendment made to it must comply with any directives issued by the Minister respecting tuition agreements.

14. (1) The council of a First Nation may enter into an agreement with any entity administering a school regulated under provincial legislation for the administration by the entity of a school situated on a reserve of the First Nation. The agreement must provide that the entity will administer the school in compliance with provincial legislation relating to education that is in force in the province in which the entity is located.

(2) The entity is deemed to comply with a requirement under this Act that applies to the Council of a First Nation if it complies with a substantially similar requirement of provincial legislation relating to education that is in force in the province in which the entity is located.

A “school that is regulated under this Act” means any First Nation school operated by the council of a First Nation or First Nation Education Authority on reserve. A school regulated “under provincial legislation,” is any public school, private school, independent or charter school that follows the rules and regulations in provincial education legislation.

The Minister may set directives on tuition agreements to ensure that some First Nations are not being charged tuition amounts that exceed the cost of educating First Nation students outside of their home communities.

Provincial school boards are required to comply with provincial education acts for all schools they operate. This section clarifies that where the provincial act contains a similar provision to a provision in this Act, the provincial act applies. This is designed to prevent duplication and conflict.

COMMUNITY PARTICIPATION

15. (1) The council of a First Nation must, for the schools it administers, establish one or more community education committees to advise the council of the First Nation and the principals and directors of education of the schools on matters relating to school administration.

(2) The council of a First Nation must consult a community education committee before establishing a school policy or education program relating to an Aboriginal language or culture.

Parents and community members from each school must be able to participate in a committee where they can share their concerns with school administrators and participate in the planning and reporting process. This can be done by establishing a committee for each school, or having a single committee for all schools located on-reserve. School administration (for the purposes of the Act) includes all aspects of operating schools.

OPTIONAL ACTIVITIES

16. The council of a First Nation may, in respect of any school that it administers, require students to pay any reasonable fees for participating in optional activities or a deposit of a reasonable amount for using educational materials and school equipment.

Students are generally guaranteed access to a free education under section 9. However, all provincial public schools charge small fees for participation in field trips, extracurricular activities, or specialty programs at the senior level. These activities can greatly enrich a child's education, but schools would not be able to offer them without small contributions from families. This provision would not affect a school's overall funding, and schools would not be able to charge for essential services as set out under section 20.

ADMINISTRATION BY A FIRST NATION EDUCATION AUTHORITY

17. (1) The council of a First Nation may, by written agreement, delegate in whole its powers and functions under sections 10 to 13, 15 and 16 to a body corporate incorporated under provincial or federal legislation if the agreement meets the conditions set out in the regulations.

(2) The body corporate must submit to the Minister, within the prescribed time limit, a copy of the agreement and of any amendment to the agreement.

(3) The Minister may, subject to the regulations made under paragraph 34(h), designate as a First Nation Education Authority the body corporate that is a party to the agreement. The Minister must, without delay, advise in writing the body corporate in question of the designation as well as each First Nation whose council is a party to the agreement.

(4) The Minister may revoke a designation if the agreement is no longer in compliance with subsection (1), on the recommendation of a temporary administrator that it be revoked, or on the dissolution of the designated body corporate. The Minister must, without delay, advise in writing the body corporate in question of any revocation as well as each First Nation whose council is a party to the agreement.

PERSONS NOT ORDINARILY RESIDENT ON RESERVE

18. (1) The council of a First Nation may make bylaws respecting the attendance at any school situated on a reserve of the First Nation of persons who are not ordinarily resident on that reserve.

(2) A responsible authority may, in respect of any school that it administers, enter into an agreement with the government of the province where persons referred to in subsection (1) ordinarily reside for the payment by that government to the responsible authority of the cost of providing education to those persons.

(3) A responsible authority may, in respect of any school that it administers, set tuition fees to be paid by persons referred to in subsection (1) who are registered at the school but the cost of whose education is not paid under an agreement entered into under subsection (2).

HOME SCHOOLING

19. (1) The parents of a person referred to in section 6 may provide, or cause to be provided, schooling to that person at home or elsewhere, if the person is registered at the school that would ordinarily provide the person with an education under this Act and if the schooling is provided in accordance with

(a) in the case of a person registered at a First Nation school, the conditions set out in the regulations; or

(b) in the case of a person registered at any other school, the conditions set out in the legislation of the province in which the school is located, whether it is on or off a reserve.

