



# TRIBAL CONSULTATION GUIDE 2022

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**INDIAN  
EDUCATION  
DIVISION**



Photo by NM Artist Michael Edmister



The State of New Mexico  
New Mexico Public Education Department

Identity, Equity, and Transformation Division

**Michelle Lujan Grisham**  
Governor of New Mexico

**Kurt Steinhaus, Ed.D.**  
Secretary of Education

**Vickie Bannerman, Ed.D.**  
Deputy Secretary of Identity, Equity, and Transformation

**Rebecca Reyes, MSW, MBA**  
Interim Assistant Secretary, Indian Education Division

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**Notes**

This guidance handbook is located on the NMPED website:  
<https://webnew.ped.state.nm.us/bureaus/indian-education/tribal-consultation/>

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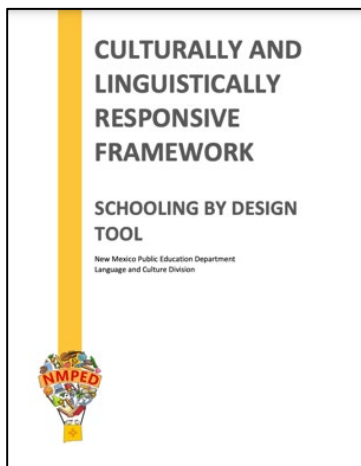
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## I. PURPOSE

The New Mexico Public Education Departments (NMPED) Tribal Consultation Guidance serves as a resource for New Mexico’s Local Education Agencies (LEAs), School Administrators, School Boards, Educators, Tribal Leaders, and Tribal Departments of Education. This consultation guide is intended to proactively address the unique educational needs of New Mexico’s Native American students, families, and communities by working together in the spirit of cooperation and collaboration. The State of New Mexico, NMPED, LEAs, and New Mexico’s 24 federally recognized Native American Tribes, Nations, and Pueblos have a shared responsibility of ensuring that Native American students will become academically prepared for college, career, life, healthy, and secure in their identity.

This document provides an overview of federal and state statutes and regulations, details non-regulatory guidance, and provides the tools necessary to support successful tribal consultation efforts at the state and local levels. It is the goal of the department to ensure that tribal consultation is a priority at all levels that impact Native American students and families, especially when developing, implementing, and supporting impartial programs and services that will result in positive outcomes.

School districts and charter schools are encouraged to reference their local school board and governing council policies for additional guidance. The document is intended to enhance the local level tribal consultation and collaboration process. In addition, the following reference may prove to be helpful – *the Culturally and Linguistically Responsive Framework: Schooling by Design Handbook (CLR/SbD)* – as a complimentary tool to the Tribal Consultation Guidance Handbook. CLR/SbD provides concepts related to transitioning from compliance “thinking” to committing to equity and inclusion. The CLR/SbD Framework is a beneficial tool used by school districts, charter schools, CLR teams, local level Equity Council members, parents and school community groups, and any other education stakeholder group connected to a school district, or charter school that is interested in improving outcomes for all students *by intentionally focusing on underserved student populations*.



Interested parties may follow the guidance detailed in this document, the desired outcome will transform our schools from local level compliance to an environment that ensures equity and inclusion of Native American students, families, Tribes, Nations, and Pueblos. As such, it is essential that all education stakeholders – including Tribes, Nations, Pueblos, and Native American students and families – are present and allowed to adequately participate in the tribal consultation process. The following guidance document is filled with materials adapted from the U.S. Department of Education – Office of Indian Education, stakeholder engagement hosted by NMPED, and other NM state agencies that provided documentation on best practices as it pertains to conducting tribal consultation.

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<sup>1</sup> Culturally and Linguistically Responsive Framework. (2020) Schooling by Design <https://webnew.ped.state.nm.us/wp-content/uploads/2020/06/CLR-Guidance-Handbook-2020-FINAL.pdf>

## II. BACKGROUND

In 2003, New Mexico (NM) was one of the first states in the country to pass the Indian Education Act (IEA) to address the needs of Native American students through the guidance of state legislators, Tribes, Nations, and Pueblos, communities, and educators. Per state statute 22-23A-5 the Indian Education Division was established within the New Mexico Public Education Department (NMPED), where the *“secretary shall appoint an assistant secretary for Indian education, who shall direct the activities of the division and advise the secretary on development of policy regarding the education of tribal students. The assistant secretary shall also coordinate transition efforts for tribal students in public schools with the higher education department and work to expand appropriate Indian education for tribal students in preschool through grade twenty.”*

The IEA followed the passage of the State-Tribal Collaboration Act (STCA) in 2009, which further supports positive and productive state and tribal government-to-government relations, effective communication, and collaboration, and address cultural competency. NMPED adopted a “Tribal Collaboration and Communication Policy” that establishes a process for consultation with Tribal governments when developing programs, policies, and activities that affect New Mexico’s Native American students.

NMPED employees shall refer to NMPED’s Tribal Collaboration and Communication Policy. This initial policy was signed by former Secretary of Education Dr. Veronica C. Garcia, in 2009, and revised and signed by former Secretary of Education Hanna Skandera on July 1, 2016. The Tribal Collaboration and Communication Policy is intended to improve the Public Education Departments processes for communication and collaboration with Tribal Governments to achieve a common goal, where consultation is emphasized and enhanced with trust and respect and if consensus is reached when a decision or outcome is mutually satisfactory to the agency and tribe(s) affected, and if mutual decision or outcome cannot be reach, that each other’s perspectives and concerns are honored based on each other’s sovereignty.

NMPED is committed to timely and meaningful tribal consultation with New Mexico’s 24 federally recognized tribes and approved tribal organizations and their communities, this document is the core of federal and state laws and policies created to improve education in New Mexico.

Lastly, Every Student Succeeds Act (ESSA) is the latest reauthorization of the Elementary and Secondary Education Act of 1965. Previously known as the No Child Left Behind Act (NCLB), this reauthorization gives states the liberty to implement standards and accountability to address their unique educational needs.

## III. HISTORY OF INDIAN EDUCATION

Since the early decades of the 19<sup>th</sup> century indigenous people faced barriers established by federal and state education policies and law. Contrary to the inherent sovereign rights of tribes the implications of these policies and laws forced curriculum that neglects indigenous histories, culture, and language. This resulted in the loss of language, culture, and access to an adequate education – as a result the rate of

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<sup>2</sup> State Tribal Collaboration Act-PED. <https://webnew.ped.state.nm.us/wp-content/uploads/2019/02/STCR-Policy-with-Colver-Letter.pdf>



dropout, proficiency scores, retention rates, and graduation are significantly poor in comparison to their non-native counterparts.

The treaties established between tribes and the U.S. Government included provisions on education. The Indian Civilization Act of 1819 implemented policies establishing and supporting Indian boarding schools across the country. Since the end of the treaty-making period (1871) and onward many federally operated Indian boarding schools were used to culturally assimilate Native American children. Native children were forcibly removed from their families and communities and relocated to distant residential facilities where their Native identities, languages, traditions, and beliefs were forcibly suppressed. The cruel and abusive conditions of these schools resulted in the trauma that resonates in many Native American communities.

The historical events outlined below provides an overview of landmark decisions that respect tribal sovereignty, including congressional actions pertaining the education of Native American children.

INDIAN EDUCATION HISTORICAL TIMELINE	BRIEF HISTORICAL DESCRIPTION
1846    TREATY OF GUADALUPE HIDALGO	<i>“United States ended its war with Mexico with the Treaty of Guadalupe Hidalgo. In the treaty, the United States agreed to recognize Pueblo land holdings, and to allow Pueblo people to continue their customs and languages.” (Our Journey, 2022)</i>
1876    UNITED STATES V. JOSEPH	<i>“The United States Supreme Court declares that the Pueblos shall not be considered wards of the government. The Court views the Pueblo people as having a settled, domestic existence and therefore not subject to federal government protection laws which were passed for “wild” nomadic Natives. As a result, disputed land grants given to the Pueblos by the Spanish government, where placed in the jurisdiction of the local officials and non-Indians started to settle on Pueblo lands.” (Our Journey, 2022)</i>

<sup>3</sup> All Pueblo Council of Governors. (2022). *Our Journey*. <https://www.apcg.org/journey/#>

<p>U.S. GOVERNMENT TREATY WITH APACHES (TREATY OF SANTA FE) JULY 1, 1852</p>	<p><i>"Reflects the naivety of both the U.S. and the Apaches. There is real tragedy embedded in the history of a treaty apparently negotiated in good faith that could have, but did not, provide the basis for continuing communications, and even collaborations."</i> (Welch, 2017)</p> <p>"The following is a summary of the treaty's eleven articles with most key phrases quoted verbatim:</p> <ol style="list-style-type: none"> <li>1. <i>"Said nation or tribe of Indians" acknowledged U. S. government jurisdiction</i></li> <li>2. <i>Apaches agree to cease hostilities and remain peaceful.</i></li> <li>3. <i>Apaches bound themselves forever "to treat honestly and humanely all citizens of the United States" and all persons and powers at peace with the United States.</i></li> <li>4. <i>Apaches agree to refer aggression against themselves to the U. S. government.</i></li> <li>5. <i>Apaches agree "for all future time to desist and refrain from making any 'incursions within the Territory of Mexico' of a hostile or predatory character, 'from capturing any Mexicans, rustling Mexican animals, stealing Mexican property, and surrender 'all captives now in their possession."</i></li> <li>6. <i>Anyone subject to United States law, who murdered, robs or otherwise maltreats any Apache "shall be arrested and tried."</i></li> <li>7. <i>People of the United States "shall have free and safe passage through the territory of aforesaid Indians."</i></li> <li>8. <i>Government intentions to establish military posts and agencies and to authorize trading houses.</i></li> <li>9. <i>Apaches agree that the government "shall at its earliest convenience designate, settle, and adjust their territorial boundaries, and pass and execute in their territory such laws as may be deemed conducive to the prosperity and happiness of said Indians."</i></li> <li>10. <i>Government agrees to "grant to said Indians such donations, presents, and implements . . . as said government may deem meet and proper."</i></li> <li>11. <i>Treaty subject to modifications and amendments by the United States government."</i> (Welch, 2017)</li> </ol>
<p>U.S. GOVERNMENT TREATY WITH THE NAVAJO NATION TREATY ARTICLES FROM THE 1868 TREATY</p>	<p>The Treaty of 1868 was signed between the United States and the Navajo People. The Navajo people agreed to cease war against the U.S. and allow U.S. officials to live within Navajo territories and oversee obligations, including the construction of railroad through the southwest. Though the Navajo people did not relinquish their inherent rights of sovereignty and negotiated their return to their aboriginal lands to maintain culture and language.</p>

<sup>4</sup> Welch, John R. (December 2, 2017). The United States Treaty with Apaches (Treaty of Santa Fe), 1852, and its Relevance to Western Apache History and Territory, Pages SCAT001559-SCAT001569



	<p>Article II: The Navajo (Diné) Reservation</p> <p>Article VI: The Education of Navajo (Diné) Children</p> <p>Article IX: What the Navajo (Diné) Gave Up</p> <p>Article XI: A Timeline for the Navajo's (Diné)</p> <p>Article XIII: The Reservation as a Permanent Home (Native Knowledge 360, 2019)</p>
1830 'INDIAN REMOVAL'	<p>Indian Removal – In 1830 the Indian Removal Act was signed by President Andrew Jackson, giving the federal government the authority to trade Native land east of the Mississippi for land to the west, in the “Indian colonization zone” that the U.S. had acquired during the Louisiana Purchase. (This “Indian territory” was in present-day Oklahoma.)</p> <p>The government was required to negotiate treaties fairly, voluntarily, and peacefully; and not coerce Native Nations into giving up their lands. However, President Jackson ignored the law and forcibly removed Native Americans from their aboriginal territories. In 1831, the Choctaw was the first nation to be removed and forced to travel on foot to the Indian Territory without food, supplies, and other help from the government. Thousands died along the way, as one Choctaw leader told an Alabama newspaper this was the “trail of tears and death.” (History, 2021)</p> <p>The Indian Problem – White settlers that moved west in search of the gold rush and mining opportunities feared and begrudged Native Americans they encountered. In the early years, Federal officials of the American democracy, insisted that the best way to resolve the “Indian problem” was to “civilize” the Native Americans. The movement to civilize Native Americans was birthed with the goal of making Natives American accept white men’s beliefs and value systems by forcing them convert to Christianity, speak, and read English, and adopt European-style economic practices (i.e., individual ownership of land and other property). In the southeast, the “Five Civilized Tribes” which includes Choctaw, Chickasaw, Seminole, Creek, and Cherokee people embraced these customs. (History, 2021)</p>
1880-1920 INDIAN BOARDING SCHOOL MOVEMENT	<p>“Kill the Indian, Save the Man” - Richard Pratt</p> <p>In the effort to fully assimilate Native Americans, it was believed that reservations schools were not sufficient in removing influence of tribal life. In the efforts of immersing Native children into mainstream American life, churches and missionaries were funded to build and run Native Indian</p>

