

# DRAFT ANISHINABEK NATION EDUCATION AGREEMENT

## *The Plain Language Version<sup>1</sup>*

The draft Anishinabek Nation Education Agreement (the “Education Agreement”) is a proposed self-government agreement between Canada and the Anishinabek First Nations under which Canada recognizes First Nation jurisdiction over Primary, Elementary and Secondary Education. This Education Agreement was initiated by the Union of Ontario Indians and Canada in July 2015.

The Parties to the Education Agreement are the Anishinabek First Nations that ratify the Education Agreement and Canada, represented by the Minister of Indian Affairs and Northern Development.

This document describes what is in the Education Agreement.

### **PREAMBLE**

The Preamble consists of 15 statements that describe the context for negotiating the Education Agreement.

The Preamble is not legally binding. It allows each Party to state their positions on education and their intent in negotiating the Education Agreement. Statements in the Preamble made by one Party are not necessarily agreed to by the other Party.

Everything that is included after the Preamble is legally binding for the Participating First Nations and Canada after the Education Agreement is ratified.

### **CHAPTER 1                    DEFINITIONS**

The Definitions are legal terms for this Education Agreement only. These have been negotiated and agreed to by the Parties. They appear in capital letters throughout the Education Agreement.

#### **Interpretation**

There are some sections here that provide guidance on how to interpret that Education Agreement. For example, singular includes the plural, “will” is an obligation, “may” is permissive, etc.

### **CHAPTER 2                    PURPOSE**

This Agreement:

- sets out the Participating First Nations law-making authority and other authority over Primary, Elementary and Secondary Education;
- sets out the Participating First Nations authority to administer the Post-Secondary Education Program;
- provides for the establishment of the Anishinabek Education System structures;

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<sup>1</sup> DISCLAIMER: This summary of the Anishinabek Nation Education Agreement is provided by the Union of Ontario Indians to support the ratification process. It is an interpretative tool and does not form part of the legal arrangements proposed between the Anishinabek First Nations and Canada. This is not a legal document or serves as a legal interpretation of the Education Agreement. If you have specific questions or wish to receive a copy of the ANEA, contact the Union of Ontario Indians by calling 705-497-3799 or Toll-Free 1-877-497-3799.

- provides for the funding arrangements to support the Anishinabek Education System and the delivery of education programs and services; and
- describes implementation, among other things.

The Education Agreement does not prevent Participating First Nations from entering into agreements or treaties with others on any topic, including education.

### **CHAPTER 3 GENERAL PROVISIONS**

This Education Agreement:

- (a) is based on the recognition that the inherent right of self-government is an existing aboriginal right;
- (b) will not take away from or add anything to our Aboriginal and Treaty Rights; and
- (c) is *not* a treaty.

The fiduciary relationship between Canada and First Nations will continue. Canada's fiduciary obligations may change over time.

The *Canadian Charter of Rights and Freedoms* applies to each Participating First Nation as it exercises its authority under the Education Agreement.

Each Participating First Nation and the KEB is not responsible for anything done or omitted to be done by Canada. Further, Canada is not responsible in respect of anything done or omitted to be done by a Participating First Nation, the KEB or any person or entity authorized to act on behalf of a Participating First Nation.

The First Nations will defend any claim against Canada for something the First Nations did or did not do. Canada will defend any claim against the First Nations for something Canada did or did not do.

Each Participating First Nation will be eligible to participate in and benefit from federal programs or services that complement or supplement but not duplicate the programs or services under the Education Agreement.

Canada and the Participating First Nations cannot challenge the validity of any section of the Education Agreement.

A breach of the Education Agreement does not relieve any Party from their obligations under this Education Agreement.

### **CHAPTER 4 FIRST NATION CONSTITUTIONS**

Each First Nation must have a constitution in place in order to become a Participating First Nation. Each First Nation constitution must cover:

- (a) the establishment of education institutions and structures required to support the exercise of its law-making powers and other authorities under this Education Agreement;
- (b) the political and financial accountability of that Participating First Nation to its Members;
- (c) procedures for the making, amending, publishing and providing access to that Participating First Nation's laws;
- (d) procedures for appealing or challenging the validity or application of a Participating First Nation law;

- (e) appeal and redress mechanisms;
- (f) conflict of interest rules; and
- (g) amendment procedures.

## **CHAPTER 5 EXERCISE OF LAW-MAKING POWERS AND OTHER AUTHORITIES**

Each Participating First Nation has the power to make laws and exercise authorities with respect to Primary, Elementary and Secondary Education on behalf of its Members on its Reserve. The laws will be made by First Nation Councils in a manner consistent with this Education Agreement and the First Nation's constitution.

The Participating First Nations will establish and maintain system-wide education standards that will support the transfer of Students between the Anishinabek Education System and the provincial education system without academic penalty.

Each First Nation may decide to delegate its law-making authority to another legal entity. Any delegation must follow the principles that:

- (a) any delegation can be withdrawn by the First Nation;
- (b) law-making authority cannot be sub-delegated; and
- (c) a First Nation that delegates its law-making authority is still responsible and accountable for the laws that are passed.

Each First Nation will establish a registry of laws where they will keep the official version of their laws. The First Nations will also send a copy of their education laws to the KEB who will keep a library of First Nation education laws.

