

Local Governance Workshop

For Participating First
Nations (PFNs) and
Ratified First Nations
(RFNs)

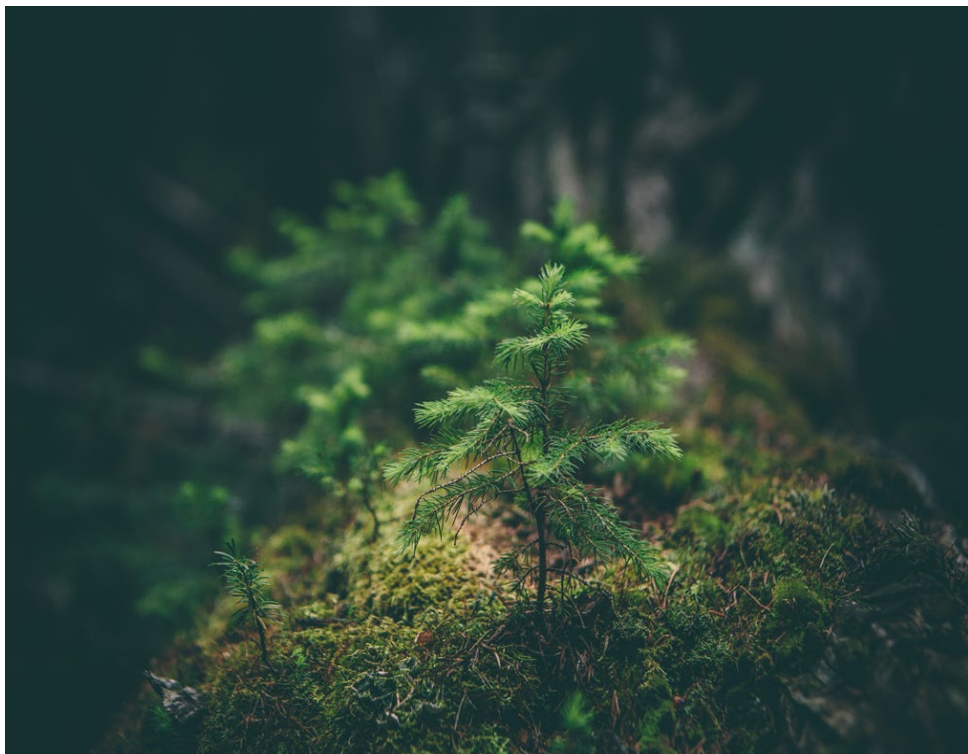
Presented By

First Nations Education Authority

June 12, 2023



**Building capacity in
education jurisdiction**



Recognition of the Territory

Agenda

- **Developing and implementing PFN Education Laws**
 - Overview of model law
 - Setting up your SGA
 - Role of SGA
 - Defining school's purpose and mission
 - Who sits on the Board?
 - Making Difficult Decisions: The Importance of Procedural Fairness
- **Board / Committee Governance**
 - Fiduciary duties
 - Board's role in assessing & planning for risk, budgets & finance
 - Reporting, accountability, & improvement planning
- **Closing remarks, and review of principles and tools for “good governance”**



Developing and Implementing PFN Education Laws



Overview of Model PFN Education Law

Overview of model law

○ General

- Principles
- Duties of students
- Parent's rights
- Parents Committee & input of non-members
- School calendar

○ Access

- Who may/must enroll
- Registration
- Code of conduct, suspension, exclusion & eviction
- Students with disabilities

Overview of model law

- School Governing Authority/CEA
 - Options (see 2021 Approaches to Governance chart & materials)
 - Accountability, conflict of interest
- Appeal of administrative decisions
 - (see separate materials on this topic)
- FNEA
 - Appointing directors
 - FNEA Rules
- PFN graduation certificates
- Financial matters
- Liability
- Regulations