<sup>5</sup> Native Knowledge 360 (2019) The Navajo Treaty of 1868 <https://americanindian.si.edu/nk360/navajo/index.cshhtml#title>

<sup>6</sup> History (July 14, 2021) Trail of Tears. <https://www.history.com/topics/native-american-history/trail-of-tears>

	<p>Boarding Schools established in white communities. Native children were forcefully removed from their families and communities and enrolled in the schools hundreds of miles away from home.</p> <p>Native Children were severely punished for speaking or representing their native heritage, resulting in generational loss of language and tradition – a destruction of Indian culture. (Our Journey, 2020)</p>
1924 – THE SNYDER ACT – THE RIGHT TO VOTE	<p>The Snyder Act of 1924 granted Native American full U.S. citizenship. Although the bill had passed, Native Americans were still prevented from participating in elections because the constitution left it up to the state to decide who has the right to vote. Forty years later, all 50 states finally allowed the first Americans to vote. (LOC, 2021)</p> <p>1934 – <i>“When Miguel Trujillo, a World War II veteran from Isleta Pueblo, went to register to vote, he was denied based on the fact that he was a Native American living on a Pueblo. Trujillo brought suit against the county registrar and won.”</i> (Our Journey, 2021)</p>
1928 – MERIAM REPORT OF 1928	<p>The Meriam report outlines failed Native American policies.</p> <p><i>“For several years the general policy of the Indian Service has been directed away from the boarding school for Indian children and toward the public schools and day schools. Many Native American children are now enrolled in public schools maintained by the state or local governments than in special Indian schools that was maintained by the Federal Government. However, boarding school that are located on either reservation or non-reservation, is the dominant characteristic of the school system maintained by the federal government. The survey staff finds itself obliged to say frankly and unequivocal the provisions for the care of the Indian children in boarding schools are grossly inadequate. The outstanding deficiency is in the diet furnished the Indian children, many of whom are below normal health. The diet is deficient in quantity, quality, and variety. The effort has been made feed the children on a per capita of 11 cents a day, plus can be produced on the school farm, including the dairy.”</i> (Meriam, 1928).</p>

<sup>7</sup> Meriam, Lewis (February 21, 1928) The Problem of Indian Administration. Institute for Government Research. Pages 8-19.

<sup>8</sup> S.943 - 115th Congress (2017-2018): Johnson-O'Malley Supplemental Indian Education Program Modernization Act. (2018, December 31). <https://www.congress.gov/bill/115th-congress/senate-bill/943>

<sup>9</sup> Native Voices (2021) 1934: President Franklin Roosevelt signs the Indian Reorganization Act. <https://www.nlm.nih.gov/nativevoices/timeline/452.html>

<sup>10</sup> Library of Congress (2021) Voting Rights for Native Americans. <https://www.loc.gov/classroom-materials/elections/right-to-vote/voting-rights-for-native-americans/#>

1934 – WHEELER-HOWARD ACT (INDIAN REORGANIZATION ACT) SHIFTS U.S. POLICY TOWARD NATIVE AMERICAN RIGHT TO SELF-DETERMINATION ON JUNE 18, 1934.	<p><i>“In 1934, President Franklin Roosevelt signed the Indian Reorganization Act (IRA), which pushed tribal governments to adopt U.S.-style governance. Through the Indian Reorganization Act, tribes were granted political sovereignty, extended tribal landholdings, and pledged to uphold native customs and language. It marked a partial reversal of the policy of assimilation.” (Our Journey, 2021)</i></p> <p><i>“Federal subsidies were offered to tribes that implemented constitutions like the United States and replace their governments with city council-style governments.” (Native Voices, 2021)</i></p>
1934 – JOHNSON O’MALLEY ACT, AND 2017-2018 JOM SUPPLEMENTAL INDIAN EDUCATION PROGRAM MODERNIZATION ACT	<p><i>“The JOM Program awards contracts to tribal organizations, schools, states, and others to educate Indian students. Under the program, the contract amounts are based on the number of students served. Under the bill, contracting parties must annually report to Interior on the number of students they serve and how the amounts for which contract funds were used. If they fail to submit the report, Interior shall not give them program funds for the fiscal year following the academic year for which the report should have been submitted.” (115th Congress, 2017-2018)</i></p>
1953 – THE TERMINATION ERA	<p>“Congress passed the Federal Termination Policy to abolish tribes and relocate Native Americans. This would essentially end all relations between Native Tribes and the federal government. Native Americans were granted all the rights of citizenship, but all federal aid, services, and protection were withdrawn, resulting in an increase in poverty and the end to sovereignty. It was not until 1970 that the policy of “termination” was officially ended by President Richard Nixon, although most federal termination activities had ceased until 1958. As a result, over 100 tribes were terminated causing tribes to be subject to state laws.” (Our Journey, 2021) (Native Voices, 2021)</p>
1975 – INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT (P.L. 93-638)	<p>A statutory act gives federally recognized tribes the autonomy to contract for the provision of programs &amp; services previously run by the federal government (i.e., BIE, Tribal grant schools, other; and shift toward tribal self-governance).</p> <p>The act promoted self-governance, and to determine educational programs suitable for children from each respective tribal community. The shift in policy changed from terminating Indian tribes to empowering tribes to take over government programs. (Bureau of Indian Affairs, 2021)</p>

<sup>11</sup> Native Voices (2021) Congress seeks to abolish tribes, relocate American Indians. <https://www.nlm.nih.gov/nativevoices/timeline/488.html>

<sup>12</sup> Bureau of Indian Affairs (2021) Bureau of Indian Education. <https://www.bia.gov/bie>

<sup>13</sup> U.S. Department of Education (2021) Every Student Succeeds Act (ESSA) <https://www.ed.gov/essa?src=rn>

<sup>14</sup> S.2167 - 101st Congress (1989-1990): Native American Languages Act. (1990, October 30). <https://www.congress.gov/bill/101st-congress/senate-bill/2167>

1978 – EDUCATION AMENDMENTS ACT OF P.L. 95-561)	Deemed tribal organizations that operated their own schools equivalent to LEAs and made each eligible for direct federal funding, primarily to take control of BIE schools.
1990 – NATIVE AMERICAN LANGUAGE ACT	The Native American Languages Act (NALA) of 1990 (PUBLIC LAW 101-477)— was enacted by Congress on October 30, 1990 and served as a historic repudiation of past policies. Its intent was to "preserve, protect and promote the rights and freedoms of Native Americans to use practice and develop Native American Languages" and "fully recognize the right of Indian Tribes and other Native American governing bodies, States, territories, and possessions of the United States to take action on, and give official status to their Native American languages for the purpose of conducting their own business." (101st Congress, 1989-1990)
2015 – EVERY STUDENT SUCCEEDS ACT (ESSA) OF 2015	<p><i>On December 20, 2015, President Barack Obama signed Every Student Succeeds Act (ESSA). The act was reauthorized and includes provisions that will help to ensure success for students and schools. Below are just a few:</i></p> <ul style="list-style-type: none"> <li><i>• Advances equity by upholding critical protections for America's disadvantaged and high-need students.</i></li> <li><i>• Requires that all students in America be taught to high academic standards that will prepare them to succeed in college and careers.</i></li> <li><i>• Ensures that vital information is provided to educators, families, students, and communities through annual statewide assessments that measure students' progress toward those high standards.</i></li> <li><i>• Helps to support and grow local innovations—including evidence-based and place-based interventions developed by local leaders and educators—consistent with our Investing in Innovation and Promise Neighborhoods</i></li> <li><i>• Sustains and expands this administration's historic investments in increasing access to high-quality preschool.</i></li> <li><i>• Maintains an expectation that there will be accountability and action to effect positive change in our lowest-performing schools, where groups of students are not making progress, and where graduation rates are low over extended periods of time."</i></li> </ul>

## IV. UNDERSTANDING TRIBAL SOVEREIGNTY

The United States is made up of three sovereign entities – the federal government, state governments, and tribal governments. In New Mexico, treaties were negotiated between all tribes and pueblos and the federal government establishing legal and political status. The tribe's authority to self-govern has been reaffirmed by the Supreme Court, Congress, Presidents of the United States and supported by numerous Treaties; the Supreme Court acknowledged that it is the oldest sovereign on the continent.

In Article 1, Section 8, of the United States Constitution “...Congress shall have the power to...regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” Many Indian tribes as distinct governments have, with a few exceptions, the same powers as federal and state governments to regulate their internal affairs. Sovereignty for tribes includes the right to establish their own form of government, determine membership requirements, enact legislation, and establish law enforcement and court systems.

With respect to Tribal Sovereignty the following landmark decision cases are often cited.

*Johnson v. McIntosh (1823)* — on the legality of tribal land grants, the case addressed the issue of privatizing lands for non-native individuals. The case drew on the premises that tribal sovereignty was compromised by colonization and only the federal government had the right to negotiate for land held by Native Americans.

*Cherokee Nation v. Georgia (1831)* — in the efforts of obtaining relief from state jurisdiction of Cherokee Nation Land, the Cherokee Nation filed a lawsuit against the state of Georgia. As a result, the Indian tribes were described as “domestic dependent nations” and retained the federal-tribal relationship.

*Worcester v. Georgia (1832)* — the case raised the issue of applying state law within tribal jurisdiction. The case determined that only Congress has the power of overriding the power of Indian Affairs and state laws are not applicable in Indian Nations. Therefore, tribes do not lose their sovereign powers by becoming subject to the power of the U.S.

The government-to-government relationship between the federal government and tribes has evolved over the years. The public laws and acts passed by congress have allowed tribes to gain autonomy.

- Public Law 280, passed in 1953 refers to the six-state identified by congress (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin), to confer to Indian country criminal jurisdiction, regardless of whether the defendant is Native American or Non-Native. Recently, some PL 280 states and tribes have worked together to return some or all this authority to back to tribes.
- Indian Child Welfare Act (ICWA) passed in 1978 was a response to crisis affecting Native American children, families, and tribes. The law establishes procedures that state agencies and courts must follow when managing Indian child custody matters. The states and tribes have dual jurisdictions; however, some courts defer to tribal governments. In 2022, the NM Governor Michelle Lujan Grisham signed The Indian Family Protection Act (IFPA) into law. The law further expands upon the critical protections for Native American children and families.

- Indian Gaming Regulatory Act (IGRA) enacted in 1988 regulates the conduct of gaming on Indian lands if a tribe should decide to participate in casino gaming. The law mandates state(s) to negotiate in good faith with the tribe to develop a basis for regulation of tribal games and revenue share.

According to the USA GOV Official Guide to Government Information and services there are 574 federally recognized tribes in the United States. These tribes, nations, bands, pueblos, communities, and Native villages through its trust relationship honor the rights reserved through treaties and are eligible for federal funding and services. Each of these tribes have a unique government-to-government relationship with the U.S. government and exercise jurisdiction over their respective territories.

