

First Nations – Government of Canada

Terms of Reference for

Joint Collaboration between the Assembly of First Nations’ (AFN) Chiefs Committee on Education (CCOE) and Canada as represented by Indigenous and Northern Affairs Canada (INAC)

to develop new funding mechanisms for First Nations Education that support First Nations development of a holistic, culturally-responsive, high-quality education for First Nation students (2016-2018)

VERSION 17 – Nov 15, 2016

1. Background

First Nations parents and communities must have the opportunity to implement their vision of education which requires us to work collaboratively to improve outcomes and opportunities for First Nation students. Decades of studies, reports, research and resolutions set out consistent recommendations in First Nations education and provide a solid foundation for moving forward.

Based on our inherent responsibilities and Aboriginal and Treaty rights First Nations across Canada have called on the Government of Canada to engage in an honourable process to develop a new fiscal framework for First Nations education. This process must recognize and support regional and local diversity.

A mechanism is required to ensure a statutory guarantee of education funding from the Government of Canada to First Nations. This work will be guided by AFN Resolution 35/2014, “A Federal Act for Funding First Nation Education,” which called for the development of an honourable process between First Nations and the federal government to achieve statutory funding and AFN Resolution 16/2016 on “Honourable Process to develop recommendations to support First Nations Education Reform.”

In response to these recent resolutions, INAC seeks to work collaboratively with the AFN and the CCOE to move toward sufficient, predictable and sustained funding. INAC is committed to improve the way education funding is provided to First Nations and First Nation organizations so that all First Nation students receive a holistic, culturally-responsive, high-quality education that improves student outcomes, while respecting the principle of First Nations control of First Nations education.

In 2016, Prime Minister Trudeau declared that the Government of Canada is committed to a “renewed Nation to Nation relationship with Indigenous Peoples, based on recognition of rights, respect, cooperation and partnership” and to fully implement the Calls to Action (CTA) of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. CTA #8 called for “the federal government to eliminate the discrepancy in federal education funding for First Nations children being educated on reserve and those First Nations children being educated off reserve.”

We note that this Terms of Reference reflect K4-grade 12 but it is understood that further discussions concerning lifelong learning including post-secondary education and early childhood education must take place.

2. Considerations

As the joint collaboration and regional and community engagement processes begin and progress to completion, some key considerations are noteworthy: support resolutions; inherent jurisdiction, required First Nations consent, and northern and remote First Nations communities.

INAC and the AFN/CCOE (the parties) mutually recognize the following noteworthy considerations:

Support Resolutions. Many resolutions passed by the Chiefs in Assembly provide support for First Nations control of First Nations education. First Nations have consistently pushed for fundamental transformation of education, in 1972 with *Indian Control of Indian Education*. A Backgrounder is available which provides an outline of the different AFN documents and resolutions relating to this matter. These documents demonstrate the strong and ongoing commitment of First Nations to this initiative.

Inherent Jurisdiction. As stated in many of the AFN resolutions, First Nations have an inherent right to jurisdiction derived from their existence as self-governing entities at the time of contact. In addition, Article 14 of the *United Nations Declaration on the Rights of Indigenous Peoples* states that "Indigenous peoples have the right to establish and control their educational systems and institutions". This is at the heart of the work to be done on this initiative: "respecting the principle of First Nations control of First Nations education" as stated in the mandate letter to Minister Bennett.

Required First Nations Consent. A First Nations consent mechanism is necessary for those who choose to participate in the new funding mechanisms.

Northern and Remote First Nations Communities. Real cost factors will be included in determining funding levels for First Nations communities in northern and remote areas.

3. Objectives

The parties have agreed on a collaborative process that will include a joint working committee and a series of task teams to identify and address the multifaceted needs of First Nation learners and enhance student outcomes. INAC commits to financially supporting regular meetings of the joint working committee and task teams through its allocations to the AFN and regional First Nations organizations.

The main focus will be to develop the following:

- a) A responsive, flexible and indexed fiscal framework for First Nations education that includes a more streamlined and effective funding mechanism for individual First Nations and First Nation organizations. Transparent and comprehensive regional funding formulae will replace antiquated and outdated methodologies to be reviewed and updated as appropriate within respective regions.
- b) A new funding mechanism that is regionally-based and responds to First Nations demands for a statutory guarantee of sufficient, predictable and sustainable funding, while also recognizing the diversity of First Nation peoples, communities and their education systems across all regions.
- c) The parties agree to mutual accountability developed within regional processes and agreements.
- d) The parties agree to establish task teams as required to implement the objectives.