Any person who is directly and significantly affected by a Participating First Nation's proposed or existing education law or administrative decision will have an opportunity to bring forward their concerns for consideration by the First Nation. Each First Nation will have a process for citizens to submit input and grievances.

## **CHAPTER 6 ENFORCEMENT AND ADJUDICATION**

Each Participating First Nation may provide services for the voluntary settlement of disputes arising from the exercise of its law-making powers. These law-making powers include the power and authority to create offenses for the violation of its education laws. The creation of these offences may provide for the imposition of sanctions, including fines, penalties and imprisonment which are not greater than penalties imposed for similar offenses under provincial law or the general penalty provisions of the Criminal Code that apply to offences punishable on summary conviction. Note that each Participating First Nation is responsible for the prosecution of violations of its laws.

## **CHAPTER 7 POST SECONDARY EDUCATION AND ANCILLIARY PROGRAMS AND SERVICES**

First Nations will continue to administer the Post-Secondary Education Program as they have in the past. Nothing in this Education Agreement stops Canada and the Participating First Nation from entering into administrative arrangements regarding Early Childhood Development, Skills Development and Adult Education in the same manner as other First Nations in Canada.

## **CHAPTER 8 DELIVERY AND ACCESS**

Each Participating First Nation will provide or make arrangements for the delivery of Primary,

Elementary, and Secondary education for its Students, ensuring that every Student has access when enrolled in programs and services.

Only First Nation members can apply for post-secondary education funding.

## **CHAPTER 9 ANISHINABEK EDUCATION SYSTEM**

The Anishinabek Nation Education System is comprised of the Participating First Nations and the Kinoomaadziwin Education Body. The Participating First Nations may establish Regional Education Councils and Local Education Authorities. The Participating First Nations will determine the responsibilities and functions for each structure within the Anishinabek Education System.

The Kinoomaadziwin Education Body will come into existence on the Effective Date.

## **CHAPTER 10 FINANCIAL RELATIONSHIPS AND FISCAL ARRANGEMENTS**

The Parties have negotiated an Education Fiscal Transfer Agreement setting out the terms and conditions by which funding will be provided by Canada to support this Education Agreement and the establishment and operation of the Anishinabek Education System.

The Education Fiscal Transfer Agreement is a contract between the Participating First Nations and Canada. It is not a treaty.

## **CHAPTER 11 ACCESS TO INFORMATION AND PRIVACY**

For the implementation and on-going funding of the Anishinabek Education System, the Anishinabek First Nations and Canada will need to share education and funding information.

The Anishinabek First Nations will make laws to protect the privacy of their education information. Canada will amend its access to information and privacy laws to respect and protect the confidentiality of First Nation education information.

## **CHAPTER 12 RELATIONSHIP OF LAWS**

First Nation education laws will exist along with federal and provincial laws. In the event of a conflict, First Nation education laws are paramount.

Participating First Nation law-making powers do not extend to matters not specifically addressed in this Education Agreement.

## **CHAPTER 13 APPLICATION OF THE INDIAN ACT**

The Indian Act will continue to apply to the Participating First Nations and their members in all manners, with the exception of the education provisions.

## **CHAPTER 14 THE RELATIONSHIP BETWEEN THIS EDUCATION AGREEMENT AND THE ANISHINABEK NATION GOVERNANCE AGREEMENT**

This part of the Education Agreement describes what happens when the Governance Agreement is ratified. The Governance Agreement will prevail for some provisions, but the Education Agreement will prevail for education-specific matters.

## **CHAPTER 15 THE PROVINCE OF ONTARIO**

The Anishinabek First Nations acknowledge that they will work with Ontario to support the delivery of education under First Nation jurisdiction.

## **CHAPTER 16 FUTURE NEGOTIATIONS**

Participating First Nations may negotiate for Canada's recognition of other jurisdictions in the future.

## **CHAPTER 17 AMENDMENTS**

Amendments to the Education Agreement may only be made in writing. The Participating First Nations will approve an amendment by a majority vote.

First Nations can join the Education Agreement after the Effective Date as Additional Parties. In order to become a Participating First Nation under the Education Agreement, each First Nation must hold a ratification vote.

## **CHAPTER 18 RATIFICATION**

Each First Nation will decide for itself whether it will put this Education Agreement to its members for a ratification vote. The ratification process will include polling stations on- and off-reserve and mail-in ballots.

Ratification funding will be provided by Canada in order to support the communications and ratification vote of each First Nation.

The threshold for ratification is 25 per cent plus 1 of the Eligible Voters of each First Nation. Those that vote "yes" must represent a majority of the votes cast. A minimum of 12 Anishinabek First Nations must ratify this Education Agreement for it to be considered ratified.

## **CHAPTER 19 IMPLEMENTATION**

There will be an implementation plan that sets out the roles and responsibilities of each party in establishing the Anishinabek Education System and implementing the Education Agreement.

Canada will provide the Participating First Nations with funding to support the implementation of this Education Agreement.

## **CHAPTER 20 DISPUTE RESOLUTION**

This part of the Education Agreement describes how disputes between Canada and the Participating First Nations will be resolved. It does not cover disputes between the Participating First Nations.

## **CHAPTER 21 OTHER PROVISIONS**

This section includes standard provisions such as the addresses for the parties, for example.

## **CHAPTER 22 – SCHEDULES**

The schedules that form part of this Education Agreement are:

- (a) Schedule A – Participating First Nations and their Addresses; and
- (b) Schedule B - Ratification Process.