Sovereignty is a legal and political concept—designating the supreme authority to self-govern. Since the early conception of American democracy, the federal government entered hundreds of treaties with Native American tribes. These treaties have been reaffirmed by the Supreme Court, the President of the United States, and Congress. In addition to these treaties, executive orders, and laws have established a fundamental contract between federally recognized tribes and the United States.

To obtain sovereign status, tribal nations surrendered millions of acres of land that made the United States. In exchange, tribes received the guarantee of self-governing as determined through treaties. The treaties and laws create what is known as the federal “trust responsibility,” to protect both tribal lands and tribal self-government, and to provide for federal assistance to ensure the success of tribal communities.

Today, tribal governments provide various programs and services for their citizens (enrolled members), (i.e., social programs, first-responder services, education, workforce development, and energy and land management, etc.) Tribes also resume the responsibility of building and maintaining a range of infrastructure (i.e., powerlines, waterlines, roads, bridges, and public buildings).

State government and tribal governments status and responsibilities are quite similar, many of tribal communities fall within one or more state boundaries, therefore it is critical for both governments to established best practices through a Tribal-State relationship.

## V. TRIBAL SOVEREIGNTY AND AUTHORITY

To ensure the local governing body and tribal entities are providing adequate services to students, and families tribal consultation shall be conducted. Tribal Consultation occurs between an executive member of the district or charter school (i.e., Superintendent, Associate Superintendent or Charter Leader) and the Tribal Leader or their designee (i.e., Tribal Governor, Lt. Governor, President, Vice-President, or Council member).

By guaranteeing that the ultimate authority and decision-makers are at the table when making decisions that impact tribal educational interests, tribal governments, tribal education departments, Native American students, parents, and families, and approved tribal organizations – is of utmost importance.

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<sup>15</sup> USA GOV – Official Guide to Government Information and Services. (2020) Federally Recognized Indian Tribes and Resources for Native Americans. <https://www.usa.gov/tribes>

Conducting a consultation without the proper decision-making authority slows down the process considerably and may result in miscommunication and the deterioration of trust and relationships.

## VI. PURPOSE OF TRIBAL CONSULTATION

With the passage and reauthorization of Every Student Succeeds Act (ESSA), the act established opportunities for states, districts, charters, and tribes to work together to strengthen education system and improve outcomes for Native American students throughout the country. The Tribal Consultation guide is intended to create a clear framework and path for tribes and school districts or schools to follow as mandated by law. The NMPED Indian Education Division (IED) is tasked with providing technical support to local education agencies (LEAs) and tribes as they navigate the process to increase opportunities for successful engagement and partnerships with stakeholders.

Tribal consultation is defined as *formal* when required by federal or state law or mandated by federal or state policy. ESSA and NM's Indian Education Act (IEA) require tribal consultation for NMPED and LEAs. NMPED's Collaboration and Communication Policy establishes agency requirements for government-to-government relations that are designed to achieve educational attainment for Native American students. All consultation with NM's 24 Tribes, Nations, and Pueblos is formal as set forth by federal and state laws.

Tribal Consultation as required by ESSA is intended to help develop relationships among state, tribal, and local educators, and officials. Specifically, establish grounds for a trusting relationship and foster transparent dialogue regarding the leverage of state or federal funds to meet the needs of Native American students and families. Tribal Consultations is meant to be an ongoing communication that can be held monthly, bimonthly, quarterly, and annually.

The effort to build these relationships leads to mutual understanding, respect, and consensus-based decision that results in collaborative efforts to develop appropriate curricula, programs, and services.

### A. AFFECTED LOCAL EDUCATIONAL AGENCIES

In NM, an affected LEA is a school district, tribal school or charter school that receives Federal Title VII grant (subpart 1 of Part A) that exceeds \$40,000 in the previous fiscal year, or a school or district with an enrollment of American Indian/Alaskan Native student population of at least 50 percent. This information is updated annually and is based on enrollment.

### B. SUCCESSFUL TRIBAL CONSULTATION

Successful tribal consultation is determined by timeliness and outcomes (meaningful).

**Timely Tribal Consultation** should occur at the earliest possible stage, prior to the development of a program, initiative, or policy; this provides an opportunity for tribes to provide feedback and is included in

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<sup>16</sup> ESEA, section 8538, Consultation with Indian Tribes, and Tribal Organizations.  
<https://www2.ed.gov/policy/elsec/leg/essa/faq/essafaqtribalconsultation.pdf>



such plans. Tribal Consultations that occur after-the-fact have real effect on the strategy and successful development of programs, policy, etc.

- a. ESSA – Tribal Consultation with tribal governments, tribal education departments, and approved tribal organizations should begin at the earliest possible opportunity, prior to the submission of LEA Education Plans or applications for covered programs.
  - i. The LEA is responsible for initiating contact with Tribes, Nations, and Pueblos to conduct consultation. It is imperative that this is done before any significant decisions regarding plans or applications are made, and to ensure that *“appropriate officials from Indian tribes or tribal organizations ... meaningfully and substantively contribute”* to an LEA’s plan (section 85378 (Q1), ESSA).
- b. IEA – Consultations outlined in the NMPED’s Tribal Communication and Collaboration Policy should take place prior to an agency activity that impacts tribal interests related to educational resources, curriculum development, or the development, changes, and implementation of educational policies and procedures that address the unique educational needs of NM’s Native American students.

**Meaningful Tribal Consultation** is when all parties respect, understand, and develop a process for continuous input and discussion. It is through regular communication, and collaboration that trust is established.

Meaningful consultation is based on open communication and coordination that acknowledges and considers the views of all participants. It also seeks agreement on how to provide continuous assistance to address the unique educational needs of Native American students. It requires LEAs/Charter Schools and State Agencies to share data and information in sufficient detail to allow tribal leaders and stakeholders to evaluate and understand the issues at hand. It necessitates translating complicated challenges into understandable English without over-simplifying or distorting the information, without patronizing tribal leaders, and without bureaucratic and educational jargon, shorthand, and acronyms.

Finally, it requires that everyone must accept that they operate within specific, often regrettable, historic contexts that can interfere with the development of trusting relationships unless all participants can avoid defensiveness and remain open to evaluating problems, ideas, and solutions from all perspectives including tribal perspectives with honoring their sovereignty, and continuing to emphasize communication with trust, respect, and reaching a best possible agreement or outcome for the Native American students we all serve.

## C. COMPONENTS OF A SUCCESSFUL TRIBAL CONSULTATION

The following are recommended for a successful outcome:

1. Consult early and often – prior to acting or finalizing decisions that may impact tribal education interests; conduct regular outreach to tribal governments, tribal departments of education (this

includes approved tribal organizations) with substantive data and information; accept feedback on the subject matter requiring consultation, or elements of the activity or decision to be made.

2. NMPED, school districts and charters, Tribal governments, tribal departments of education, and approved tribal organizations are encouraged to *share information early and often* as it applies to the educational success of Native American students. Examples of information sharing may include curriculum development, the implementation of education policies and procedures, or the allocation of resources that may impact the education of American Indian students.
3. Establish/create a list/agenda that identifies mutual educational priorities, issues, and responsibilities.
4. Ask tribal stakeholders for advice and collaboration on cultural awareness and diversity training for LEA leadership and administrators to foster, support, and sustain positive and productive government to government relationships.
5. Recognize and honor tribal sovereignty and tribal governmental authority as it relates to tribal educational priorities, educational issues, and challenges; and
6. All meetings including government to government (G2G) consultation should not conflict with tribal cultural calendars, feast days, and tribal holidays.

Pursuant to the Indian Education Act (IEA) 22-23A-5-6,

- a. *The Secretary and Assistant Secretary shall convene semi-annual G2G meetings for the express purpose of receiving input on education of tribal students.*
  - b. *On a semi-annual basis, representatives from all NM tribes, members of the commission, the office of the governor, the Indian Affairs department, the legislature, the secretary, the assistant secretary, and the Indian education advisory council shall meet to assist in evaluating current rule changes.*
7. The NMPED and School Leaders should follow-up with tribal leaders to ensure that communication regarding decisions and consultation issues is timely while honoring tribal sovereignty and authority.

## D. EXAMPLES OF FAILED TRIBAL CONSULTATION ATTEMPTS

The following are communication components that shall not be considered as tribal consultation:

- After-the-fact emails or letters
- Notification of decision-making
- Same day or the week of invitations to participate
- Information posted on website
- Sending information home with students

- Informal conversations

## E. TRIBAL CONSULTATION CHECKLIST

To ensure timely and meaningful tribal consultation as well as enhance positive outcomes for Native American students, the NMPED, school districts, charter schools, tribal governments, tribal departments of education, and approved tribal organizations are encouraged to create a tribal consultation checklist like the list detailed below:

PLANNING – BEFORE THE MEETINGS	
	Understand the role of tribal leadership (i.e., Governor vs President, Lt. Governor vs Vice-President, Council members, etc.) and structure of tribal government.
	Understand the cultural differences of each Tribe, Nation, and Pueblo. Respect and honor cultural and traditional practices and incorporate into meeting structure.
	Design a one-pager about the district/charter's current initiatives for tribal leaders ( <i>Be advised that tribal leaders may not be familiar with educational content or regulations and programming</i> ).
	Understand tribal sovereignty and tribal governmental authority as it relates to tribal educational priorities, educational issues, and challenges.
	Establish or enhance internal systems and processes to support consulting early and often, and prior to actions or decisions finalized.
	Design the consultation process in partnership with the tribe, nation, and pueblo.
	Ensure that all parties (LEA and Tribes) have agreed to time, place, agenda, and length of meeting. Both parties should identify a point-of-contact to work out the logistics.
	For all Tribal consultations and public meetings, an agenda should be submitted for review and approval. ( <i>Note: the agenda should include date, time, and location</i> ).
	Conduct outreach to tribal governments, tribal departments of education, and approved tribal organizations with the goal of sharing data and information.
	Receive and respond to feedback on the subject matter requested prior, during, or after consultation.
	Share information early and often as it applies to the educational success of Native American students. <ul style="list-style-type: none"> <li>• (i.e., curriculum development, the implementation of education policies and procedures, notice of deadlines for LEA's educational plans and applications; or the allocation of resources that may impact the education of Native American students).</li> <li>• Conduct outreach to tribal governments, tribal education departments, and approved tribal organizations with the goals of sharing data and information.</li> </ul>
	Plan government-to-government consultation and meetings; such gatherings should not conflict with tribal cultural calendars, feast days, tribal holidays, etc.
	Provide notice of deadlines of the school district and charter school's education plans and applications.

	Collaborate with tribal government to provide cultural awareness and diversity training for school district and charter school leadership and administrators to foster, support, and sustain positive and productive government-to-government relationships.
<b>DURING THE MEETINGS</b>	
	Share information and presentations on educational programs, policies and data (it is recommended that such documents are shared in advance to allow all parties to review).
	Explain proposed program or policy changes; provide an opportunity for questions and input on the proposed program or policy changes; and respond contemporaneously or as soon as possible thereafter.
	Establish/create and agree upon a list that identifies tribal educational priorities, issues, challenges, and establish a timeline for action items that require a follow up.
	When applicable, ensure that both the tribal official and the school district or charter school leader have signed a consultation agreement.
	Review and update (as needed) points of contact for school districts, charter schools, tribal governments, tribal education departments, and approved tribal organizations.
	Receive and respond to feedback on the subject matter requiring consultation, or elements of the activity or decision to be made.
<b>AFTER THE MEETINGS</b>	
	<p>Ensure that the consultation process includes a timeline and agreements for follow-up and transparency.</p> <ul style="list-style-type: none"> <li>Meeting documents, notes taken for the meeting, and agendas should be considered documentation within the purview of the Public Information Act and should be made available to parents, families, and the community upon request.</li> </ul>

## F. CULTURAL CONSIDERATION CHECKLIST

This section is intended for NMPED, school district, and charter school staff who are new, unfamiliar or may need a review or update with cultural considerations to keep in mind with conducting tribal consultation with Native American students and families, tribes, nations, and pueblos. Please see the checklist below.