Setting up your School Governing Authority

School Governing Authority

- All First Nation schools differ in their governing and administrative structures.
- Because of this, we use the term School Governing Authority in reference to the body that is responsible for the school's regular operations, budget and policies.
- 4 options (per August 2021 "Approaches to Governance" memo):
 - Chief & Council are the SGA
 - Chief & Council delegate responsibilities to a committee/board
 - Chief & Council create a distinct legal entity pursuant to federal and First Nation education jurisdiction laws
 - Chief & Council create a distinct legal entity pursuant to provincial *Societies Act*

School Governance in the Jurisdiction Context

Approach #1	Legal entity operating school & employing its staff	School Governing Authority	Comments
Chief and Council as School Governing Authority (with or without an education advisory committee or board)	First Nation	Chief and Council	There may be an education advisory committee / board that provides input or advice but does not have decision-making authority.

School governance continued

Approach #2	Legal entity operating school & employing its staff	School Governing Authority	Comments
Chief and Council <u>delegate</u> some or all <u>authority</u> to an education committee / board (non-incorporated)	First Nation	Chief and Council and/or education committee / board	<p>If education committee/board has been delegated decision-making authority over <u>all</u> education matters, it will be the school governing authority.</p> <p>If the committee/board has only been delegated authority over <u>some</u> matters, it will be the school governing authority for those matters and Chief and Council will remain the school governing authority for the other matters.</p> <p>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.</p>

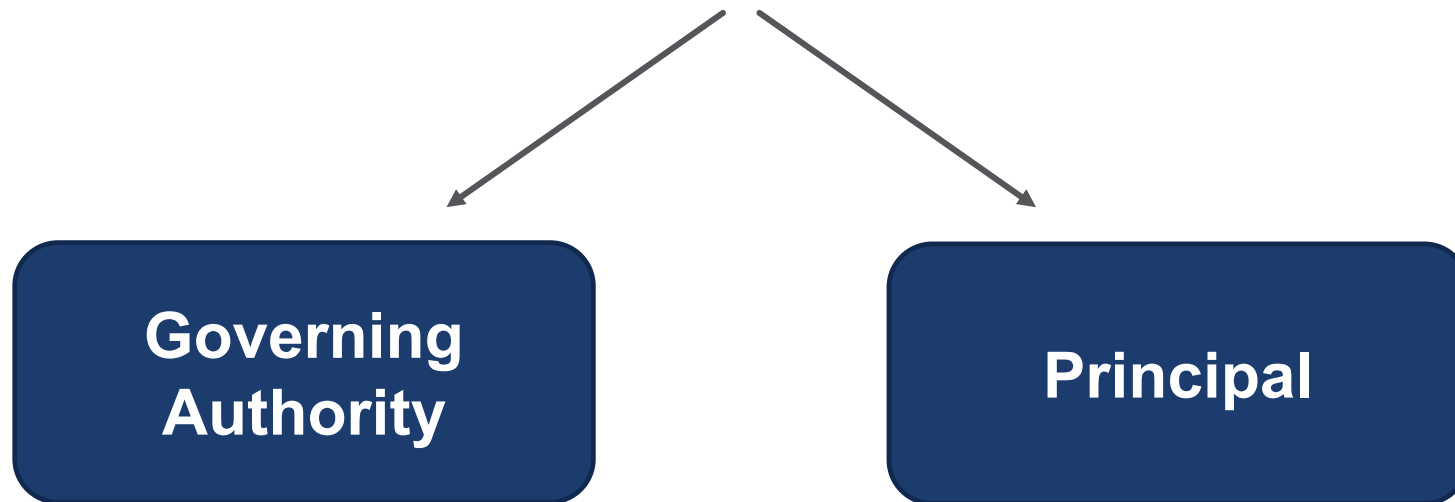
School governance continued

Approaches # 3 and 4	Legal entity operating school & employing staff	School Governing Authority	Comments
Community Education Authority (CEA) established under FN's education law	CEA established under First Nation's education law	Board of the CEA	Critical to have an agreement between CEA and the First Nation re: transfer of funding from First Nation to CEA, and reporting and accountability from CEA to First Nation.
CEA established under BC <i>Societies Act</i> or federal law	CEA established under BC <i>Societies Act</i> or federal law	Board of the CEA	Same comments as for approach #3.



