Self-Government over Education

EDUCATION

Self-Government over education will help us make what our children learn in school more relevant to them, and to our culture. For too long we have been forced rely on European-based curriculum, learning standards developed by people who don’t understand our culture, and education policies that do not fit our system of governance.

<table>
<thead>
<tr>
<th>Current System - Provincial</th>
<th>Self Government - Miawpukek</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law-making authority over pre-school to Grade 12 rests with province.</td>
<td>We would able to make laws over K – 12 that could replace the provincial Education Act</td>
</tr>
<tr>
<td>Province decides on teacher qualifications</td>
<td>We would be able to issue its own teaching certificate, in addition to the provincial Teacher’s Certificate that exists now and is issued by the province.</td>
</tr>
<tr>
<td>Province decides on the curriculum (what will be taught)</td>
<td>We could work in partnership with the province on curriculum, programs and resource development to reflect culture and language.</td>
</tr>
<tr>
<td>Province owns and maintains schools</td>
<td>We could negotiate transfer of ownership and maintenance of schools.</td>
</tr>
</tbody>
</table>

Early Childhood Education (E.C.E.)

Miawpukel may choose to make laws concerning E.C.E. They will be able to regulate or certify facilities and educators, providing they ‘meet or beat’ standards guaranteeing the safety, health and protection of children. The First Nation and province would have to work together on setting standards.

Student Support Services

Student support services include grants, loans, scholarships, counseling, and administrative support for students accessing Continuing Education programs. Miawpukel First Nation may choose to pass laws concerning Student Financial Assistance, counseling and administration.

Further, the First Nation could enter into agreements or consult with provincial or federal government on records, avoiding duplication of payments, and providing services to the community members.
SAMPLE 1: Mi'kmaq Kina'matnewey

1.0 INTERPRETATION

1.1 Definitions

In this Agreement, except where the context otherwise indicates:

"community education board" means a body established by a band council pursuant to this Agreement;

"education" means primary, elementary, and secondary education on reserves, and post-secondary student support;

"elementary education" means education programs and services of a nature generally provided to students enrolled in primary and grade levels 1 to 8 in schools in other education systems in Canada;

"jurisdiction" means the power delegated to participating communities pursuant to section 5.1 or 5.5 of this Agreement;

"member" means a member of a Band in Nova Scotia who is listed on the Band registry maintained by Canada or, where a band determines its own membership in accordance with the Indian Act, a person on that band’s registry;

"Mi'kmaq Bands" means the Bands in Nova Scotia who are participating communities pursuant to this Agreement;

"Mi'kmaq Kina'masutí" means the body described in section 5.7 of this Agreement;

"post-secondary student support" means the program administered on reserve to provide student financial support in respect to education assistance including counselling provided by Mi'kmaq Bands to members attending post-secondary institutions;

"primary education" means education programs and services of a nature generally provided to students enrolled in classes which precede Grade 1 in schools in other education systems in Canada. These programs and services are often referred to as Kindergarten (K4 and KS) in on-reserve education systems;

"secondary education" means education programs and services of a nature generally provided to students enrolled in classes in grade levels 9 to 12 in schools in other education systems in Canada.

2.0 OBJECTIVES OF THE AGREEMENT

2.1 Objectives

The objectives of this Agreement are:

2.1.1 To specify the procedures and instruments through which the jurisdiction of the participating communities with respect to education will be realized; and

2.1.2 To determine the specific governance and administrative structures through which the participating communities shall exercise jurisdiction with respect to education.
4.0 STATUS AND LIMITATIONS

4.2 This Agreement is not a treaty within the meaning of section 35 of the Constitution Act, 1982.

4.4 For greater certainty, nothing in this Agreement restricts the participating communities from entering into:

4.4.1 Other agreements with Canada or the Province of Nova Scotia with respect to any matter, including education; or

4.4.2 Treaties, within the meaning of section 35 of the Constitution Act, 1982, with respect to any matter, including education, and secondary education.

5.2 Exercise of Jurisdiction by Participating Communities

5.2.1 The jurisdiction of participating communities with respect to education shall be exercised by the band council of that community following adoption of a constitution consistent with the principles set out in Schedule D.

5.2.2 For greater certainty, a band council, when exercising jurisdiction with respect to education, is not an agent of Canada.