The Minister may revoke a designation if the written agreement was altered so that the education authority was no longer fulfilling all of its obligations under the Act or regulations. In the case of significant problems with the school's management or the safety of students or educational outcomes, ameliorative steps under sections 27-30 would apply. Revoking a designation would be a last resort in the case where an education authority was no longer able to administer one or more schools.

This section allows for off-reserve students to attend on-reserve schools where either the province in which the student resides or the student's family pays tuition fees. The student could then be admitted in accordance with the school's registration policy. A bylaw may be necessary to allow non-band members to come onto reserve to attend school.

Parents may choose to home school their children. However, they still need to register their children – and their choice to home school – in order for the First Nation to be able to ensure that all children have been given access to education.

If the student would normally attend a provincial school, the home school would be regulated and supervised according to the relevant provincial legislation.

(2) The parents of a person receiving schooling under subsection (1) must ensure that the person regularly attend the place where they receive schooling for the full school year.

(3) The entity administering the school where the person referred to in subsection (2) is registered must ensure the supervision of the schooling and may provide support for the schooling.

SCHOOL OPERATIONS

SERVICES

20. A responsible authority must provide to the persons registered in each school that it administers the instruction, the access to educational materials and school equipment, and the transportation, as well as any other service prescribed by regulation, that enable those persons to participate in the school's education program.

Schools provide students with more than just classroom teaching. Schools provide students with textbooks and materials, transportation and other tools necessary for success. Regulations will set out minimum requirements that all schools must provide. These minimums are meant to list the basics, but individual schools may choose to offer more services based on their students' needs.

21. A responsible authority must provide to the schools that it administers services relating to the management of human resources, of information and information technology, of finances and of property, as well as any other service prescribed by regulation that enable those schools to be managed and operated effectively.

Schools also need services to operate, such as financial management, human resources management, maintenance of buildings and materials and information technology assistance. Regulations will also list minimum standards that every school needs. However, individual schools may find that other services improve the quality of education they can provide.

22. (1) A responsible authority must maintain, in respect of each school that it administers, insurance against the loss of, or damage to, property, liability insurance and any other insurance coverage required by the regulations.

(2) A responsible authority has an insurable interest in respect of each school that it administers.

This clause allows an education authority to take out insurance on a school building, even if that building is owned by the First Nation.

DIRECTOR OF EDUCATION

23. (1) A responsible authority must employ a director of education to supervise the day-to-day management and operations of the schools that it administers.

(2) A director of education is, for each school in respect of which they supervise the day-to-day management and operations, responsible for

(a) implementing the school policies established by the responsible authority;

(b) developing school policies respecting students with special needs;

(c) managing human resources, including employing teachers with a teaching certificate in good standing issued by a provincial education ministry or a recognized Canadian teacher certification authority;

(d) subject to the minimum requirements respecting the number of instructional hours and instructional days, establishing for each school year the school terms, school holidays and professional activity days;

(e) establishing and maintaining a record of student registration and submitting the record to the Minister;

(f) establishing school policies relating to the management of information concerning students, teachers and other staff of the school, including the collection and protection of that information; and

(g) performing any other function assigned to them by the responsible authority.

(3) The policies referred to in paragraph (2)(b) must enable students with special needs to participate in the school's education program.

(4) Despite subsection (3), if a student has special needs that prevent the student from participating in the school's education program, the director of education

The Act requires that an employee be hired to carry out the functions of an education director under this Act. A First Nation education authority is likely to employ one education director to operate all of its schools. A community-operated school may employ a part-time education director, or hire one individual to act as both principal and education director.

Regulations would detail the minimum number of hours and days for which students must be in the classroom. Schools would have the ability to develop their own school calendar within these limits.

This refers to what is known as the "nominal roll".

These would be policies to protect the privacy of staff and students, and allow access to records only where appropriate.

All students have a right to an education, regardless of their needs or abilities. In some cases, where small schools may have difficulty providing a quality education program to children with high needs, these children may be offered no-cost access to an education through another nearby school that can better meet their needs, where this option is available.

must ensure that the student is provided with an education that takes account of the student's needs and abilities, at the school at which the student is registered or elsewhere, at no cost to the student.

(5) A director of education must not, in respect of a school for which they supervise the day-to-day management and operations, serve as a member of the council of a First Nation if

- (a) that council administers that school; or
- (b) that council is a party to an agreement with a First Nation Education Authority for the administration by that Authority of that school under section 17.