The Role of the School Governing Authority: Governance Focus

- To understand the work of the Governing Authority, it is important to differentiate the roles and responsibilities of the two key school leaders



Governing members are dependent on the principal for the school's success

- The Governing Authority's role is to make decisions regarding governance issues, but members are not expected to have extensive expertise in education and running an effective school.
- The Authority should be able to rely on the principal to implement its direction and decisions.

- A positive working relationship between a Governing Authority and its principal is vital to the school's successful operation.
- To prevent misunderstandings, it is important to clarify which responsibilities will be those of the Authority, and which will be those of the principal.

- Boards that do not have a clear understanding of governance and that are not committed to their governance responsibilities find that their attention quickly drifts towards management – that is, the activities and efforts of the principal and staff.
- When this occurs, confusion and conflict develops.

What is Governance?

- To govern is to set the direction for the school's future.
- It is important for Authorities to be highly disciplined in building and maintaining a governance focus.
- There is a natural tendency for many people to be concerned about the day-to-day operation of the school and how it functions.
- But while it is natural to want to discuss the detailed work of the school, evidence shows that effective Authorities focus their attention primarily on governance.

Leadership roles for Board and Principal




Govern	Lead the school, including direct leadership of staff
Oversee school direction, including setting its mission	Day to day school management and future planning
Approve plans and policies	Develop and implement approved plans and policies
Review and approve the budget	Develop and manage the approved budget
Build positive relations with community	Engage with parents, build strong relations between school and community

School Governing Authorities ...

- Approve plans and policies and then rely on the principal and staff to get the job done; they do not become directly involved in day-to-day management.
- Oversee the direction of the school, including setting out its mission.
- Review and approve the budget – which allows the principal to operate the school within established parameters.
- Should be integral to all school improvement activities.
- Are key to building a positive relationship with the community.

School Principals ...

- Work for and report to the School Governing Authority.
- Provide advice, make recommendations for actions, and implement the direction and decisions set by the Governing Authority.
- Are responsible for day-to-day management and for the direct leadership of the staff, as well as for curriculum and student learning, *all according to the mission and policies approved by the Governing Authority.*



Defining the School's Purpose and Mission

Establishing the School's Purpose

- The top priority for a School Governing Authority is knowing what the community and families expect for students and identifying the purpose of the education setting.
- It is also important to ensure the principal understands this purpose and consistently communicates it to the entire staff.
- There is an opportunity to embed guiding principles, values, etc. in the PFN Education Law, but it is also useful for the SGA to have a “stand alone” mission statement.

Creating and Maintaining a Mission Statement

- Related to establishing a purpose, many schools have a clearly defined mission.
- A mission statement answers the question: “what does our school stand for?”
- A widely shared mission involves creating an image of what is important to the community and using that image as a guide for making good decisions for the benefit of students.
- It is not expected that the Governing Authority must have all of the experience and skills needed to independently undertake a comprehensive mission-setting process.
- The task of the Governing Authority is not to do the job itself, but rather to guide and oversee the preparation of the mission statement.

Creating and Maintaining a Mission continued

- Usually, Governing Authorities and principals or program leaders are jointly responsible for creating a mission statement that sets out expectations and an explicit direction for the education setting.
- There are a variety of ways to develop a mission statement, but it should be done collectively and collaboratively.
- Principals are then expected to consistently communicate and promote the mission, with help from the Governing Authority.
- The mission should guide all of the school's work.



Who sits on the Board?