5.3 Community Education Boards

5.3.1 Where the band council of a participating community undertakes to exercise jurisdiction in accordance with section 5.2.1, it may establish a community education board, responsible to the band council, to exercise jurisdiction with respect to education on its behalf.

5.3.2 The powers, duties, functions and composition of a community education board shall be determined by the band council of a participating community, and shall be exercised by the community education board pursuant to the direction of the band council in accordance with the constitution adopted by the participating community pursuant to section 5.2.1.

5.4 Education Standard

The participating communities shall provide primary, elementary and secondary education programs and services comparable to those provided by other education systems in Canada, so as to permit the transfer of students between education systems without academic penalty, to the same extent as the transfer of students is effected between education systems in Canada.
5.5 Post-Secondary Student Support

5.5.1 The participating communities shall have jurisdiction with respect to post-secondary student support for members, whether or not resident on reserve to the same extent as would otherwise have been exercised by Canada.

5.5.2 For greater certainty, the participating communities shall not have jurisdiction with respect to post-secondary education, other than with respect to the provision of post-secondary student support.

5.6 Access to Services

5.6.1 The participating communities shall provide, or make provision for, primary, elementary, and secondary education services for members living on reserve.

5.6.2 Where there are non-members living on reserve:

5.6.2.1 Funding for primary, elementary and secondary education programs and services for non-members living on reserve shall be provided by Canada in accordance with an administrative arrangement among Canada, Nova Scotia, and the Mi'kmaq Bands at the equivalent rate provided for members as set out in the Funding Agreement. Such amounts shall be adjusted annually in accordance with provisions of the Funding Agreement. In no event shall the Province of Nova Scotia be responsible for the education costs of non-members living on reserve by way of these administrative arrangements; and

5.6.2.2 Nothing in this Agreement shall be construed so as to grant to non-members any rights which are similar to or analogous to the rights of members, or to establish any entitlement of non-members to any services from the participating communities other than the provision of elementary and secondary education, funded under this Agreement. The provision of funding for and services to non-members is for purposes of delivery of education services under this Agreement only.

5.6.3 Subject to section 5.6.2, participating communities shall provide primary, elementary and secondary education programs and services to non-members living on reserves on the same basis as provided for members living on reserves.

5.6.4 For greater certainty, the participating communities have no obligation to provide education in relation to:

5.6.4.1 Members not resident on reserves, other than with respect to the provision of post-secondary student support; or

5.6.4.2 Non-members wherever resident, with respect to the provision of post-secondary support.

5.6.5 Following the implementation of the Final Agreement, members resident on reserve shall not require nor generally be eligible for education programs or services from DIAND in areas provided for in the Final Agreement for which funding is provided pursuant to the Final Agreement. This exclusion does not apply to incremental programs or services not included in a Funding Agreement.
5.7 Mi’kmaw Kina’masuti

5.7.1 Upon the date on which federal legislation enacted pursuant to this Agreement as set out in section 9.2 comes into force, a body corporate shall come into existence, having as its objective the support of the delivery of education programs and services by participating communities.

5.7.2 Membership in this body corporate shall consist of the participating communities while they are party to this Agreement.

5.7.3 The body corporate shall be governed by a Constitution which shall be in accordance with the principles outlined in Schedule D.

5.7.4 The body corporate established pursuant to this section shall have the capacity of a natural person.

5.7.5 For greater certainty, the body corporate established pursuant to this section is not an agent of Canada.

6.0 DISPUTE RESOLUTION

6.1 Process

In the event of a dispute between one or more of the participating communities and Canada, as to the interpretation or implementation of any provision of this Agreement, the Parties involved in the dispute shall, unless agreed upon otherwise, make use of the following process to address the dispute:

6.1.1 The matter in dispute shall be set out in a notice of dispute and served on the other Party and the Mi’kmaw Kina’masuti;

6.1.2 Upon the serving of the notice of dispute, the provisions for continuity in education programs and services as set out in section 6.2 shall come into effect;

6.1.3 Within 15 (fifteen) days of the serving of a notice of dispute, the Parties shall meet and make best efforts to resolve the dispute.