To prevent conflicts of interest, it is important that the administrative role of the council of the First Nation, or the governing board of the First Nation education authority, be separated from the day-to-day operations of the school. The education director serves as the link between the two.

PRINCIPAL

24. (1) Under the supervision of the director of education, the principal of a First Nation school is responsible for

- (a) preparing and implementing a school success plan, after consulting with a community education committee established under section 15;
- (b) implementing its education program;
- (c) developing a school program, including in respect of participation in extra-curricular activities and physical activities;
- (d) planning the school's daily schedule;
- (e) supervising the teachers;
- (f) ensuring evaluation of the students, taking into account their grade level, the school's education program and the culture of the First Nation in question;
- (g) ensuring that regular reports on the student's progress are sent to the student's parents;

A school program includes the activities that take place at the school beyond the "education program." This includes recesses, clubs and activities, sports, special assemblies and community participation. These activities create a sense of belonging, encourage children to attend school, and can be used to promote positive behaviour and social development.

- (h) implementing any policy applicable to the school, including its registration policy and attendance policy;
- (i) preparing and implementing a school safety plan;
- (j) providing a safe learning environment;
- (k) attending to the students' well-being;
- (l) ensuring the maintenance of the school;
- (m) providing to the responsible authority, the director of education or the school inspector any information that they may require to enable them to exercise their powers or perform their functions under this Act; and
- (n) performing any other function assigned to them by the responsible authority.

(2) The school success plan referred to in paragraph (1)(a) must set out

- (a) the school's educational objectives and the time within which and manner in which they are to be achieved; and
- (b) measures for
 - (i) preparing students who obtain a certificate or diploma referred to in subsection 6(3) to continue their education successfully at a post-secondary institution or to enter the work force; or
 - (ii) preparing students to continue their education successfully after completing any year of study other than the year leading to the issuing of such a certificate or diploma.

(3) The principal of a First Nation school must not, in respect of the school of which they are the principal, serve as a member of the council of a First Nation if

- (a) that council administers the school; or

Schools can support students after high school graduation by making them aware of their options for post-secondary studies or employment, and building skills for success before graduation.

Many First Nation students attend an on-reserve school only up to a certain grade, before they transfer to a provincial school system. Schools can take steps to help ease the transition, both academically and socially, for students moving between the two systems.

(b) that council is a party to an agreement with a First Nation Education Authority for the administration of that Authority of that school under section 17.

SCHOOL INSPECTOR

25. (1) A responsible authority administering a school must employ a person, other than that school's principal or director of education, to conduct an annual inspection of the school, in this Act referred to as the "school inspector".

(2) The school inspector must be qualified to conduct inspections of schools in the province in which the school is located. However, if, in the Minister's opinion, employing such a person would not be practical in the circumstances, the Minister may, on request, allow the responsible authority to employ a person who is otherwise competent to conduct the inspection of the school.

(3) The school inspector must verify compliance with the requirements under this Act and, in particular, must

- (a) verify that the programs, policies, procedures and plans required to be established under this Act have been established and implemented;
- (b) evaluate the extent to which the objectives of the school success plan referred to in paragraph 24(1)(a) have been achieved; and
- (c) perform any function related to the annual inspection prescribed by regulation.

(4) The school's principal, the director of education, the council of a First Nation or a First Nation Education Authority and their employees must provide the inspector with all reasonable assistance to enable the inspector to perform their functions.

26. (1) The school inspector must, on completion of an inspection, prepare a report on the matters referred to in subsection 25(3) and include recommendations to remedy any problems of non-compliance with the requirements under this Act.

School inspections are a part of every provincial education system in Canada. The inspection will focus on ensuring that appropriate policies and procedures are in place as required in the Act.

A First Nation school may wish to request an exemption from this requirement if:

- After making reasonable efforts, they have been unable to find a person qualified in their province to conduct the inspection.
- If the school is following a curriculum from a different province from the one in which they are located.

(2) The report must be submitted to the responsible authority administering the school. If the responsible authority is a First Nation Education Authority, it must also be submitted to the council of the First Nation that delegated its powers and functions under section 17 to that Authority for the administration of that school.

(3) The responsible authority that is administering the school must provide the Minister with a copy of the report within 10 days of receiving it.

COMPLIANCE WITH ACT

27. (1) If a school is the subject of a report submitted under subsection 26(2) that identifies problems of non-compliance with the requirements under this Act, the responsible authority must ensure that measures are taken to remedy those problems.

