The Education Service Contracts/Tuition Agreements Guidebook

A Resource for Ontario School Boards and First Nations

Information/Input Sessions
Spring 2011
Partners

- First Nation Education Coordination Unit (FNECU)
- Ministry of Education (EDU)
- Aboriginal Affairs and Northern Development Canada (AANDC)
- Ontario Public School Boards Associations (OPSBA)
  - Association des conseils scolaires des écoles publiques de Ontario
  - Association franco-ontarienne des conseils scolaires catholiques
  - Ontario Catholic School Trustees Association
  - Ontario Public School Boards Association
“School Boards/First Nations Tuition Agreements Resource Manual”

- Published in 1993/94 by OPSBA and the Ontario Separate School Trustees’ Association (OSSTA) & funded by the Ontario Ministry of Education and Training.
- Includes an extensive “History of First Nation Education
- Funded by the Ontario Ministry of Education and Training.
- The section “History of First Nation Education in Canada” is available at www.opsba.org.
Legislation

Provincial

The Ontario Education Act

Agreements re education of Indian pupils
Section 188. (1)

Federal

The Indian Act

A First Nation may enter into a tuition agreement with a board through provisions within the Indian Act – R.S.C. 1985, c.1-5
First Nations

- Education for First Nation students who reside in a First Nation community is provided for through federal funding.

- AANDC oversees the terms and conditions for the various aspects of education funding.

- In Ontario, most First Nations communities set local education policy and manage their own operations.

- AANDC directly administers education in a small number of First Nation communities.

- The First Nation community will appoint a person to oversee the tuition agreement process. This is usually the Education Manager/Director in the community.

- Agreements are generally signed by the Chief of the First Nation.
A Word of Caution

- Sample agreements and processes presented, in no way replaces legal advice
WITHIN THE GUIDE:

* TYPES OF AGREEMENTS

* SAMPLE NEGOTIATION PROCESS

* SAMPLE COMPONENTS OF AN AGREEMENT

* SAMPLE ADDENDA (eg. Special Education)
TYPES OF AGREEMENTS

- Specific needs addressed in education services agreements are unique from community to community.

- No template agreement is recommended here since there is no “one size fits all” approach to developing an agreement.

- Every partnership between the First Nation community and school board in meeting the needs of First Nation students.

- It is hoped that the examples provided will cover the full range of provisions that the parties to an education services agreement might need to consider.
- A single board may have different agreements with two or more First Nations.

- A single board may also have one agreement with two or more First Nations. Individual First Nations and boards will decide what kind of agreement they will have.

- The provincial legislation references are *section 185 of the Education Act and section 64 of Ontario Regulation 196/10 (Grants for Student Needs) for 2010-2011.*
- **Education Services (Tuition) Agreement or Contract**
  - Some preference for the title “Education Services Contract.”
  - Outlines more than the payment of fees.
  - Guided by the *Ontario Regulation “Calculation of Fees for Pupils for the Year xxx for School Board Fiscal Year* and the Education Act.
  - Clauses/sections that offer detailed description of specific programs, services or equipment to which the two parties have agreed.

- **Reverse Tuition Agreement**
  - the First Nation provides education for pupils that are otherwise qualified to be pupils of the board (i.e. reside off-reserve in the board’s area of jurisdiction) in exchange for receiving payment from the school board of a fee.
### SAMPLE PROCESS OF NEGOTIATING A TUITION AGREEMENT

<table>
<thead>
<tr>
<th>Objectives</th>
<th>Timelines</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Designation of an Education Services Negotiation Team</strong></td>
<td>Two years prior to the ending date of current agreement</td>
</tr>
<tr>
<td>- First Nation Team – lead negotiator, recorder</td>
<td></td>
</tr>
<tr>
<td>- FN Collective Team – negotiators assigned, lead, terms of reference,</td>
<td></td>
</tr>
<tr>
<td>meeting reporting process</td>
<td></td>
</tr>
<tr>
<td><strong>Education Service Agreement &amp; Negotiation Training</strong></td>
<td>Two years prior to the ending date of current agreement</td>
</tr>
<tr>
<td>- Components of an agreement</td>
<td></td>
</tr>
<tr>
<td>- Negotiation skills</td>
<td></td>
</tr>
<tr>
<td><strong>Education Service Agreement Planning Sessions to;</strong></td>
<td>Ongoing – monthly meetings</td>
</tr>
<tr>
<td>- current issues with the existing agreement</td>
<td></td>
</tr>
<tr>
<td>- Issues impacting First Nation students</td>
<td></td>
</tr>
<tr>
<td>- Brainstorm solutions</td>
<td></td>
</tr>
<tr>
<td>- prioritize issues <em>(easiest to difficult)</em></td>
<td></td>
</tr>
<tr>
<td>- proposed amendment changes</td>
<td></td>
</tr>
</tbody>
</table>
### SAMPLE PROCESS OF NEGOTIATING A TUITION AGREEMENT