Options & Considerations for structure of a SGA Board

(*Options 2, 3 & 4 from “Approaches to Governance”*)

- What skills & experience do you need?
 - Keep in mind Board’s role is to set mission and oversee principal, not participate in management
- What’s the right size?
 - Big enough to include all the “voices” that you need to hear, and able to deal with potential absences
 - The more members, the harder it is to schedule meetings & make decisions, especially where consensus is expected.
 - Thoughtful use of quorum and committees can help make large boards more efficient
- Who appoints board members?
 - Elected by members/parents or appointed by Chief & Council or a mix?
 - Regardless – it is critical to have a pro-active approach to recruitment
 - Consider using overlapping/split terms, term limits and/or periodic renewal of board membership

Options & Considerations for structure of a SGA Board (*Options 2, 3 & 4 from “Approaches to Governance”*)

- Role of Chief & Council
 - Designated seat(s) on the Board or “just” observers?
- Role of the principal
 - Seat on the Board?
 - Common model in non-profit and for-profit boards in other contexts is to include senior management, however the board needs the ability to exclude senior management from some discussions
 - Assuming the principal is not on the board, it’s important to have structures in place to support clear communication between the principal and the board.
 - Right to attend all board meetings, except where Board needs to go “in camera” (e.g. to discuss performance of the principal)
 - Strong relationship with Board chair and committees

Committees

- Typically mandated to assess and make recommendations to the Board, not decide
- Can assist the Board with workload, especially on technical matters
- Can be an opportunity to include non-board members (staff, Chief & Council, parents) to participate in some deliberations (with appropriate controls for confidentiality)
- Opportunity for new (or potential) Board members to build deeper understanding; can be part of successorship/board renewal process
- Can build trust with management and collegiality amongst board members.



Making Difficult Decisions: The Importance of Procedural Fairness

What is Procedural Fairness?

- Refers to procedures employed by a statutory decision maker
- The general starting point is that administrative law decision-makers are subject to the common-law duty of fairness. The duty is triggered when a decision will affect the rights, privileges, and interests of an individual.
- The basic idea is that if a decision will affect the rights of an individual, the process followed to arrive at the decision must be fair to the persons affected - the person must be told the case to be met and afforded an opportunity to respond