(2) On request by the Minister, the responsible authority must employ a special advisor to provide assistance in the development and implementation of the measures referred to in subsection (1).

28. (1) The Minister may appoint a temporary administrator to administer a school, for a period specified by the Minister, if

(a) the Minister is not provided with an inspection report under subsection 26(3) in respect of that school for two consecutive years;

(b) after receiving at least two consecutive annual inspection reports in respect of that school that identify significant problems of non-compliance with the requirements under this Act, the Minister is of the opinion that adequate measures to remedy the problems have not been put in place;

Issues creating non-compliance with the Act could be simple mistakes, or minor issues. They could also involve more serious matters affecting student safety and outcomes. The first step is for a responsible authority to develop a plan to address the issues to the best of their ability.

Where a responsible authority requires support to deal with a matter of non-compliance, a special advisor may assist in developing a plan and putting in place the resources to address the issue. A special advisor is only intended to be employed for the amount of time required to address the specific issues raised in the school inspection.

As in provincial education systems, where two reports or more show serious and persistent problems of accountability or financial management, or major risks to student's safety and outcomes which remain unaddressed, a temporary intervention may be possible. This section provides a clear framework for the exercise by the Minister of this power, which would only be used as a last resort power.

(c) there is a significant risk to student well-being and success at the school and the Minister is of the opinion that immediate action is required to deal with that risk; or

(d) the Minister is of the opinion that immediate action is required to deal with a significant risk that the responsible authority will not be able to comply with the requirements under the Act due to it being in serious financial difficulties.

Should factual information reveal that immediate intervention is necessary to prevent major risks to students safety and outcomes or to ensure a school remains operational, the Minister would not have to wait up to two years for two consecutive reports of non-compliance to be received.

(2) The Minister must appoint as temporary administrator a person qualified to administer schools in the province in which the school is located or, if the appointment of such a person would not be practical in the circumstances, a person who is otherwise competent to administer the school.

A temporary administrator would need similar qualifications to those of a school inspector.

(3) The temporary administrator may exercise any powers and perform any functions of the responsible authority that the Minister specifies and the responsible authority ceases to exercise those powers and perform those functions during the period for which the temporary administrator is appointed.

A temporary administrator may take over any of the duties of the responsible authority that are laid out in this Act, so far as is necessary for them to accomplish their objective of addressing the issues of major non-compliance.

(4) The Minister may remove a temporary administrator at any time.

29. (1) The school's principal, the director of education, the teachers and other staff of the school must provide the temporary administrator with all reasonable assistance to enable the temporary administrator to exercise their powers and perform their functions and with any information relevant to the administration of the school that the temporary administrator requires. They must also comply with any direction given by the temporary administrator related to the administration of the school.

Because the temporary administrator has taken on the duties of the responsible authority, they may give directions to educational staff in order to address the issues of non-compliance.

(2) No proceedings lie against any person referred to in subsection (1) for providing the temporary administrator with assistance or information in good faith or complying with his or her directions.

30. (1) The temporary administrator must submit a report to the Minister outlining the measures taken to

remedy the problems that resulted in the appointment of the temporary administrator, the results of those measures and any recommendations regarding future measures, including a recommendation that a designation made under subsection 17(3) be revoked.

(2) A copy of the report must be submitted to the responsible authority administering the school. If the responsible authority is a First Nation Education Authority, it must also be submitted to the council of the First Nation that delegated its powers and functions under section 17 to that Authority for the administration of that school.

(3) The report and the copy must be submitted 30 days before the end of the period specified by the Minister under subsection 28(1) or at any earlier date if the temporary administrator is of the opinion that the problems have been remedied.

(4) On receipt of the report, the Minister may end the temporary administrator's appointment if the Minister is satisfied that the problems in question have been remedied.

(5) On receipt of the report, the Minister may, on the recommendation of the temporary administrator, revoke the designation as a First Nation Education Authority of the body corporate in question.

The temporary administrator is intended to be a short-term intervention to increase organizational capacity and protect the best interest of students. For this reason, a temporary administrator may submit a report to the Minister at any time stating that the issues resulting in non-compliance have been resolved.

FUNDING

31. (1) The Minister must pay to a responsible authority, in respect of each school year and at the time and in the manner prescribed by regulation, the amounts determined in accordance with the methods of calculation prescribed by regulation for providing access to elementary or secondary education under this Act.

This provision establishes that the Minister may fund a First Nation or a First Nation Education Authority to operate one or more schools. The amount to be paid will be determined by a funding formula, which will be written out in regulations.