<table>
<thead>
<tr>
<th><strong>Negotiation Process with School Board</strong></th>
<th>One year prior to the ending date of current agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• first meeting present issues &amp; solutions</td>
<td></td>
</tr>
<tr>
<td>• Negotiate solutions and wording</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>First Nation/School Board Approval Process of the Final Draft of the Agreement</strong></th>
<th>Two months prior to the ending date of the current agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• seek legal opinion on the final draft</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Signing of the Agreement</strong></th>
<th>One month prior to the ending date of current agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• simple signing process</td>
<td></td>
</tr>
<tr>
<td>• signing ceremony</td>
<td></td>
</tr>
</tbody>
</table>
SAMPLE COMPONENTS OF AN AGREEMENT

The tuition agreement might include, but is not limited to:

- Opening statements
- Definition of “authorized” pupils
- Definitions or interpretations section
- Enrolment notice – eligibility
- Tuition fee provisions
  - responsibility for fees
  - payment schedules
  - additional tuition costs
- Description of programs and services
- School Board and First Nation community relations
- First Nation representation
- First Nation staffing
- Native Language and First Nation cultural programs
- Transition programs for First Nation students
- Freedom from Harassment
- Transportation
- Access to school facilities
- Media Releases
- Special Education programs and services
- Special services under s. 188(4) Education Act
- Reporting and communications requirements
  - financial records
  - pupil accommodation charge
  - program and statistical reports
  - data collection
- Access to information
- Accountability
- Dispute Resolution
- Term of the Agreement including termination and renewal clause
- Notices
- Signing authority
- Addenda
BETWEEN:

(name of School Board)
in the Province of Ontario
hereinafter referred to as the “Board”
OF THE FIRST PART

AND

(name of First Nation)
as represented by the elected Council
hereinafter referred to as “First Nation”
OF THE SECOND PART

AND WHEREAS PURSUANT TO Section 188(1)(b) and 2(b) of the Education Act, the Board may enter into an agreement with the First Nation for the provision of accommodation, instruction and additional services in the schools of the Board for Indian pupils.

AND WHEREAS pursuant to the provisions made for implementation of Indian Control of Indian Education and the First Nation assumption of jurisdiction for education previously administered by the Minister under section 114(1) of the Indian Act, R.S.C. 1985, c.1-5, as amended, the First Nation may enter into an Agreement with the Board.

NOW THEREFORE, THIS AGREEMENT WITNESSETH that the parties hereto covenant and agree with each other to the terms and conditions as follows;
Base Tuition Fee

- The base tuition fee is established pursuant to Ont. Reg. 195/10 Calculation of Pupils’ Fees for 2010-2011, a regulation made under the Education Act and shall be the amount calculated pursuant to the regulation.

- The base tuition fee covers a range of education services including Special Education costs.

- The base tuition fee does not cover transportation or capital costs.
Special Education Program, Services or Equipment

- Special Education programming and related costs has been an area of difficulty and will require much discussion and clarification throughout the process of developing the agreement.

- There may be situations where the Board and the First Nation(s) agrees that additional funding is required to provide specific special education programs and services.
  - E.g. an individual student for whom a Board would submit a SIP or SEA equipment claim were that student a Pupil of the Board.
  - Since Boards may not submit claims to the Ministry for tuition fee students, the Board may seek additional payment from the First Nation.

- It is advisable to have a general statement that states how Special Education will be addressed. The clause in the body of the agreement can be simple and state that any specifics will be outlined in an addendum to the agreement. Otherwise, there would be no additional costs.
Sample Statement Pertaining to Special Education:

General Statement

The Board and the First Nation(s) may agree to an additional cost for providing Special Education Program, Service or Equipment to the First Nation Pupils as per Appendix “Supplementary Program, Service or Equipment of this Agreement”.
## Implementing the Tuition Agreement

### Sample 13 Month Cycle

<table>
<thead>
<tr>
<th>Estimated Timeframe</th>
<th>First Nation</th>
<th>School Board</th>
<th>AANDC</th>
</tr>
</thead>
<tbody>
<tr>
<td>August</td>
<td>Prepares draft FN student list for October count date</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td>Parent consent to access student information</td>
<td>Prepares draft FN student list for October count date</td>
<td>Forwards previous year nominal roll to First Nation</td>
</tr>
<tr>
<td>October</td>
<td>FN finalize student list for October count date</td>
<td>October 31 count date</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Comparison of FN student list and nominal roll list</td>
<td>Schools forward FN student list to school board</td>
<td></td>
</tr>
<tr>
<td>November</td>
<td>Comparison of FN student list to School Board student list</td>
<td>School Board reviews FN student list and forwards to FN and FN signs off the student list</td>
<td>Compares nominal roll list with other FN nominal roll lists</td>
</tr>
<tr>
<td>December</td>
<td></td>
<td>School Board invoice the FN and the FN forwards payment of tuition fees</td>
<td>Forward final nominal list to FN and tuition funding.</td>
</tr>
<tr>
<td>February</td>
<td>Prepares draft FN student list for March count date</td>
<td>Prepares a draft FN student list for March count date</td>
<td></td>
</tr>
</tbody>
</table>
Implementing the Tuition Agreement