PRE-PLANNING AND LEARNING	
	<p>Review the link below on the 24 federally recognized tribes, nations, and pueblos as well as their annotated histories, and geographic locations.</p> <p><a href="https://www.newmexico.org/places-to-visit/native-culture/pueblos-tribes-nations/">https://www.newmexico.org/places-to-visit/native-culture/pueblos-tribes-nations/</a></p>
	<p>Each tribe has their own website. Take time to review each site. Review information on the government structure, tribal leadership, linguistic landscape, geographic components, internal departments/entities, education structure, etc.</p> <p><i>(Be aware newly appointed tribal governors/presidents may not be available to meet within the first two months of their appointment.)</i></p> <p><a href="https://www.iad.state.nm.us/#">https://www.iad.state.nm.us/#</a></p>

	<p>Review district and charter school calendars along with the dates of tribal traditional and cultural events to prepare for conversations about tribal students attending event when school is in session.</p> <p>This is a great opportunity to work in collaboration with tribal leaders to place specific feast/cultural days on the calendar for the school board approval for each SY.</p>
	<p>Review State-Tribal Consultation, Collaboration and Communication Policy. See link below:</p> <p><a href="https://webnew.ped.state.nm.us/wp-content/uploads/2019/02/STCR-Policy-with-Colver-Letter.pdf">https://webnew.ped.state.nm.us/wp-content/uploads/2019/02/STCR-Policy-with-Colver-Letter.pdf</a></p>
	<p>When working with a tribe, nation, or pueblo in NM regarding public education, carefully review the NM Public Education Department's Tribal Consultation resources webpage.</p> <p><a href="https://webnew.ped.state.nm.us/bureaus/indian-education/tribal-consultation/">https://webnew.ped.state.nm.us/bureaus/indian-education/tribal-consultation/</a></p>
	<p>Understand the linguistic landscape, tribal language structure, including the preferences by tribes, nations, and pueblos about language use by non-tribal members.</p> <p><i>(For example: If you would like to learn and use a basic welcome/hello/greeting in the tribal language of the tribe(s), nation(s), or pueblo(s) you are meeting with or hosting, seek proper permission to ensure it is permissible.)</i></p>
	<p>Understand the diversity of tribal cultures and language. Within a tribe, nation, or pueblo, tribal members have their own identities. Identities are comprised of many facets (i.e., language, gender, age, religion, sexuality, socioeconomic status, family, class, ethnicity, clan, etc.)</p>
<b>BEFORE THE MEETING/EVENT</b>	
	<p>All parties should identify a point-of-contact (POC). If a POC is not identified, please reach out to tribe, nation, or pueblos administrative offices, or the NMPED IED.</p>
	<p>When scheduling, know and honor when the tribe celebrates feast days and other important cultural dates and events.</p>
	<p>Design an outcomes-based agenda in partnership with your tribal points of contact or representative.</p>
	<p>Ask your tribal contact person about the general terms and specific titles of tribal leaders to ensure it is properly documented and used during meetings.</p>
	<p>Provide meeting participants with the agenda and relevant handouts (data, funding, etc.) prior to the meeting.</p>
	<p>Seek advice and guidance regarding proper protocol, (i.e., opening remarks from leadership; appropriate greetings; potential restrictions, if any, are applicable due Public Health Orders, etc.)</p>
<b>DURING THE MEETING/EVENT</b>	
	<p>Come to the meeting with an open mind. This is an opportunity for all parties to engage and partner free of biases or stereotypes.</p>
	<p>When hosting a meeting, ensure you include plenty of time for introductions and relationship-building.</p>
	<p>"Wait time" and "reflection time" is appropriate when requesting for information, ideas, etc. These meetings may have long periods of silence; do not try to fill the space or move quickly through your</p>

	agenda. Certain requests may require official action from tribal council before committing to any work with an organization outside of their tribal structure.
	Understand and respect that your meeting may move slower than you anticipated; new topics may be added to the agenda; or your expected outcomes might change during the meeting. If you are dealing with looming deadlines, be prepared for those not to be met or to request more time. Tribal decisions are often <i>communal</i> , which may differ from what is the norm in your organization.
	Listen and learn. Observe social queues during the meeting/event. Avoid interrupting, talking over people, or raising your hand while someone else is speaking. Take notes and wait until an appropriate time to speak. Be mindful of communication patterns across all cultures.
AFTER YOUR MEETING/EVENT	
	Allow up to 60 days for input from tribal leaders and/or tribal council if your meeting content includes making decisions that directly impact the tribal community. Work with your tribal points of contact.
	Circle back as needed while adhering to the communal norms mentioned in this document.

## VII. SUGGESTED TRIBAL CONSULTATION MEETING PROTOCOL

The following is a suggested tool/format when conducting tribal consultations.

MEETING ONE	MEETING TWO	MEETING THREE	MEETING FOUR
Onboarding and Building Relationships	Building Background and Information Sharing	Compliance, Funding, and Data Review	Consensus, Agreement, and Formalization
<p>Take the time to share, listen, and learn.</p> <p>Design meeting procedures and norms together.</p> <p>Create a list of active participants, list documents needed, and build a mechanism to share items openly and honestly.</p> <p>GOAL: Establish common understanding along with building trust.</p>	<p>Gather all pertinent information that is important to everyone regarding tribal consultation.</p> <p>Ensure everyone has an opportunity to speak and that all voices are heard.</p> <p>Make a list of must-haves, agreements, and items that can be achieved together.</p> <p>Ask for continued feedback and proactive active listening.</p>	<p>Conduct a data workshop.</p> <p>Learn about laws, regulations, policies, funding, and data.</p> <p>Ensure that everyone understands the non-negotiables and facts that surround the tribal consultation topic.</p>	<p>Come to an understanding, consensus, or agreement, and formalize the consultation, when appropriate.</p>

Another important step in building a good working relationship is to allow and encourage authenticity. The practice of authenticity is being genuine and the building the foundation. Trust is established early in the welcoming process.

The practice of clear communication is critical. Prior to the closure of the meeting, ensure that all participants are aware of next steps and how information will be shared with students, families, and communities that are impacted by the consultation topic.

If a Tribal Leader (Governor or President) elects a Tribal Education Director to serve as a designee, the LEA/School should obtain a written document verifying this request. This written document expires each fiscal year or when a new Tribal Leader is elected, whichever comes first. Please see “Tribal Leader Proxy” template on the next page.

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<sup>17</sup> Suggested Tribal Consultation Meeting Protocol, this method was designed using the NMPED Tribal Collaboration and Communication Policy (2016) in Appendix C of this document and the Equity Council Advisement Meeting Process (2021) found here: <https://webnew.ped.state.nm.us/wp-content/uploads/2021/06/Equity-Council-Advisement-Process-2021.pdf>



[Official Tribal Letterhead]

Date

Tribal Leader

Address

City, NM zip

RE: Tribal Consultation – Tribal Proxy

Dear Superintendent,

Under ESSA and the States Tribal Consultation Policies, the school district aims to respect the government-to-government relationship between Tribes, Nations, and Pueblos.

I am unable to attend the Tribal Consultation meeting on \_\_\_\_\_, 20\_\_\_\_\_. I hereby designate \_\_\_\_\_ who holds the position of \_\_\_\_\_ within the Tribe/Pueblo to act as my proxy for this meeting.

If you have any questions, please contact me at email or phone number.

Sincerely,

\_\_\_\_\_

Tribal Leader Governor/President

## A. Agenda Template

# AGENDA

## Tribal Consultation

Date

Start Time – End Time

Meeting called by:

Attendees:

Attendee Names

Please read:

Reading List

Please bring:

Supply List

Start Time – End Time	Introduction	Location
Start Time – End Time	Item #1 Topic 1: Review Applicable Title Funds and other Funding Sources	Location
Start Time – End Time	Item #2 Topic 2: Review Data	Location
Start Time – End Time	Item #3 Topic 3: Review Program and Services for Students	Location
Start Time – End Time	Item #4 Topic 4: Additional topics and open Q&A	Location

Additional Instruction:

Use this section for additional instructions, comments, or directions.

<b>Tribal Consultation with</b> <u>Name of Tribe, Nation, or Pueblo</u>	<b>DATE</b> Month Day Year
<b>DEMOGRAPHICS</b>	<b>DATA</b>
TOTAL SCHOOL/DISTRICT ENROLLMENT	
TOTAL AMERICAN INDIAN STUDENTS (DISTRICT-WIDE)	
TOTAL PUEBLO STUDENTS (DISTRICT-WIDE)	
TOTAL AMERICAN INDIAN STAFF (ALL POSITIONS/DISTRICT-WIDE)	/
Total Personnel (Administrators, teachers (ALT, Level 1, 2, 3), EAs, Subs, and Ancillary, NALC, etc.	
Total Personal above broken down by Native American Staff	

1. For funding amounts, include the most recent funding allocation.
2. Complete as applicable to school/district

FUNDING SOURCE DESCRIPTION	DISTRICT AMOUNT RECEIVED AND PRIMARY PURPOSE	TOPICS FOR POINTS/RECOMMENDATIONS
<b>TITLE I:</b> This section of the law requires challenging academic standards, aligned statewide testing, reporting and school improvement activities at the state and local levels. This section requires accountability by student subgroup such as race or ethnicity.		
<b>PART A</b> Improving Basic Programs Operated by State and Local Educational Agency	\$ • •	
<b>PART C</b> Education of Migratory Children	\$ • •	
<b>PART D</b> Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk	\$ • •	
<b>TITLE II, Part A-</b> Supporting Effective Instruction	\$ • •	

<b>TITLE III, Part A-</b> English Language Acquisition, Language Enhancement, and Academic Achievement	\$ • •	
<b>TITLE IV, Part A &amp; B</b> A: Student Support and Academic Enrichment Grants B: 21st Century Community Learning Centers	\$ • •	
<b>TITLE V, Part B, Subpart 2</b> Rural and Low-Income School Program	\$ • •	
<b>TITLE VI, Part A, Subpart 1</b> Indian Education Formula Grants to Local Educational Agencies	\$ • •	
<b>TITLE VII, Impact Aid</b> Indian Policies and Procedures Assurance tribal/parent input, Public Hearings, written input	\$ • •	
<b>JOHNSON O'MALLEY</b>	\$ • •	
<b>MCKINNEY VENTO</b>	\$ • •	
<b>OTHER FUNDING SOURCES</b> (Private donors, state grants, etc.)  <b>ESSER III =</b>  <b>Bilingual Multicultural Education Program (BMEP) =</b>  <b>Indian Education Act =</b>  <b>IDEA-B=</b>		

<b>TYPES OF PROFESSIONAL DEVELOPMENT</b> (Consultants, purpose, etc.) PD provided at _____ in the following topics:  •				
<b>DATA COLLECTION</b>	School/District Truancy %	Absenteeism:	Behavioral/At-risk %	Graduation Rate Percentage:
<b>FOLLOW UP</b>				

# AGENDA

## Tribal Consultation

Date

Start Time – End Time

Meeting called

by:Attendees: Attendee Names

Please read: Reading List

Location:

Start Time – End Time	Introduction	Notes
Start Time – End Time	Item #1 Topic 1: What has occurred over the past year; also, provide some background information about what the purpose of ESSA Tribal Consultation is for those new to the process.	
Start Time – End Time	Item #2 Topic 2: Background information to include: Teachers who are fully certified, on Alt Licenses, or Waivers, total number or Subs, EAs, NALC, Counselors, Social Workers, Etc. to include Native American Teachers/All Staff. Data that is specific to the tribes (specific student or staff population and how it is relevant to the community), number of students taking native language classes by language.	
Start Time – End Time	Item #3 Topic 3: How students' academic, cultural and linguistic needs will be identified, supported and what services will be offered.	
Start Time – End Time	Item #4 Topic 4: Parental Engagement	

Additional Instruction:

Use this section for additional instructions, comments, or directions.

