

Four Principal Approaches to Governance under Education Jurisdiction

Chief and Council as School Governing Authority (with/without an education advisory committee/board)

1. First Nation operates the school with Chief and Council as the “School Governing Authority.” The First Nation could have an education committee or “board” (which is not the board of a separate legal entity) that provides advice to Chief and Council. Under this approach, staff at the school would be employees of the First Nation. Final decision making in respect of school matters would be the responsibility of Chief and Council.
 - Legal entity operating school and employer of school staff: First Nation
 - School Governing Authority: Chief and Council

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

2. First Nation operates the school. Chief and Council delegate some or all of their decision-making authority to an education committee or “board” (which is not the board of a separate legal entity). If Chief and Council delegate all of their authority to the education committee or “board”, the committee or board would likely be considered the “School Governing Authority.” If Chief and Council have only delegated some of their authority, Chief and Council would likely remain the “School Governing Authority.” It is also possible that each of them could be the School Governing Authority in respect of specific matters. Under this approach, staff of the school would be employees of the First Nation. The education committee/board would be responsible for making those decisions that have been delegated to them. The remaining decisions would be made by Chief and Council. Chief and Council would have to maintain some oversight, since they are ultimately responsible for the school’s operations. Under this approach, it is critical to delineate those matters that have been delegated to the education committee/board, and those that have not, through a written agreement, terms of reference or a letter of understanding.
 - Legal entity operating school and employer of school staff: First Nation
 - School Governing Authority: Chief and Council and/or education committee/board (if final decision-making over certain matters has been formally delegated to the committee/board)

Community Education Authority established under authority of FN’s education law

3. Community Education Authority (CEA), established solely under the authority of the First Nation’s education law as a separate legal entity, operates the school. The board of the CEA is the “School Governing Authority.” Under this approach, staff of the school would be employees of the CEA. There would have to be an agreement between the CEA and the First Nation with respect to the transfer of funding from the First Nation to the CEA, as well as the reporting and accountability from the CEA to the First Nation (which is ultimately responsible under the funding agreement with Canada). *Note:* A CEA could be established by more than one Participating First Nation (or by a Participating First Nation with involvement of neighbouring First Nations).
 - Legal entity operating school and employer of school staff: CEA established under First Nation’s education law
 - School Governing Authority: board of the CEA

Community Education Authority established under Societies Act (or federal legislation)

4. Community Education Authority, (CEA) established under the BC *Societies Act* (or federal not-for-profit legislation) as a separate legal entity, operates the school. The board of the CEA is the “School Governing Authority.” Under this approach, staff of the school would be employees of the CEA. The First Nation’s education law could provide some direction to the CEA, but this direction could not be inconsistent with the CEA’s obligations under the *Societies Act* (or federal legislation), its Constitution or its bylaws. There would have to be an agreement between the CEA and the First Nation with respect to the transfer of funding from the First Nation to the CEA, as well as reporting and accountability from the CEA to the First Nation (which is ultimately responsible under the funding agreement with Canada). *Note:* A CEA could be established by more than one Participating First Nation.
 - Legal entity operating school and employer of school staff: CEA established under *Societies Act* (or federal legislation)
 - School Governing Authority: board of the CEA

Other

5. Some First Nation communities may adopt an approach to governance that does not fit neatly into any of the four approaches described above. For example, there may be cases where a separate legal entity (i.e. a society) has been established, but the First Nation remains the employer of school staff. In that case, it would be critical to have a written agreement, terms of reference or a letter of understanding clarifying the scope of Chief and Council’s authority (as the ultimate body responsible for the First Nation’s employees) and the scope of the society and its board’s authority.

Considerations

There may also be cases where a First Nation establishes an education committee or “board” (that is not the board of a separate legal entity), and full responsibility for operating the school is assigned to that committee/board. If there is no separate legal entity (such as a CEA) or no clear delegation of roles and responsibilities to the committee/board, the members of the committee/board are at risk as they may be found to be acting (e.g. entering into agreements) in a personal capacity. As well, the Chief and Council and the First Nation itself remain at risk and may be ultimately found to be responsible for the school and its employees. Such an arrangement carries risk for all and should be avoided.