Sample 13 month cycle

<table>
<thead>
<tr>
<th>Estimated Timeframe</th>
<th>First Nation(s)</th>
<th>School Board</th>
<th>AANDC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>March</strong></td>
<td>Finalize FN student list for March count date</td>
<td>March 31 Count date School forwards FN student list to school board</td>
<td></td>
</tr>
<tr>
<td><strong>April</strong></td>
<td>Comparison of First Nation student list and nominal roll list</td>
<td>School Board reviews FN student list and forwards to FN FN signs off the FN student list</td>
<td></td>
</tr>
<tr>
<td><strong>May</strong></td>
<td></td>
<td>School Board invoices the FN and FN forwards payment of tuition fees</td>
<td></td>
</tr>
<tr>
<td><strong>June</strong></td>
<td>FN forwards payment for March count date</td>
<td></td>
<td>Conducts a tuition audit from FN on actual tuition fees invoices.</td>
</tr>
<tr>
<td><strong>July</strong></td>
<td>FN forward tuition invoices to AANDC for audit</td>
<td></td>
<td>Identifies surplus and deficits and adjust funding accordingly</td>
</tr>
<tr>
<td><strong>September</strong></td>
<td>FN forwards payment of adjustment invoice</td>
<td>School Board forwards an adjustment invoice based on Board’s audited statement to FN</td>
<td><em>Note: AANDC conducts a on site nominal roll visit to FNs and schools every 5 years.</em></td>
</tr>
</tbody>
</table>
## Implementing the Tuition Agreement

### Sample of Special Education Program, Service, Equipment Fee

<table>
<thead>
<tr>
<th>Estimated Timeframe</th>
<th>First Nation(s)</th>
<th>School Board</th>
<th>AANDC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>May</strong></td>
<td>Obtains parent consent to access student information</td>
<td>Teacher referral to School Special Education Team</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>School’s Special Education consults with parents to</td>
<td></td>
</tr>
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<td></td>
<td></td>
<td>• determines Individual Education Plan</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• arrangements for assessment of exceptionality and placement may occur.</td>
<td></td>
</tr>
<tr>
<td><strong>June</strong></td>
<td>FN negotiates with School Board on Special Education costs.</td>
<td>School Board notifies FN of special education placement.</td>
<td></td>
</tr>
<tr>
<td><strong>October – August</strong></td>
<td>Same process as Per Pupil Tuition Fee for October/March count dates</td>
<td>Same process as per Pupil Tuition Fee for October/March count date along with</td>
<td>Same process as Per Pupil Tuition Fee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>an updated IPRC report</td>
<td></td>
</tr>
</tbody>
</table>
## Implementing the Tuition Agreement

### Sample: Program & Services Reporting

<table>
<thead>
<tr>
<th>Estimated Timeframe</th>
<th>First Nation(s)</th>
<th>School Board</th>
<th>AANDC</th>
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</thead>
<tbody>
<tr>
<td>September</td>
<td></td>
<td>School Board to prepare a Board’s accountability report for previous school year. It can include aggregated statistical data on enrolment, retention, capital costs, EQAO etc.</td>
<td></td>
</tr>
<tr>
<td>Monthly</td>
<td>FN to obtain parent/guardian’s consent to obtain information on students. It can include attendance, credit summary, transcript</td>
<td>Schools to provide data upon request from FN and “Consent for Information” form are signed by parent/guardian</td>
<td></td>
</tr>
<tr>
<td>Yearly</td>
<td>Any meeting reports pertaining to special services, IPRC reviews pending parent/guardian approval</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Implementing the Tuition Agreement

Dispute Resolution

If a dispute occurs regarding the tuition fee, either party can follow a process as set out by the Tuition Agreement by providing a written notice on the dispute to the other party.

Refer to the “Calculation of Fees for Pupils for the 2010-11 School Board Fiscal Year” (O. Reg. 195/10)
Contacts:

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- Elizabeth Bigwin, MoE Ph:705 725-7591 or 1 866 670-8437  E-mail: Elizabeth.bigwin@ontario.ca