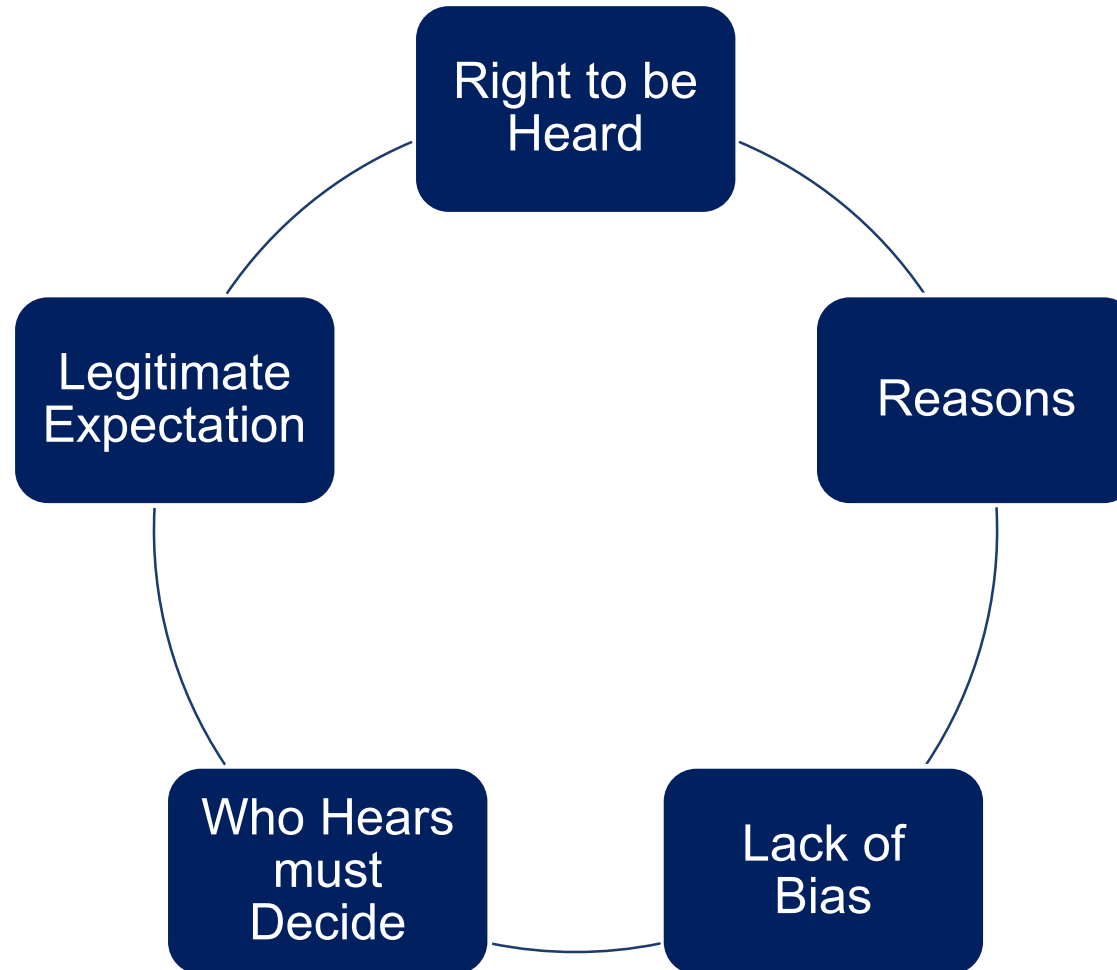
The Content of Procedural Fairness

- The level of procedural fairness required operates on a sliding scale
- Procedural fairness applies to a wide range of decision makers and issues
- Need to determine the appropriate level of procedural fairness depending on the context

Why Have Procedural Fairness?

- Quality of the resulting decision
 - Appropriate procedures will increase the likelihood of good decision-making
 - Reduce the chance of the decisions being overturned on appeal
- Enhancing the acceptability of the decision
 - Maintain confidence in the decision makers
 - Allow for community participation in decisions
- Achieving Balance
 - Right of the individual to participate in the process
 - Efficiency of the process

Common Components of Procedural Fairness



Judicial Review

- Is there a clear Appeal Process? If so, it should be clearly set out in the statute or procedures.
- A person generally has the right to have a court review a statutory decision maker's 'decision' ("judicial review")
- The courts generally accept that institutions have wide latitude in setting their processes and making decisions. BUT if they find a decision was unreasonable because of a lack of procedural fairness, they can send the decision back to the institution for a new review, sometimes with guidelines provided by the court. Rarely set aside completely.

Best Practices

- Notice
 - Reasonable opportunity to make representations, appear, and prepare
- Disclosure of the case to be met
 - Identification of the issues to be addressed
 - Providing copies of all the information that is before decision maker
- Opportunity to respond
 - Oral hearing
 - Written submissions or process
- Reasons
 - Detailed rationale



Break



Board / Committee Governance



Fiduciary Duties

Fiduciary duties - Overview

- Directors must meet the standard of care of a fiduciary.
- In a non-profit context, this typically means:
 - Acting honestly and in good faith with a view to the best interests of the organization
 - *“Best interests” are defined with reference to the Education Law, Mission Statement, and other founding documents for the school*
 - Exercising the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
 - Acting in accordance with the founding legislation, bylaws, etc. of the organization.

Conflict of Interest

- Conflict of interest is a critical element of a director's fiduciary duty:
 - Critical to disclose and abstain from decisions in which a director may benefit (directly or indirectly).
 - *Often necessary to consider reputation of the organization when dealing with perceived, potential or foreseeable conflicts vs. real, actual and apparent conflicts.*
 - Directors can also face conflicts of “duty and duty” for people who wear multiple hats (e.g. directors who sit on boards of multiple organizations, where those organizations interact with each other)
 - *This is often a challenge when members of Chief & Council sit on the board of a separate entity that has financial or contractual relationships with the First Nation*
 - First objective is to avoid conflicts, and when they do arise, to manage them properly and document how they were handled.
 - Critically important to have a conflict of interest policy customized to your organization.