(2) If, in the Minister's opinion, it is necessary for carrying out the purposes of this Act, the Minister may enter into an agreement regarding funding, including in respect of tuition, the government of a province or an entity administering a school that is regulated under provincial legislation.

These provisions allow the Minister to enter into agreements with provinces or provincial school boards to allow First Nation students to attend provincial public schools. It would also allow for other funding agreements that were required to implement the Act.

(3) The Minister may pay to an entity with which the Minister has entered into an agreement regarding funding the amounts determined under or specified in the agreement.

LIABILITY

32. (1) Her Majesty is not liable in respect of anything done or omitted to be done by the council of a First Nation, a First Nation Education Authority, a director of education or a principal — or by any person or body authorized by any of them — in the exercise of their powers or performance of their powers or functions under this Act.

(2) No action or other proceeding lies against Her Majesty, the Minister or any employee or agent of Her Majesty or the temporary administrator, for anything done or omitted to be done in good faith in the exercise or performance of their powers or functions under this Act.

BYLAWS

33. (1) The council of a First Nation must publish a copy of every bylaw made by the council under this Act on its Internet site, in the First Nations Gazette or in a newspaper that has general circulation on a reserve of the First Nation, whichever the council considers appropriate in the circumstances.

It is important that bylaws are published so that the community is aware of the rules that apply to them.

(2) The council of a First Nation must also, on request by any person, provide the person with a copy of the bylaw.

Bylaws should also be made available to members of the community and other interested parties for consultation after the publication period.

(3) For greater certainty, publishing a bylaw on its Internet site in accordance with subsection (1) does not discharge the council of the First Nation from its obligation under subsection (2) to provide a copy of the bylaw to any person who requests one.

Not all persons may have access to the Internet, so it may be necessary to provide them with a paper copy of the bylaw.

(4) A bylaw made by the council of a First Nation under this Act comes into force on the day on which it is first published under subsection (1) or on any later day specified in the bylaw.

(5) A bylaw that is published by the council of a First Nation on its Internet site under subsection (1) must remain accessible in that manner for the period during which it is in force.

(6) In the absence of evidence to the contrary, a copy of the bylaws appearing to be certified as a true copy by an officer of the First Nation is proof of the original without proof of the officer's signature or official character.

This provision allows the court to accept bylaws as evidence if signed by an appropriate First Nation official.

REGULATIONS

34. The Minister may make any regulations that are necessary for carrying out the purposes and provisions of this Act, including regulations

- (a) respecting the approval of the equivalent graduation certificates and diplomas referred to in paragraph 6(3)(c);
- (b) respecting annual budgets for the purposes of paragraph 11(1)(a) and subsection 11(2), including providing for their submission to the Minister and the matters that must be addressed in those budgets;
- (c) respecting reports for the purposes of paragraph 11(1)(j), including providing their submission to the Minister and the matters that must be addressed in those reports, and prescribing information that must be made public for the purposes of that paragraph;
- (d) respecting the management of human resources, including the employment of principals, directors of education, teachers and other school staff and the process for hiring those persons and determining their required qualifications;

This section describes the types of regulations the Minister can make to support the implementation of the Act. The Government of Canada is committed to developing mechanisms that would involve First Nation representatives in a co-operative process of establishing these regulations.

- (e) providing for the matters that must be addressed in the school policies referred to in paragraphs 11(1)(e) and 23(2)(b) and (f), the school success plans referred to in paragraph 24(1)(a), the school programs referred to in paragraph 24(1)(c) and the school safety plans referred to in paragraph 24(1)(i);
- (f) respecting the management of school property for the purposes of paragraph 11(1)(h) and subsection 11(2), including their operations and maintenance;
- (g) respecting community education committees for the purposes of section 15, including their establishment and composition and the holding of their meetings;
- (h) respecting the conditions that an agreement referred to in subsection 17(1) must meet and designations made by the Minister under subsections 17(3) and (4);
- (i) respecting tuition agreements and administration agreements for the purposes of sections 13 and 14, respectively;
- (j) respecting schooling provided at home or elsewhere for the purposes of section 19, including the supervision of that schooling and the circumstances in which the schooling may be discontinued;
- (k) prescribing minimum requirements for the number of instructional hours and instructional days in a school year;
- (l) respecting insurance for the purposes of section 22;
- (m) respecting the establishment and maintenance of records for the purposes of paragraph 23(2)(e), including providing for their content and their submission to the Minister;
- (n) respecting school inspections, including when, and the manner in which, they are to be conducted, any qualifications or competencies required of an inspector in addition to those described in

subsection 25(2), and the preparation and submission of inspection reports;

- (o) prescribing the methods of calculation referred to in subsection 31(1); and
- (p) prescribing anything that by this Act is to be prescribed.