## VIII. SUGGESTED DATA TO PROVIDE

Number of AI/AN by tribe:

<ul style="list-style-type: none"> <li>• Test scores disaggregated by grade level</li> <li>• State and local assessments on students' academic progress and growth over time</li> <li>• Average GPA (secondary students only)</li> <li>• Students who have dropped out of school</li> <li>• Transfer students</li> <li>• Students enrolled in career technical education</li> <li>• Students enrolled in AP, Dual Credit,</li> <li>• At-risk students</li> <li>• Numbers of students concurrently enrolled in college</li> <li>• Students with disciplinary concerns</li> </ul>	<ul style="list-style-type: none"> <li>• Students involved in extracurricular programs (sports, band, choir, academic team, FFA, etc.)</li> <li>• Students with high mobility</li> <li>• Students participating in free and reduced lunch programs</li> <li>• Students attending after-school programs</li> <li>• Students who have an Individualized Education Program (IEP) or 504 plan</li> <li>• Students identified as English language learners (ELL)</li> <li>• Students identified for truancy services</li> </ul>	<ul style="list-style-type: none"> <li>• Teachers who are fully certified</li> <li>• Teachers on Alt. Licenses or Waivers.</li> <li>• Total # of Subs, EAs, NALC, Counselors, SW, ETC.</li> <li>• To include # of Native American Staff/All Staff</li> <li>• Data that is specific to the tribes (specifically student or staff population and how it's relevant to the community)</li> <li>• # of students taking native language classes by language</li> </ul>
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<b>AI/AN student population by tribe and grade:</b> <ul style="list-style-type: none"> <li>• Elementary</li> <li>• Middle School</li> <li>• Junior High School</li> <li>• High School</li> </ul>	<b>AI/AN student assessment scores:</b> <ul style="list-style-type: none"> <li>• Reading</li> <li>• Mathematics</li> <li>• Science</li> </ul>	<b>Federal Program Funding</b> What funding amount do you receive per program and what is this money spent on? <ul style="list-style-type: none"> <li>• Title I, Parts A, C &amp; D</li> <li>• Title II Part A</li> <li>• Title III Part A</li> <li>• Title IV, Parts A &amp; B</li> <li>• Title V, Part B subpart 2</li> <li>• Title VI Part A subpart 1</li> <li>• Title VII, Impact Aid</li> <li>• State Grant Opportunities</li> <li>• Other</li> </ul>
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## IX. EXAMPLE OF DATA SHARING AGREEMENT

I. **PARTIES.** (Tribe/Nation/Pueblo) and (Tribal Dept. of Education) affirm that they are authorized to receive information from local educational authorities (LEAs/ School district or Charter school) subject to Family Educational Rights and Privacy Act (FERPA). The parties wish to share data collected by (local educational authorities).

- **SCOPE OF DATA TO BE DISCLOSED.** To fulfill the objectives of this Agreement, the following data must be provided to (Tribe/Nation/Pueblo) and (Tribal Dept. of Education). This data includes personally identifiable information:
  - Class rosters by grade level
  - iStation K-3 Literacy Assessment Data by school, by grade, by subgroup beginning in 2018-19 and annually and thereafter.
  - PARCC proficiency data by school, by grade, by subgroup beginning in 2017-18 and annually and thereafter.
  - Information regarding students who are in danger of failing or need credit recovery to increase graduation success and to support the TPETD Summer School Program.
  - Early Warning System Attendance Information for Taos Pueblo students with 5 or more days absent.

Data shall be provided to (Tribe/Nation/Pueblo) and (Tribal Dept. of Education) for K-12 (Tribe/Nation/Pueblo) students in School District or Charter School.

## X. TIMELINE FOR TRIBAL CONSULTATION ON BUDGET AND LEGISLATIVE PRIORITIES

The NMPED and LEAs should consult tribes on legislative priorities and budget prior to the start of the annual legislative session (including special sessions). This includes the budget design and approval to ensure collaboration on decisions that impact tribes, students, and families.

LEGISLATIVE SESSION	SEND INVITATION	DATE OF MEETING	MEETING INVITES	AGENDA
ODD YEARS		November 20XX		
EVEN YEARS		December 20XX		

	SEND INVITATION	DATE OF MEETING	MEETING INVITES	AGENDA ITEM
BUDGET DESIGN		October 20XX		<i>Use the TESR as a resource</i>
BUDGET APPROVAL		March 20XX		

## XI. RELIEVING THE REPETITIVE CONSULTATION BURDEN ON TRIBES ASSOCIATED WITH MULTIPLE LEAS

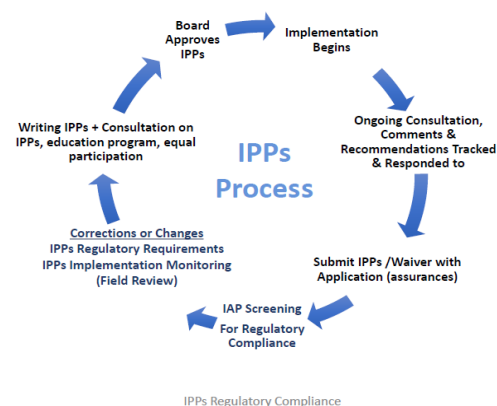
The following are suggestions for LEAs to use in helping relieve the burden of tribes dealing with high turnover in LEA leadership that may cause lack of continuity in systems and processes, and repetitive meetings:

- Review, provide consistency, and strengthen MOUs with the purpose of streamlining the consultation and collaboration components.
- Review annual tribal consultation and collaboration trainings provided by the NMPED to districts, schools, and charters to ensure new LEA staff is informed.
- LEAs may create “unique-to-tribes” onboarding manuals for consistency in tribal consultation and collaboration.
- District/Charter Schools can prepare a document with a high-level overview of current initiatives, services, budget that impact tribes, students, and families.
- District/ Charter Schools can request pertinent information from tribal archives.
- Use information from the Tribal Education Status Report (TESR) as a resource.

## XII. INDIAN POLICIES AND PROCEDURES

The purpose of the Indian Policies and Procedures (IPPs) is to 1.) grant equal participation of Indian children in LEA’s educational programs and activities; and 2.) improve communication and cooperation between LEA and tribal community (to include parents and tribal officials in planning and developing educational programs and activities).

1. The LEA shall implement the IPPs in accordance with the regulation.
2. The LEA shall review the IPPs annually to ensure they comply and are implemented in accordance with this section.
3. If an LEA determines, after input from the tribe(s) and parents of Indian children, that their IPPs do not meet the requirements of this section, the LEA shall amend its IPPs to conform with those requirements within 90 days of its determination.
4. An LEA that amends its IPPs shall, within 30 days, send a copy of the amended IPPs to the Impact Aid Director and the affected tribes.



### XIII. Who holds the purview?

It is not uncommon for individuals unfamiliar with State Government to know the statutory responsibilities of various leaders within the State. Below are some important examples to understand where the purview lies within each leadership role and or agency.

Leadership Role	Purview and Authority as Related to Tribal Consultation and Collaboration
Governor of New Mexico	Signs bills into law.
New Mexico Legislature	Sponsor/carry legislation during legislative sessions.
Secretary of Education	Is responsible for the operations of the NM Public Education Department. School budget authority, flow through of funds, changes in policy requiring consultation, and to administer and enforce the laws with which the secretary or the department is charged.
Public Education Commission	Authorizes State Charter Schools
Assistant Secretary of Indian Education	Purview over Indian Education Act.
Indian Education Division Staff	No purview or authority over school districts/charters or related to tribal consultation. Provides technical assistance related to statute and NM regulation.
Local School Boards	County-elected officials. Purview over district and local charter budgets

### XIV. NEW MEXICO PUBLIC EDUCATION DEPARTMENT – TRIBAL COMMUNICATION AND COLLABORATION POLICY

The purpose of the NM Public Education Department State-Tribal Collaboration and Communication policy (STCA) is to assist the agency in developing policies that will enhance the government-to-government relationship between the State of New Mexico and the 24 Tribes, Nations, and Pueblos as required by the STCA. The resulting collaboration and communication policy will:

1. Formalize the requirement of the STCA to implement a collaboration and communication policy that seeks collaboration and participation by Indian nations, tribes and pueblos in the policy development and program activities or services related to education.

2. Establish a minimum set of requirements and expectations with respect to a government-to-government relationship to increase educational attainment.
3. Promote the development of innovative methods of obtaining collaboration on issues from tribal governments and involving tribal governments in agency decision-making processes that affect education policy.
4. Establish a process that can assist in resolving potential conflicts, maximize inter-governmental relations and enhance an exchange of ideas and resources between the entities for the greater good of all NM's citizens.

For the purposes of guidance on tribal consultation for the NMPED, it is notable that the communication and collaboration policy defines both consultation and collaboration.

The NMPED's *Tribal Communication and Collaboration Policy* defines and describes consultation as:

**Consultation** operates as an enhanced form of communication that emphasizes trust and respect. It is a decision-making method for reaching agreement through a participatory process that:

- i. involves the Agency and Tribes through their official representatives.
- ii. actively solicits input and participation by the Agency and Tribes; and
- iii. encourages cooperation in reaching agreement on the best possible decision for those affected. It is a shared responsibility that allows an open, timely and free exchange of information and opinion among parties that, in turn, may lead to mutual understanding and comprehension.

**Areas of Consultation** the agency, through reviewing proposed policies, rules, or other pending programmatic actions, recognizes the need to assess whether such actions may impact American Indians/Alaska Native and/or tribes, as well as whether consultation should be implemented prior to making its decision or implement its action. To such ends, the agency strives to notify relevant tribal officials and pursue government-to-government consultation, provided that tribal officials also have the discretion to decide whether to pursue and/or engage in the consultation process.

The term collaboration is used alternately within the IEA and NMPED's *Tribal Communication and Collaboration Policy*. Collaboration is defined as:

**Collaboration** is a recursive process in which two or more parties *work together* to achieve a common set of goals. Collaboration may occur between the Agency and Tribes, their respective agencies, or departments, and may involve Indian organizations, if needed. Collaboration is the timely communication and joint effort that lays the groundwork for mutually beneficial relations, including identifying issues and problems, generating improvements and solutions, and providing follow-up as needed.

The distinguishing, but not exclusive, element between consultation and collaboration is the process for information sharing, input, and mutual agreement, and working together to achieve common goals. Consulting and collaborating parties include NMPED, tribal governments and organizations, and the IEAC. Central to the consultation and collaboration process within NMPED is the assistant secretary for the Indian Education Division, the Indian Education Advisory Commission, and Tribal leadership and tribal education directors.

The consultation process within the NMPED *Tribal Communication and Collaboration Policy* begins with identifying the consultation's scope and focus, as well as areas of consultation. Consultation is initiated through written notification of consultation by either NMPED or tribal governments.

In addition to federal and state laws and policies that establish tribal consultation, it is advisable for the NMPED and LEAs to become familiar with the Pueblos', Tribes', and Nations' consultation laws, policies, or protocols; and, together, conduct tribal consultations that meet the requirements of federal, state, and tribal laws and policies as they relate to consultation and Native American student education.

## XV. FEDERAL LAW REQUIRING TRIBAL CONSULTATION

The federal Every Student Succeeds Act (ESSA), which is the reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965, was enacted into law on December 10, 2015. Provisions within ESSA detail specific tribal consultation requirements. Below is the detailed language of such requirements:

### SEC. 8538. [20 U.S.C. 7918] CONSULTATION WITH INDIAN TRIBES AND TRIBAL ORGANIZATIONS

(a) IN GENERAL.—To ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students, an affected local educational agency shall consult with appropriate officials from Indian tribes or tribal organizations approved by the tribes located in the area served by the local educational agency prior to the affected local educational agency's submission of a required plan or application for a covered program under this Act or for a program under title VI of this Act. *Such consultation shall be done in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or tribal organizations to contribute to such plan meaningfully and substantively.*

(b) DOCUMENTATION. —*Each affected local educational agency shall maintain in the agency's records and provide to the State educational agency a written affirmation signed by the appropriate officials of the participating tribes or tribal organizations approved by the tribes that the consultation required by this section has occurred.* If such officials do not provide such affirmation within a reasonable period, the affected local educational agency shall forward documentation that such consultation has taken place to the State educational agency.

