

MEMORANDUM

To: Engaged First Nations
From: Nancy Morgan, legal counsel for FNEC
Date: May 14, 2024
Re: Relinquishing "Independent school" designation under jurisdiction

Schools operated by First Nations (or their community education authorities) that are contemplating becoming Participating First Nations (PFNs) under the education jurisdiction initiative will not be able to retain their status as, or apply to become, "independent schools" under the *Independent School Act*.

The definition of "independent school" under the *Independent School Act* specifically precludes Participating First Nations from operating "independent schools." The definition states as follows:

"independent school" means a school, including an online learning independent school, that is, or is to be, maintained and operated in British Columbia by an authority and

- (a) that offers an educational program to 10 or more school age students,
- (b) that meets the requirements of section 2 (e) of the Schedule and otherwise qualifies for a certificate of group classification, or
- (c) for which an authority holds a subsisting interim certificate issued under section 4 (2),

but does not include

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

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

This means that a First Nation which currently operates an independent school (or operates it through their community education authority) would be required to relinquish the school's status as an "independent school" upon becoming a Participating First Nation. A First Nation that currently operates an independent school should consider what, if any, impacts this change might have on the school's operations and funding.