4. Principles

In working together to meet the objectives set out above, the parties will work in a collaborative manner that is consistent with the following principles:

1. First Nations have an inherent and Treaty right to education and each First Nation has authority and autonomy over their citizens with respect to education.
2. Work collaboratively to continuously improve educational outcomes for First Nation students.
3. Acknowledge existing regional processes and honour the autonomy of each to determine their own education systems, funding mechanisms and processes.
4. Recognize the diversity of First Nation peoples, communities, languages, cultures, traditions and spiritual practices.
5. Acknowledge Canada's commitment, through Minister Bennett's mandate letter from Prime Minister Trudeau, to make significant new investments for First Nations education to ensure that First Nations children on-reserve receive a quality education while respecting First Nations Control of First Nations Education.
6. Affirm Canada's obligation to section 35 of the Constitution Act, 1982, which recognizes existing Aboriginal and Treaty rights.
7. Affirm Canada's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples and the UN Convention on the Rights of the Child, which promote and protect the inherent rights of First Nations students.
8. Recognize the calls to action related to education from the Truth and Reconciliation Commission.
9. Recognize First Nation's vision of holistic, lifelong learning that ensures all students receive a quality education within a linguistically and culturally appropriate learning environment.
10. Affirm the government's commitment to First Nation's vision of First Nations control of First Nations education and to a quality education for all First Nations students.
11. The development of regional funding models for First Nations education will be based on engagement with First Nations, existing regional structures and processes where applicable, research, legal decisions and a rationale that outlines the needs of First Nations students and not solely provincial comparability of funding.
12. Affirm that these are joint and collaborative processes and shall not be construed as consultations.

5. Scope of Work & Composition

The parties will establish a joint work plan outlining the operational terms of the task teams to engage in the following collaborative work:

COORDINATION

The parties will serve an overall national coordinating role for the consistency and sharing of content between the regions across Canada as appropriate. The parties of the working group have the responsibility to share information and get feedback from the parties they represent.

The parties agree to hold meetings of the joint working committee to discuss the implementation of activities governed by this Terms of Reference and results to date.

The parties agree that joint working committee meetings will be co-chaired by the two parties. Meeting agendas and other preparatory materials will be jointly discussed and distributed to both parties prior to each meeting.

The parties agree that three initial task teams be prioritized. The parties will agree to appoint co-chairs for each of the task teams.

1: FUNDING MECHANISMS

This task team will provide a forum for jointly discussing and elaborating options for regionally-based fiscal frameworks for First Nation elementary and secondary education that would see current INAC methodologies replaced with more transparent and comprehensive formula-based funding approaches. This will include but not be limited to: languages and cultures, immersion/bilingual programming, virtual schools, technology, curriculum development, transportation, recreation, administrative governance, libraries, vocational education, adult education, teacher training, recruitment and retention, second and third level supports and other areas. This work would respect existing regional funding models.

First Nations within regions will lead and determine appropriate discussions concerning the development of their funding mechanisms (i.e. formulae, structures and other costs). Discussions with First Nations leadership within the regions will be undertaken to approve regional funding mechanisms.

2: EDUCATION STATUTORY FUNDING

This task team will provide a forum to explore options on how to establish a statutory/legal guarantee of funding.

3: MUTUAL ACCOUNTABILITY/ RESULTS REPORTING

This task team will provide a forum for jointly discussing what can be regionally measured to represent First Nations student success. These indicators and measurements will be defined regionally by First Nations. This task team will explore other global models/options on reporting, as well as discuss the importance of mutual accountability, INAC's existing EIS, relationships between First Nations and INAC, and issues of data privacy and data security. This work will not displace or interfere with existing regional models.

ADDITIONAL TASK TEAMS

The parties also agree to a series of additional task teams to address issues in the following areas. The topics include but are not limited to:

- 1) Early Learning education
- 2) Post-Secondary education
- 3) Accountability of and funding for First Nations students attending Provincial Schools
- 4) Unique Needs of Northern and Remote Communities
- 5) Education Infrastructure (including major/minor capital and transportation)

6. Funding

INAC commits to financially supporting regular meetings of the joint working committee and task teams through its allocations to the AFN and regional First Nations organizations

7. Reporting

The joint working committee will report on mutually agreed upon outcomes and draft documents. The joint working committee will establish the parameters of work to be undertaken by each task team. Each joint task team will have a clear objective and work plan. Work produced through these joint task teams will be presented to the joint working committee for review and approval.

Work undertaken will be taken to Chiefs-in-Assembly.

8. Amendments

These terms of reference may be amended from time to time by the parties through mutual agreement.

9. Dispute Resolution

The parties agree to develop a dispute resolution process.

10. Milestones

The parties agree to make every effort to adhere to the following timeline and milestones leading up to INAC's planned return to Cabinet in 2017-2018.

October 2016 – Mutually agreed upon Terms of Reference validated by AFN/CCOE and INAC.

October to December 2016 – First meetings of the 1) Funding Mechanisms and 2) Education Statutory Funding and 3) Mutual Accountability task teams. Timeline and order of priority for standing up other joint task teams confirmed by the parties.

December 2016 – INAC provides initial progress update to Minister Bennett; CCOE provides initial progress update to Chiefs in Assembly.

January 2017 to June 2017 – Task teams discuss and elaborate various recommendations for reforming First Nation education.

March 2017 to July 2017 – Regional leadership dialogues between Canada and First Nation leadership. Format and schedule to be determined.

July 25-27, 2017 – Update on progress presented to Chiefs at AFN Annual General Assembly.

September 2017 to December 2017 (TBC) – Options to Cabinet prepared and presented.

Next steps dependent on direction/resolution from AFN Chiefs-in-Assembly as well as outcomes from Cabinet.