The U.S. Department of Education’s (USDOE) webpage provides additional guidance on the tribal consultation requirements, including the USDOE’s internal Consultation and Coordination with American Indian and Alaska Native Tribal Governments consultation document. Appendices A and B also provide additional guidance related to the federally required tribal consultation process.

Finally, national non-profits related to Native American education have also offered guidance on tribal consultation under ESSA. See the following links for details: (1) the National Indian Education Association: NIEA Consultation Guides; and (2) the Midwest Comprehensive Center at American Institutes for Research (AIR): Tribal Consultation under the Elementary and Secondary Education Act.

## XVI. STATE STATUTORY TRIBAL CONSULTATION REQUIREMENTS

The state of New Mexico has tribal consultation requirements related to various education topics in state statutes.

STATUTORY CITATION	STATUTORY LANGUAGE
<i>Section 22-1-9.1 NMSA 1978. New Mexico diploma of excellence; state seal for bilingual and biliterate graduates.</i>	<i>(3) in the case of tribal languages, certification of tribal language proficiency in consultation with individual tribes and adherence to processes and criteria defined by that tribe as appropriate for determining proficiency in its language;</i>
<i>Section 22-2-2.3 NMSA 1978. Department; additional duties; closing a school; consultations with tribal leaders and members and families of students.</i>	<p><i>A. Whenever the department is contemplating closing a public school on tribal land for any reason, it shall consult with tribal leaders and members and families of students attending the public school.</i></p> <p><i>B. Consultation shall include, among other actions, meetings in which the department explains:</i></p> <p><i>(1) the reasons for closing the public school;</i></p> <p><i>(2) the reasons why the department has not or cannot provide additional resources to keep the public school open;</i></p> <p><i>(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;</i></p> <p><i>(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:</i></p> <p><i>(a) culturally and linguistically responsive school policies;</i></p>

STATUTORY CITATION	STATUTORY LANGUAGE
	<p><i>(b) rigorous and culturally meaningful curricula and instructional materials;</i></p> <p><i>(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and,</i></p> <p><i>(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.</i></p> <p><i>(5) how the educational outcomes for the Indian students will be improved by attending another public school;</i></p> <p><i>(6) plans for the public-school buildings that will be left empty by the closure; and</i></p> <p><i>(7) any other matters the department believes provide an adequate explanation of the reasons for closing the public school on tribal lands.</i></p>
<p><i>Section 22-2F-3 NMSA 1978. School support and accountability system; created; establishing a school dashboard; prioritizing resources for schools receiving additional support.</i></p>	<p><i>A. The "school support and accountability system" is created in the department. The department, in consultation with school districts, charter schools, school personnel, tribal nations and the legislative education study committee, shall promulgate rules to carry out the provisions of the School Support and Accountability Act through the system.</i></p>
<p><i>Section 22-5-4.13 NMSA 1978. Local school board; consideration of opening or closing a public school on tribal land; consultation with tribal leaders and members and families of students.</i></p>	<p><i>A. Whenever a local school board is contemplating opening a public school on tribal land, in addition to negotiations involving land or buildings, the local school board and the local superintendent shall consult with tribal leaders and members and families of students who will be eligible to attend the public school on the design of the school's programming.</i></p> <p><i>B. Consultation shall include, among other actions, meetings in which the local school board and local superintendent explain:</i></p> <p><i>(1) how and why they reached the decision to approach the tribe about opening a public school on tribal land; and</i></p> <p><i>(2) the level of their commitment to improving educational outcomes for Indian students by opening a public school and how that commitment will be manifested through:</i></p> <p><i>(a) culturally and linguistically responsive school policies;</i></p>



STATUTORY CITATION	STATUTORY LANGUAGE
	<p><i>(b) rigorous and culturally meaningful curricula and instructional materials;</i></p> <p><i>(c) sensitivity to the tribe's calendar of religious and tribal obligations when making the school calendar; and</i></p> <p><i>(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.</i></p> <p><i>C. Whenever a local school board is contemplating closing a public school on tribal land for any reason, it shall consult with tribal leaders and members and families of students attending the public school.</i></p> <p><i>D. Consultation shall include, among other actions, meetings in which the local board and the local superintendent explain:</i></p> <p><i>(1) the reasons for closing the public school;</i></p> <p><i>(2) the reasons why the local school board has not or cannot provide additional resources to keep the public school open;</i></p> <p><i>(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;</i></p> <p><i>(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:</i></p> <p><i>(a) culturally and linguistically responsive school policies;</i></p> <p><i>(b) rigorous and culturally meaningful curricula and instructional materials;</i></p> <p><i>(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and,</i></p> <p><i>(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;</i></p> <p><i>(5) how the educational outcomes for the Indian students will be improved by attending another public school;</i></p>

STATUTORY CITATION	STATUTORY LANGUAGE
	<p><i>(6) plans for the public school buildings that will be left empty by the closure; and</i></p> <p><i>(7) any other matters the local school board believes provide an adequate explanation of the reasons for closing the public school on tribal lands.</i></p>
<p><i>Section 22-8-6 NMSA 1978. Operating budgets; educational plans; submission; certain reports; failure to submit.</i></p>	<p><i>E. For fiscal year 2021 and subsequent fiscal years, each school district's and each locally chartered or state-chartered charter school's educational plan shall include:</i></p> <p><i>(2) a narrative explaining the identified services to improve the academic success of at-risk students;</i></p> <p><i>(5) a narrative explaining supplemental programs or services offered by the school district or charter school to ensure that the Bilingual Multicultural Education Act [Chapter 22, Article 23 NMSA 1978], the Indian Education Act [Chapter 22, Article 23A NMSA 1978] and the Hispanic Education Act [Chapter 22, Article 23B NMSA 1978] are being implemented by the school district or charter school;</i></p> <p><i>I. In addition to the requirements of Subsection E of this section, a school district or charter school that receives federal or local revenue shall include in its educational plan a narrative explaining how the school district or charter school will use the federal or local revenue to improve outcomes for students or to improve the condition of a school building. No later than October 1 of each year, a school district or charter school that received federal or local revenue in the prior fiscal year shall report to the department on the actual uses of that revenue, including a comprehensive evaluation of how the programs and services provided with that revenue improved outcomes for students or how capital projects undertaken improved the condition of a school building. A school district or charter school that is required under federal law to consult with tribal entities as a condition of receiving impact aid funds shall include in its educational plan a detailed narrative of its consultations with tribal entities and the results of those consultations. The school district or charter school shall transmit the October 1 spending and outcomes report to the appropriate tribal authorities. No later</i></p>

STATUTORY CITATION	STATUTORY LANGUAGE
	<p><i>than November 15 of each year, the department shall compile the federal and local revenue outcomes reports into a statewide report to the legislative education study committee and the legislative finance committee that includes an analysis and identification of effective programs and strategies that improve outcomes for students.</i></p> <p><i>G. A school district or charter school operating budget and educational plan shall prioritize federal and local revenue for purposes relating to the Indian Education Act [Chapter 22, Article 23A NMSA 1978]; for capital expenditures authorized by the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978], the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978]; or for research-based or evidence-based social, emotional or academic interventions for which at-risk program units may be used.</i></p>
<p><i>Section 22-8B-12 NMSA 1978. Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.</i></p>	<p><i>(7) for charter schools located on tribal land, documentation of ongoing consultation pursuant to the Indian Education Act [Chapter 22, Article 23A NMSA 1978].</i></p>
<p><i>Section 22-8B-12.2 NMSA 1978. Charter schools; proposals to open or close a public school on tribal land; consultation with tribal leaders and members and families of students.</i></p>	<p><i>A. If a charter school applicant wants to open a charter school on tribal land, it shall negotiate with and receive the tribal government's approval for the public school before the charter school authorizer acts on the application. The applicant shall also consult with tribal leaders and members and families of students who will be eligible to attend the public school.</i></p> <p><i>B. Consultation shall include, among other actions, meetings in which the charter school applicant shall explain:</i></p> <p><i>(1) how and why the applicant reached the decision to approach the tribe about opening a public school on tribal land; and</i></p> <p><i>(2) the level of the charter school applicant's commitment to improving educational outcomes for Indian students by opening a public school and how that commitment will be manifested through:</i></p>

STATUTORY CITATION	STATUTORY LANGUAGE
	<p><i>(a) culturally and linguistically responsive school policies;</i></p> <p><i>(b) rigorous and culturally meaningful curricula and instructional materials;</i></p> <p><i>(c) sensitivity to the tribe's calendar of religious and tribal obligations when making the school calendar; and</i></p> <p><i>(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.</i></p> <p><i>C. Whenever a charter school authorizer is contemplating closing a charter school on tribal land, for any reason, it shall consult with tribal leaders and members and families of students attending the charter school.</i></p> <p><i>D. Consultation shall include, among other actions, open meetings in which the charter school authorizer and the head administrator of the charter school explain:</i></p> <p><i>(1) the reasons for closing the charter school;</i></p> <p><i>(2) the reasons why the charter school has not or cannot provide additional resources to keep the charter school open;</i></p> <p><i>(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;</i></p> <p><i>(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:</i></p> <p><i>(a) culturally and linguistically responsive school policies;</i></p> <p><i>(b) rigorous and culturally meaningful curricula and instructional materials;</i></p> <p><i>(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and</i></p> <p><i>(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;</i></p>

STATUTORY CITATION	STATUTORY LANGUAGE
	<p><i>(5) how the educational outcomes for the Indian students will be improved by attending another public school;</i></p> <p><i>(6) plans for the public school buildings that will be left empty by the closure; and</i></p> <p><i>(7) any other matters the charter school governing body and head administrator believe provide an adequate explanation of the reasons for closing the charter school.</i></p>
<p><i>Section 22-23A-2 NMSA 1978. Purpose of act [the Indian Education Act]</i></p>	<p><i>D. ensure that the department of education [public education department] partners with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities;</i></p> <p><i>E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico and the Navajo Nation to address the unique issues of educating students in Navajo communities that arise due to the location of the Navajo Nation in those states;</i></p> <p><i>F. provide the means for a formal government-to-government relationship between the state and New Mexico tribes and the development of relationships with the education division of the bureau of Indian affairs and other entities that serve American Indian students;</i></p> <p><i>G. provide the means for a relationship between the state and urban American Indian community members to participate in initiatives and educational decisions related to American Indian students residing in urban areas;</i></p> <p><i>H. ensure that parents; tribal departments of education; community-based organizations; the department of education [public education department]; universities; and tribal, state and local policymakers work together to find ways to improve educational opportunities for American Indian students;</i></p>
<p><i>Section 22-23A-4 NMSA 1978. Rulemaking.</i></p>	<p><i>B. The secretary shall consult on proposed rules implementing the Indian Education Act with the Indian education advisory council and shall present rules for review and comment at the next semiannual government-to-government meeting pursuant to Section 22-23A-5 NMSA 1978.</i></p>
<p><i>Section 22-23A-5 NMSA 1978. Indian education division; created; assistant secretary; duties.</i></p>	<p><i>E. In accordance with the rules of the department and after consulting with the Indian education advisory council and determining the resources available within the department, the assistant secretary shall:</i></p>

## XVII. STATE REGULATORY TRIBAL CONSULTATION REQUIREMENTS

The state of New Mexico also has tribal consultation requirements related to various education topics in state administrative rules.

ADMINISTRATIVE RULE CITATION	SPECIFIC ADMINISTRATIVE RULE LANGUAGE
6.35.2.11 NMAC, AMERICAN INDIAN/ALASKA NATIVE STUDENT NEEDS ASSESSMENT	A. Beginning in the 2020-2021 school year, a historically defined Indian impacted school district shall:  (3) conduct a tribal consultation with local Indian nations, tribes, and pueblos to prioritize and address, the needs identified in the American Indian/Alaska Native student needs assessment;
6.35.2.12 NMAC, SYSTEMIC FRAMEWORK FOR IMPROVING EDUCATIONAL OUTCOMES FOR AMERICAN INDIAN AND ALASKA NATIVE STUDENTS	A. Beginning in the 2020-2021 school year, a historically defined Indian impacted school district shall:  (2) conduct a tribal consultation with local Indian nations, tribes, and pueblos on the development and implementation of the systemic framework for improving educational outcomes for American Indian and Alaska Native students.