REVIEW

35. (1) The Minister must, five years after the day on which this Act receives royal assent and every five years after that, undertake a review of the provisions and the operation of this Act. In carrying out the review, the Minister must give First Nations an opportunity to make representations.

Measures could be developed to ensure First Nations participation in the review of the bill.

(2) The Minister must, no later than one year after the day on which the review is undertaken, cause a report on the review to be tabled in each House of Parliament.

TRANSITIONAL PROVISIONS

36. For the period beginning on the day on which this section comes into force and ending on June 30, 2017, this Act does not apply in any given school year in respect of the council of a First Nation or any person who is ordinarily resident on a reserve of that First Nation if, in the 12 months preceding June 30 of that given year,

This section exempts First Nations who have joined the *Tripartite Education Framework Agreement* in British Columbia, and are served by the First Nation Education Steering Committee until June 2017, the school year in which the agreement expires.

- (a) a school situated on a reserve of that First Nation received assistance or services under clause 4.1 or 4.2, respectively, of the *Tripartite Education Framework Agreement* between Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of British Columbia and the First Nations Education Steering Committee that came into force on January 27, 2012; and
- (b) the council of that First Nation or an entity acting on its behalf was a party to a funding arrangement that complied with clause 5.1 of that Agreement.

37. (1) The Minister has all the powers and functions of a responsible authority under this Act in respect of a school that, on the coming into force of this section, is being operated by the Minister under subsection 114(2) of the *Indian Act*, as it read immediately before the day on which section 40 comes into force.

(2) The council of the First Nation on whose reserve a school referred to in subsection (1) is situated is deemed to have complied with this Act.

(3) The council of the First Nation may, in respect of the school, develop a transition plan in which it indicates the day on which it intends to exercise an option under section 8. It must submit the plan to the Minister for approval.

(4) Subsections (1) and (2) do not apply in respect of the school as of the day the council of the First Nation exercises the option in accordance with the transition plan approved by the Minister.

38. Despite section 40, sections 114 to 122 of the *Indian Act*, as that Act read immediately before the day on which that section 40 comes into force, continue to apply

- (a) in respect of a First Nation that is party to an agreement given effect by an Act of Parliament and listed in the schedule, to the extent provided for in the agreement; and
- (b) in respect of the Sechelt Indian Band established under subsection 5(1) of the *Sechelt Indian Band Self-Government Act*, to the extent provided for in that Act.

Many self-government agreements contain provisions that state that the *Indian Act* education provisions will stay in place, until the First Nation puts its own laws on education in place. This provision ensures that there is no jurisdictional gap for those communities that have a self-government agreement, but have not drawn down jurisdiction.

RELATED AMENDMENTS TO THE INDIAN ACT

INDIAN ACT

39. Subsection 4(3) of the *Indian Act* is replaced by the following:

(3) Unless the Minister otherwise orders, sections 42 to 52 do not apply to or in respect of any Indian who does not ordinarily reside on a reserve or on lands belonging to Her Majesty in right of Canada or a province.

This provision amends a section of the *Indian Act* to remove a reference to the section 114 to 122 (the schools provisions). The schools provisions of the *Indian Act* are deleted in section 40, below.

40. The heading before section 114 and sections 114 to 122 of the Act are repealed.

This provision removes the portion of the *Indian Act* that deals with schools and school attendance.

COMING INTO FORCE

41. (1) Subject to subsection (2) , the provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

(2) Sections 37 and 40 come into force on a day to be fixed by order of the Governor in Council.

“Coming into force” refers to the day that this Act becomes law. The Government will consult with First Nations to determine if some sections of the Act should come into force before others to allow First Nations and First Nation schools time to prepare for new requirements under the Act.

CONCLUSION

The Government of Canada wants to hear from you on the proposal for a bill on First Nation education.

We invite you to provide comments by e-mail: consultation-education@aadnc-aandc.gc.ca, or online at <http://www.aandc.gc.ca/firstnationeducation>, or by post to:

Education Branch
Aboriginal Affairs and Northern Development Canada
15 Eddy Street
Gatineau, Quebec K1A 0H4