Confidentiality

- Critical component of fiduciary duty
- Directors must respect the confidentiality of matters that are not, or will not be, disclosed to the public
- Requires clear understanding of who is (and is not) responsible for follow-up on matters
- Connected to communications policy: who speaks for the Board & School in what forum (i.e. community, government, public) on various matters?
- Should be taken into account when preparing & circulating agendas, supporting materials, and minutes

Fiduciary Duties – “reasonable care, skill & diligence”

- Linked to assessing performance of a board/director.
- Are board members reading materials provided in advance and ready to ask the right questions?
- Is everyone given, and taking, the opportunity to participate in discussions?
 - Boards often have “dominant” voices, but all directors need to make their own decisions

Personal Due Diligence – what questions should directors ask?

1. What is the legal structure of our organization?
2. What is the purpose of our school?
3. What are our values?
4. What does the community expect from us?
5. What risks does the school and the SGA face?
6. What is my role as a director?
7. How are directors selected?
8. How does the board work?
9. What committees does the board have?
10. What are my duties as a director and how can I manage my risk of direct liability?
11. How do we assess the performance of the board and individual directors?
12. How do the board and directors relate to the Principal?
13. How do we assess the performance and plan the succession of our Principal and directors?
14. How do we oversee budgets and finance?
15. Who speaks for the organization?

**adapted from Chartered Professional Accountants Canada, 20 Questions Directors of not-for-profit organizations should ask about governance*



Board's role in assessing
& planning for risk,
budgets & finance

General

- Varies with role of the board (see earlier discussion on options/models for SGAs)
- Linked to fiduciary duties – especially the duty to exercise reasonable skill, care & diligence

Risk

- The Board's role is to “look to the horizon”
 - What events could disrupt our goals?
 - Do we have policies & procedures in place to minimize or mitigate those risks? Are they being followed?
- Risks can arise internally, for example:
 - Human Resources – turnover of principal or key staff, unjust dismissal
 - Liability – accidents, negligence or malfeasance
 - Financial – expenses beyond resources
- ... or externally, for example:
 - Loss of funding sources
 - Legislative or policy changes from other governments
 - Natural disaster, criminal conduct

Budgets & Finance

- Organizations should have, and follow, clear policies and procedures for:
 - Annual Budgets
 - Long-term forecasts
 - Deposits
 - Expenses (e.g. signing authorities tiered to various limits/issues)
 - Variance reporting (e.g. how much have we received & spent in the past quarter/year compared to what we thought we would receive or spend?)
 - Audits
- The Board's role isn't to do these things, but to require and support the principal and/or relevant community staff to do them on time and properly.



Reporting, Accountability, & Improvement Planning

Do you have an effective board?

- Boards should periodically self-assess and so should whoever appoints them.
- FNEESC and FNSA have developed extensive resources to support assessment of boards, principals & schools.
- Key questions for assessing whether your board is effective:
 - Are new directors properly “on boarded”, and existing directors supported with ongoing governance education?
 - Has the board succeeded in adopting and overseeing the implementation of key policies & procedures and budgets in reasonable time frames?
 - Does the board have (and follow) a structured approach to agendas, including proper use of consent resolutions, *in camera* processes, proper use of committees, recording decisions and action items?