## XVIII. NEW MEXICO INDIAN EDUCATION ACT 2003

NM's Indian Education Act (IEA) of 2003, provides services to 33 school districts and charter schools that serve a significant number of Native American students through programs and services aligned to NMSA 1978, Sections 22-23A-1 through 22-23A-11. (See map on p. 19). As outlined within the IEA, the Division focuses on establishing equitable and culturally relevant learning environments, culturally relevant curricula, and instructional materials for Native American students enrolled in public schools.

The IEA along with PED recognizes the importance of maintaining a government-to-government relationship with Tribes, Nations, Pueblos, Native American urban community members, and Native American community-based organizations.

### The Act:

#### Ensures:

- Native American students are provided with a learning environment that is equitable and culturally relevant and educators have access to culturally relevant instructional materials.
- Maintenance of Native languages
- Establish partnerships to increase tribal involvement and control over schools

- Tribes are notified of curricula development for their support and approval
- Establish of collaborative efforts among relevant organizations and parents to improve educational opportunities for Native American students

**Encourages:**

- Agreements that align with the Bureau of Indian affairs and state assessment programs
- Cooperation among Navajo communities across AZ, UT, NM
- Parental involvement

**Provides for:**

- Study, development, and implementation of educational systems that positively affect academic success of Native American students
- Formal government to government relationship between NM and NM tribes and other entities that serve Native American Students
- Means for a relationship between state and urban American Indian communities' members to participate in initiatives and educational decisions related to Native American students residing in urban areas

## **XIX. AMENDED INDIAN EDUCATION ACT GUIDANCE**

The IEA directs districts and charters to:

1. Develop a student needs assessment, using valid and reliable data
2. Prioritize in their respective school district budget the needs of American Indian (AI) and Alaska Native (AN) students and closing the achievement gap between AI and AN students and all other student groups using state and federal funding for AI and AN students, at-risk students, and economically disadvantaged students
3. Determine support for public schools, at home, and in the community.
4. Meet with Tribes to prioritize needs; and conduct Tribal Consultations
5. Apply for Federal, State, and private funding to address prioritized needs.
6. Host bi-annual public meetings with Tribal leaders, parents, and the Indian Education Division to report on prioritized needs and progress toward addressing them; and
7. Develop a systemic framework to improve educational outcomes for Indian students, and to do so in collaboration with stakeholders, including school employees, Tribal leaders, Indian students and families, social services providers, and community and civic organizations.
8. Develop an accountability tool which shall be reevaluated annually, that measures the success or failure of a public schools efforts to the systemic framework.
9. Submit a written statement to the department, detailing the ways in which the historically defined Indian impacted school district's budget successfully met or failed to meet the prioritized needs from the most recent American Indian/Alaska Native student needs assessment.

## XX. NATIVE AMERICAN LANGUAGE AND CULTURE AND CERTIFICATION

The purpose of the Certification in Native American Language and Culture K-12 is to provide a certification system, whereby any public school district and charter may employ non-degreed individuals to teach in the native language and culture of a specific Pueblo, Tribe, or Nation, in any grade K through 12. Each NM Pueblo, Tribe, or Nation shall have the opportunity to collaborate with the NMPED to develop a Memorandum of Agreement (MOA) for the certification process. The MOA shall be negotiated every three years for a constant update and verification of any addendums to certification of Native language and culture educators.

- A. Each Tribe, Nation, or Pueblo shall have the opportunity to develop standards and criteria for determining competency for initial certification and renewal of certification, and if participating shall verify in writing to NMPED that these standards and criteria have been developed and are maintained on file with the certifying Tribe, Nation, or Pueblo.
- B. Each NM Tribe, Nation, or Pueblo in collaboration with NM PED shall have the opportunity to develop and consistently use a process for determining if candidates for the initial or continuing certification for Native American language and culture have met the standards of competence and language proficiency required for certification. The participating Tribe, Nation, or Pueblo shall verify in writing to NM PED that the process has been developed and is the sole basis for determining language and culture competence, and that a description of the process is maintained on file with the certifying Tribe, Nation, or Pueblo. *NM PED shall not review or approve the standards and criteria developed and approved by each of the NM Tribe, Nation, or Pueblos.*

## XXI. CERTIFICATION

(School Personnel Act, 22-10A-1 through 22-10A-39, Appendix A)

The state board [department] may issue a Native American language and culture certificate to a person proficient in a Native American language and culture of a NM tribe or pueblo who meets criteria established by the state board. A baccalaureate degree is not required for the person applying for this certificate. The Native American language and culture certificate shall be issued and renewable in accordance with procedures established by the state board.

Additional resources: <https://webnew.ped.state.nm.us/bureaus/licensure/how-to-apply/native-american-language-and-culture-certificate-prek-12/>



## XXII. NEW MEXICO BILINGUAL MULTICULTURAL EDUCATION ACT OF 2004

State regulation 6.32.2 NMAC provides requirements for state-funded bilingual multicultural education programs in accordance with the Bilingual Multicultural Education Act, Section 22-23-1 NMSA 1978. Thus, the state's bilingual multicultural education program (BMEP) goals are for **all** students, including English language learners, to:

- A. become bilingual and biliterate in English and a second language, including Spanish, a Native American language (with appropriate approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children) or another language. For Native American languages that are oral only, the literacy component shall be measured only in the skill areas/domains of listening, speaking, and comprehension; and
- B. meet state academic content standards and benchmarks in all subject areas [6.32.2.9 NMAC]

The State of New Mexico currently funds language programs in:

Keres	Jicarilla Apache
Zuni	Mescalero Apache
American Sign Language	Navajo
Spanish	Tewa
Tiwa	Towa

Public schools providing a Native American language revitalization program, or other approved Native American bilingual multicultural education model, shall obtain approval from tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children. An approved program shall include:

1. instruction to attain language proficiency and literacy skills in English and a Native American language (where tribal language is written); for Native American languages that are oral only, the literacy component shall be measured only in the skill areas or domains of listening, speaking and comprehension.
2. instruction to attain academic achievement in English and a Native American language.
3. sheltered content instruction.
4. standardized curriculum, including instructional materials with scope and sequence, that is aligned with the state academic content standards, benchmarks and performance standards, unless otherwise agreed to in writing by the department in accordance with the Indian Education Act Article 23A;
5. instruction in the history and cultures of New Mexico Native American tribes; and
6. culturally and linguistically responsive instruction designed to develop cross-cultural skills.

Memo for Professional Development for Bilingual Multicultural Education (BME) Programs:

[https://webnew.ped.state.nm.us/wp-content/uploads/2018/04/ADA-BMEP\\_PD\\_Guidance\\_Memo\\_09.28.2016-1.pdf](https://webnew.ped.state.nm.us/wp-content/uploads/2018/04/ADA-BMEP_PD_Guidance_Memo_09.28.2016-1.pdf)

Additional Resources: State Seal of Bilingualism-Biliteracy (SSBB) – New Mexico Public Education Department <https://webnew.ped.state.nm.us/bureaus/languageandculture/seal-of-bilingualism-biliteracy/>

## XXIII. NMPED RULEMAKING

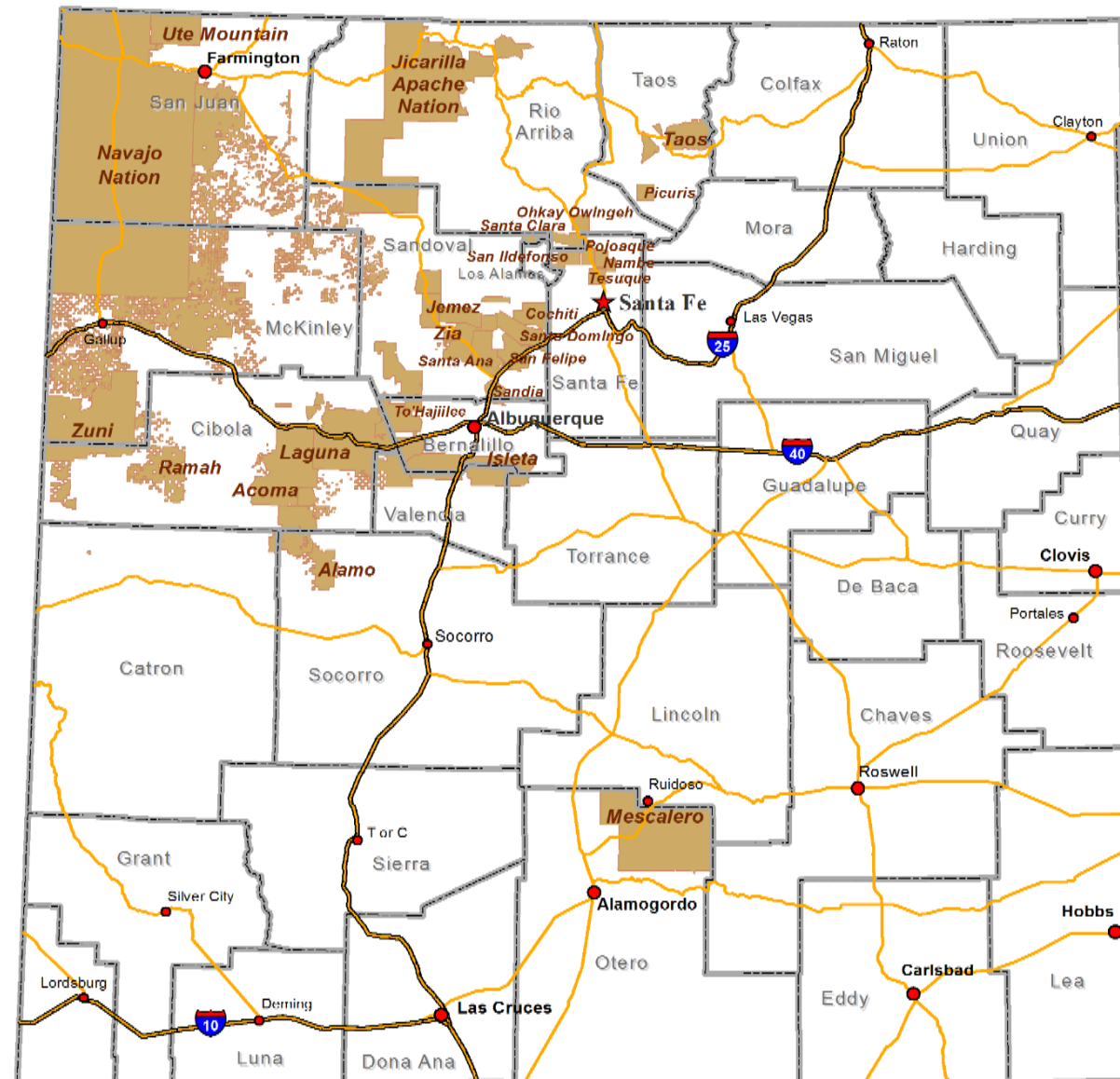
NMPED engages in tribal consultation with rule making cited in the Indian Education Act (22-23A-4 NMSA 1978) and NMPED Collaboration and Communication Policy per the State-Tribal Collaboration Act (STCA). The State Rules Act (Chapter 14 Article 4 NMSA) lays out guidelines for rulemaking for all state agencies. The Statutory Authority (22-2-2 NMSA, Department, General Duties) gives the Secretary of Education the right to promulgate rule (See Appendix C).

### 22-23A-4. Rulemaking.

The secretary shall ensure that the duties prescribed in the Indian Education Act [22-23A-1 NMSA 1978] are carried out and that each division within the department is collaborating to fulfill its responsibilities to tribal students. The secretary shall consult on proposed rules implementing the Indian Education Act with the Indian education advisory council and shall present rules for review and comment at the next semiannual government-to-government meeting pursuant to Section 22-23A-5 NMSA 1978.