6.1.4 If the Parties fail to resolve the dispute within ninety (90) days of the serving of a notice of dispute, the Parties shall make best efforts to appoint a mediator to assist in the resolution of the dispute; and

6.1.5 In the event that the Parties are unable to agree upon a mediator within fifteen (15) days, or in the event that a mediator is appointed, and the Parties are unable to resolve the dispute within ninety (90) days of the appointment of a mediator:

6.1.5.1 The dispute may, if the Parties agree, be resolved through binding arbitration, relying on an arbitrator and arbitration procedures acceptable to the Parties; or

6.1.5.2 Either Party may commence legal proceedings in a court of competent jurisdiction.
6.2 Continuity in Education Programs and Services

6.2.1 In the event of a dispute between one or more of the participating communities and Canada, the Parties to the dispute shall make best efforts to ensure the continuation of education programs and services.

6.2.2 In the event that, despite their best efforts, the Parties to the dispute cannot agree on the conditions under which education programs and services will continue, the Parties to the dispute shall refer the matter to binding arbitration.

6.2.3 In the event the matter is referred to binding arbitration, the Parties to the dispute agree to appoint an arbitrator within seven (7) days of notice of desire for binding arbitration being served. In the event that the Parties to the dispute cannot agree on an arbitrator, then after the expiry of such a seven (7) day period, a Party to the dispute may make application to a court of competent jurisdiction to appoint an arbitrator to hear the binding arbitration.

6.2.4 With the exception of the determination of funding levels as provided for in this Agreement, the arbitrator shall have jurisdiction to order the Parties to make provision for the continuation of education upon such terms and conditions as the arbitrator deems advisable including the imposition of new obligations on the Parties. The arbitrator shall not be bound by the terms of this Agreement, except with respect to section 6.2.

6.2.5 Only the decision arrived at by the arbitrator with respect to the continuity of education shall be binding upon the Parties to the binding arbitration. No appeal to a decision with respect to the continuity of education shall lie therefrom.

6.2.6 The binding arbitration shall be conducted in accordance with the provisions of the Commercial Arbitration Act unless the Parties agree to opt out, in whole or in part, of such legislation.

6.2.7 The joint costs of the binding arbitration shall be borne equally by the Parties to the dispute, but each party shall be responsible for its own costs.

6.3 Paramountcy

Education laws of the participating communities with respect to jurisdiction, set out in section 5.0, shall have paramountcy over federal and provincial education laws.
MK FUNDING AGREEMENT WITH RESPECT TO GOVERNANCE IN EDUCATION

1.0 INTERPRETATION OF THE AGREEMENT

1.1 Funding Agreement

The Funding Agreement forms part of the Final Agreement and the provisions thereof apply to this agreement unless the context of the Funding Agreement otherwise requires.

1.2 Definitions

In this agreement, except where the context otherwise indicates:

"A-Base" means the amount which is subject to the adjustment provisions contained in this agreement, payable by Canada to the participating communities and the Mi'kmaw Kina'masuti through an Annual Grant in each year of the agreement;

"Annual Grant" means the amount payable by Canada to the participating communities and the Mi'kmaw Kina'masuti in respect of a specific fiscal year under the Funding Agreement.

"Base Year" means the fiscal year beginning April 1, 1997 and ending March 31, 1998.


"Fiscal Year" means a twelve-month period beginning on and including April 1 of a year and ending on and including March 31 of the immediately following calendar year.

"Funding Agreement" means this agreement which shall accompany the Final Agreement.

"Funding Schedules" mean the annual allocations inclusive of the budget and cash flow requirements for the Mi'kmaw Kina'masuti and each of the participating communities.

"Implementation Period" means that period from the date of signing of the agreement through the date on which the federal and provincial legislation with respect to the Final Agreement comes into force.

"Indian Studies Support Program" means a DIAND program component of the post-secondary student support program which provides for financial support to institutional projects.

6.0 FUNDING UNDER THIS AGREEMENT

6.1 Scope

Funding under this agreement is provided to the participating communities and the Mi'kmaw Kina'masuti for the support of the governance and delivery of education programs and services as set out in section 5.0 of the Final Agreement, including:

6.1.1 Operations and maintenance funding with respect to elementary and secondary education, post-secondary support, education facilities, education-related band support and tribal council support and band employee benefits;
6.1.2 Capital funding with respect to major maintenance, replacement and construction of assets and classroom equipment for existing facilities in participating communities as of the effective date of this agreement; and

6.1.3 Governance funding with respect to the operation of the Mi'kmaw Kina'masuti and the education governance activities of participating communities.