Yes/No

Works Toward a Clear Purpose

We focus on student learning as our highest priority

We support all efforts to promote student learning related to our language, culture, traditions and values

We oversee the development of a school mission statement, which provides the foundation for our decision-making and school actions

We encourage strategic planning and support innovation and change

Measuring the Performance of the School Governing Authority and Planning for Improvement

- Effective Governing Authorities think ahead about succession planning.
- They also focus on the growth and development of the Board.
- Conducting a self-assessment can help with continuous improvement, because good governance doesn't just happen; it requires a thoughtful review of practices and policies to promote greater certainty about how well governance is working for the benefit of students.
- The FNEESC and FNSA School Governance Handbook includes a comprehensive self-assessment tool for First Nations School Governing Authorities

Measuring the Performance of the Principal for Professional Growth Planning

- School Governing Authorities can support their principals in accessing relevant professional development, and with professional growth planning.
- For support FNEESC and FNSA offer a performance review process for First Nation school principals.
- It sets out a framework for a review based on the collectively developed Standards for Principals in First Nation Schools.
- FNEESC staff are available to implement the review, but the cost of travel are the responsibility of the First Nation.
- First Nations School Governing Authorities can ask for more information and support as required

Monitoring and Reporting on Student Achievement

- Governing Authorities should expect regular updates from the principal about student achievement and outcomes.
- Effective school leadership uses objective information to drive continuous improvement.
- Governing Authorities can work with their principals to determine how evidence will be used to support school growth.
- Governing Authorities can model a perspective of data as a helpful tool for educators, and focus on the importance of continued growth in student achievement and success.
- School Governing Authorities can also ensure that student outcomes reports are provided to the school's parents and the community.

Example of Outcomes Data Reporting

- As an example... BCTEA requires schools to report annually to parents and the community on:
 - The percent of students who meet or exceed grade level expectations for reading (grades K5 – 7), writing (grades 2-7), and numeracy (grades K5-7)
 - Student attendance rates of school-age students
- PFNs will not be required to submit BCTEA data each year, although they can participate in ongoing data collection efforts of First Nations schools if they are interested
- Whatever approach is chosen, effective Governance involves determining how to report regularly to the school's families and community about student outcomes.

School Reviews and Improvement Planning

- According to the FNEA Rules for the Certification of Participating First Nation Schools:
 - FNEA adopts the First Nations Schools Assessment and Certification Process as the process by which PFN Schools will be certified.
 - FNEA will recognize the certification of any PFN School certified through the First Nations Schools Assessment and Certification Process until their current certification expires.
 - Following the expiry of a PFN School's current certification, the PFN School will be certified in accordance with the First Nations Schools Assessment and Certification Process and any policies and procedures adopted by FNEA, which are built on the First Nations Schools Assessment and Certification Process.

The School Assessment and Certification Process

- A five-year cycle of review intended to result in the development of a School Growth Plan – an evidence based and thorough improvement plan for a five-year period.
- The Process involves reviewing all aspects of school operations, including student achievement data and input from students, parents, school staff, and other community members.
- Schools are supported through an information meeting, funding grants to sponsor assessment activities, and assistance from FNEESC staff.
- Schools participating in the School Assessment Process are visited by a team of individuals who review the assessment findings and the School Growth Plan to provide suggestions and feedback in a report to the community.
- Schools are then supported in implementing their School Growth Plans through funding grants and continued coaching.

- To be “Certified,” the external evaluation team that visits the school must determine that it meets a set of collectively established standards.
- FNSA, now moving to FNEA Certification, is necessary for PFN schools to access Reciprocal Tuition, and to offer the Dogwood or Adult Dogwood.



Closing Remarks
&
Review of foundational
principles and tools for
good governance

Foundational Principles

- Have a clear and common understanding of the relationship of your SGA with:
 - Chief & Council
 - PFN administration
 - the principal
 - the community/parents
- Define the mission, values & objectives for your school
 - These will be touchstones for the board, principal, students, parents, and leadership within the community when making important and difficult decisions.

Tools

- Have a structured and thoughtful approach to selecting board members that includes plans for successorship & renewal
- Be prepared for making decisions that will be challenged
- Ensure board members understand their fiduciary duties, and have a structured process for onboarding and periodic refreshers on good governance
- Ensure the organization has (and follows) policies & procedures for finance, conflict of interest, and other key matters
- Remember that you're not alone! FNEA, FNEESC & FNSA have resources **available and** staff dedicated to the success of your school.



Discussion and Questions

Thank You

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**First Nations
Education Authority**

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