7.0 EDUCATION FACILITIES

7.1 Existing Facilities

With respect to education facilities and any subsequent modifications or replacement of those facilities in participating communities as of the effective date of this agreement:

7.1.1 The capital and operation and maintenance programs adopted by the participating communities and the Mi'kmaw Kina'masuti shall ensure the protection of the current investment in education facilities, as it may exist from time to time;

7.1.2 Funding for participating communities, as set out in the Funding schedules will reflect amounts required to meet the projected repair, renovation, growth, and replacement requirements of existing facilities, and

7.1.3 Participating communities shall be responsible for the disposition of the capital funding provided for education facilities in accordance with this agreement.
SAMPLE 2

1. a) **** First Nation has jurisdiction in relation to kindergarten, elementary and secondary education on **** reserve lands for members.

   b) The **** First Nation education system shall be designed to permit transfers between education systems without academic penalty to the same extent as transfers are effected between other education jurisdictions in Canada.

2. Without limiting the generality of section 1, **** First Nation has the authority to:
   a) enter into tuition, post-secondary support, capital, curricular, recreational, special needs and other arrangements;
   b) create administrative bodies to administer any education program;
   c) enter into agreements regarding children of Members who attend school off **** First Nation lands;
   d) enter into agreements with the province concerning the delivery of provincial services or the application of provincial standards including:
      i) curriculum development;
      ii) education level equivalencies;
      iii) teaching methodologies;
      iv) programs and standards;
      v) teacher certification;
      vi) teacher training and developments; and
      vii) evaluation of the education systems;
   e) administer post-secondary student support funding for Members living on or off **** lands.

3. **** First Nation’s exercise of jurisdiction in education shall recognize the importance of compatibility with other education authorities while maintaining **** First Nation’s right to protect its culture, identity, language and traditions.

4. Sections 114 to 122 of the Indian Act will continue to apply until such time as the coming into force of any **** First Nation Law enacted pursuant to the jurisdiction described in this section. Upon coming into force of any **** First Nation law related to education as outlined above, sections 114 to 122 of the Indian Act will no longer apply.

5. Except as otherwise provided in this Agreement, in the event of a conflict between **** First Nation Law in relation to education and federal law, **** First Nation law will prevail to the extent of the conflict.
SAMPLE 3

Where negotiations are required to devolve education jurisdiction from the province to the First Nation, the following wording may be used:

1. Government and the **** First Nation may negotiate the devolution of programs and services associated with the responsibilities of the **** First Nation.

2. For greater certainty, Government and the **** First Nation may negotiate the devolution of the programs and services dealing with the following:
   
   2.1 **** First Nation authority for the design, delivery and management of Indian language and cultural curriculum;
   
   2.2 the division and sharing of **** First Nation and Government responsibility for the design, delivery and administration of programs relating to:

   Education

   a) Indian student counselling,
   b) cross-cultural teacher/administrator orientation,
   c) composition of teaching staff,
   d) early childhood, special, and adult education curriculum,
   e) kindergarten through grade 12 curriculum,
   f) the evaluation of teachers, administrators, and other employees.

SAMPLE 4

1. The *** First Nation Government has the power to enact laws in relation to:

   (1) education, except post-secondary, for *** Citizens in *** communities or on *** lands, including the teaching of the *** language and the history and culture of the *** First Nation but not including the certification of teachers;
   
   (2) pre-schooling and early childhood development programs for *** Citizens in *** communities or on *** lands;
   
   (3) certification of persons to teach the *** language and the history and culture of the *** First Nation;

2. Curriculum, examination and other standards established under this agreement shall be designed with the objective of permitting transfers of students between and within provincial and territorial school systems at a similar level of achievement and enabling qualified students to gain admission to provincial and territorial post-secondary education systems.
1 The *** First Nation may make laws with respect to primary and secondary education on First Nation land.

2 The *** First Nation education system shall be designed to permit transfers between education systems without academic penalty to the same extent as transfers are effected between other education jurisdictions in Canada.

3 In the event of a conflict between *** First Nation laws made and federal laws, *** First Nation laws shall prevail to the extent of the conflict.