## XV. SCHOOL DISTRICTS LOCATED ON OR NEAR TRIBAL LAND

### Native Nation Lands New Mexico



#### Legend

- ★ Capital
- Cities and Towns
- Interstate
- US Highway
- Native Nation Boundary
- New Mexico County Boundary

## XVI. GOVERNORS TERM LIMITS

TRIBE	TERM PERIOD
Acoma Pueblo	2 year- Jan 1, 2022 - Dec 31, 2024
Cochiti Pueblo	1 year- Jan 1, 2022- Dec 31, 2023
Isleta Pueblo	2 year- Jan 1, 2021 - Dec 31, 2023
Jemez Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Jicarilla Apache	2 year- July 1, 2020 - June, 2022
Laguna Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Mescalero Apache	2 year- Jan 1, 2022 - Dec 31, 2024
Nambe Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Navajo Nation	4 year- Jan 1, 2018 - Dec 31, 2022
Ohkay Owingeh	2 year- Jan 1, 2021 - Dec 31, 2023
Picuris Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Pojoaque Pueblo	4 year- Jan 1, 2019 - Dec 31, 2022
Sandia Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
San Ildefonso	1 year- Jan 1, 2022 - Dec 31, 2023
San Felipe Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Santa Ana	1 year- Jan 1, 2022 - Dec 31, 2023
Santa Clara Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Santo Domingo	1 year- Jan 1, 2022 - Dec 31, 2023
Taos Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Tesuque Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Zia Pueblo	1 year- Jan 1, 2022 - Dec 31, 2023
Zuni Pueblo	4 year- Jan 1, 2019 - Dec 31, 2022

## XVII. TRIBAL EDUCATION DEPARTMENTS

Tribal Departments of Education (TEDs) are departments or divisions within the tribal government structure that are responsible for educating their tribal members, youth, and adults. Additionally, TEDs are directed by tribal governments to represent the tribe, nation, or pueblo, keeping in mind tribal sovereignty, tribal education priorities, needs, and resources.

NMPED officially recognizes these tribal entities and is committed to collaborate and respectfully work with each of the 23 tribal governments in the state.

Below is a chart detailing the current tribal education directors and staff, as of January 2022:

*(Note: Contact will be updated quarterly on IED website)*

## XVIII. TRIBES, NATIONS, PUEBLOS CONTACT INFORMATION

TRIBE	NAME AND TITLE	EMAIL
<b>Acoma Pueblo</b>	Tribal Ed. Director - Melissa Riley	mriley@poamail.org
<b>Cochiti Pueblo</b>	Tribal Ed. Director - Geraldine Jojola	geraldine.jojola@cochiti.org
<b>Isleta Pueblo</b>	Tribal Ed. Director – Charlene Lucero	marianserna@yahoo.com
<b>Jemez Pueblo</b>	Tribal Ed. Director - Kevin Shendo	shendo@jemezpueblo.org
<b>Jicarilla Apache</b>	Tribal Ed. Director – Roz Carroll	rz_carroll@yahoo.com
<b>Laguna Pueblo</b>	Program Director - Monika Whitmore	m.whitmore@lagunaed.net
	Tribal Edu. Director - Patricia Sandoval	p.sandoval@lagunaed.net
<b>Mescalero Apache</b>	Tribal Education Director - Kelton Starr	kstarmat@yahoo.com
	Director of Language Prog.- Oliver Enjady	oliverenjady@yahoo.com
<b>Nambe Pueblo</b>	Tribal Ed. Director - Quella Musgrave	qmusgrave@nambepueblo.org
	Education Coordinator - Paige Loretto	ploretto@nambepueblo.org
	Program Director - Monica Vigil	mvigil@nambepueblo.org
<b>Navajo Nation</b>	Superintendent- Dr. Harold Begay	haroldgbegay@nndode.org
	Assist. Superintendent- Dr. Carmen Moffett	mariadcarmenmoffett@nndode.org
<b>Ohkay Owingeh</b>	Ohkay Owingeh Principal- Claudia Sena	claudia_sena@OOCs.org
	Victoria Aquino	victoria_aquino@education.oocs.org
<b>Picuris Pueblo</b>	Education Director-Cecelia Shields	educationdirector@picurispueblo.org
<b>Pojoaque Pueblo</b>	Tribal Ed. Director - Cristal Suazo	csuazo@pojoaque.org
<b>Sandia Pueblo</b>	Education Admins. – Nico Otero	notero@sandiapueblo.nsn.us
	Tribal Education Director-Beatriz Pacheco	bpacheco@sandiapueblo.nsn.us
<b>San Ildefonso</b>	Tribal Ed. Director – Rick Juliani	rick.juliani@sanipueblo.org
<b>San Felipe Pueblo</b>	Tribal Programs Administrator - Anne Oandasan	aoandasan@sfpueblo.com
	Education Director- KatieAnn Juanico	kjuanico@sfpueblo.com
<b>Santa Ana Pueblo</b>	Education Director- Kevin Facer	Kevin.Facer@psaedu.org
	Language and Culture Program Coordinator- Juan Montoya	Juan.Montoya@psaedu.org
<b>Santa Clara Pueblo</b>	Tribal Ed. Director – Jeremy Oyenque	joyenque@santaclarapueblo.org
<b>Santo Domingo</b>	Tribal Ed. Director - Shana Coriz	shcoriz@kewa-nsn.us
	Language Director - Patricia Ann Coriz	PACoriz@kewa-nsn.us
<b>Taos Pueblo</b>	Tribal Ed. Director - Bettina Sandoval	bsandoval@taospueblo.com
<b>Tesuque Pueblo</b>	Tribal Ed. Director – Marita Hinds	mhinds@pueblooftesuque.org
<b>Zia Pueblo</b>	Educational Services Manager - Marsha Leno	mleno@ziapueblo.org
<b>Zuni Pueblo</b>	Division Director - Bernadette Panteah	bernadette.panteah@ashiwi.org
	Director of Instruction and Applied Indigenous Studies- Reynelle Lowsayatee	reynelle.lowsayatee@ashiwi.org
	Executive Director - Hayes Lewis	hayes.lewis@ashiwi.org

## XIV. INDIAN EDUCATION DIVISION CONTACT INFORMATION

NAME	PHONE	EMAIL	TITLE
Rebecca Reyes	(505) 670-3781	<a href="mailto:Rebecca.Reyes2@state.nm.us">Rebecca.Reyes2@state.nm.us</a>	Deputy Director/Interim Assistant Secretary
Cassaundra Garcia	(505) 500-5152	<a href="mailto:Cassaundra.Garcia@state.nm.us">Cassaundra.Garcia@state.nm.us</a>	Business Operations Specialist
Judith Harmon	(505) 660-2760	<a href="mailto:Judith.Harmon@state.nm.us">Judith.Harmon@state.nm.us</a>	Data Analyst
Gloria A. Hale	(505) 396-1264	<a href="mailto:Gloria.Hale@state.nm.us">Gloria.Hale@state.nm.us</a>	School Design Specialist
Elena Aguilar	(505) 372-9458	<a href="mailto:elena.aguilar@state.nm.us">elena.aguilar@state.nm.us</a>	Tribal Consultant Specialist
Derek Begay	(505) 231-6540	<a href="mailto:derek.begay@state.nm.us">derek.begay@state.nm.us</a>	Navajo Nation Specialist
Elizabeth Bahe	(505) 412-2450	<a href="mailto:elizabeth.bahe@state.nm.us">elizabeth.bahe@state.nm.us</a>	Native American/Indigenous Language Specialist

## APPENDIX A: SUGGESTED RESOURCES

### **IMPACT AID**

Phone: 202-260-3858

E-mail: [Impact.Aid@ed.gov](mailto:Impact.Aid@ed.gov)

Impact Aid Grant System (IAGS) Portal with Resources <https://impactaid.ed.gov/resources/>  
Legislation, Regulations, and Guidance <https://impactaid.ed.gov/legislation/>

### **Implementing the Indian Education Act**

<https://nmonesource.com/nmos/nmac/en/item/18063/index.do#!b/t6c35p2>

### **Indian Education Article 22-23A-1 through 22-23A-11**

<https://www.nmonesource.com/nmos/nmsa/en/item/4368/index.do#!b/a23A>

### **State-Tribal Collaboration Act Policy**

<https://webnew.ped.state.nm.us/wp-content/uploads/2019/02/STCR-Policy-with-Colver-Letter.pdf>

### **Title VI 506 Form:**

[506form.pdf](#)

### **NM Pueblos**

<https://www.iad.state.nm.us/pueblo-tribes-and-nations/pueblos/>

### **Navajo Nation**

<https://www.iad.state.nm.us/pueblo-tribes-and-nations/navajo/>

### **Apache Tribes and Nations**

<https://www.iad.state.nm.us/pueblo-tribes-and-nations/apaches/>

### **Tribal Feast Days, Festivals & Events - New Mexico Tourism - Travel & Vacation Guide**

<https://www.newmexico.org/events/big-annual-markets/>

### **Feast Days | Indian Pueblo Cultural Center**

<https://indianpueblo.org/feast-days/>

## GLOSSARY AND ACRONYMS

ACRONYM/ TERM	DEFINITION
24 Districts	24 out of the 89 New Mexico school districts that are located on or near New Mexico tribal lands and have an AI student population
520 Certification	Native American language and culture certification license through the NMPED. Teachers who are certified by tribal governments to teach their native language in NM public schools
Academic Program	All subject matter areas of the curriculum of the school, as defined in the New Mexico Standards for Excellence, 6.29.1-11 NMAC. Content Standards and Benchmarks. Especially refers to the core content areas— math, social studies, and language arts
AI	American Indian, same as NA (Native American)
American Indian	A person who is enrolled as a member of a U.S. federally recognized Nation, Tribe, or Pueblo
BAR	Budget Adjustment Request
Best Practice	An efficient and effective way of accomplishing a task, based on repeatable procedures that have proven themselves effective over time for large numbers of people
Bicultural	Identifying with the cultures of two different language groups. To be bicultural is not necessarily the same as being bilingual and vice versa.
BIE	Bureau of Indian Education
Bilingualism	Term that describes equal facility and proficiency in two languages, commensurate with age and proficiency level of student
Biliteracy	The ability to effectively communicate or understand thought and ideas through two languages' systems and vocabulary, using their written symbols
CBE	Cultural-based education reflects, validates, and promotes the values, worldviews, and languages of the local community's cultures.
CCR	College and Career Readiness
CCSS	Common Core State Standards
CFR	Code of Federal Regulations
Community Civic Engagement	Individual and collective actions designed to identify and address issues of public concern within Indigenous or urban settings
Cultural Competence	A set of congruent behaviors, attitudes, and policies that come together in a system and enables that system to work effectively in cross-cultural situations; as well as, applicability of materials and methodologies to one's own ethnicity, home and community environment, and/or personal experiences
Culturally and linguistically different	Students who are of a different cultural background than the mainstream United States culture and whose home or heritage language—inherited from the student's family, Tribe, or country of origin—is a language other than English
Culture	The total shared way of a given people. This comprises modes of thinking, acting, law, language, art, and customs. Also material products—such as houses, clothes, foods, tools, and so on—are aspects of culture.



Curricula	Set of courses, defined content of course, and offered at a formal academic school
District	Public school or any combination of public schools in a district
DODE	Navajo Nation's Department of Diné Education
Dual Language Immersion	Dual language immersion is designed to develop high academic achievement in two languages, additive bilingual and biliterate proficiency, and cross-cultural skills development.
ELD	English language development refers to instruction designed specifically for English learners/limited English proficient students to further develop listening, speaking, reading, and writing skills in English beyond English as a second language.
ELL	English language learners are students whose home or heritage language influence is not English and who are unable to speak, read, write, and understand English at a level comparable to their grade-level, English proficient peers, as determined by objective measures of proficiency.
ENIPC	Eight Northern Indian Pueblos Council
EoC	End-of-course exam
EPSS	Educational plan for student success—long-range plan for improvement that is developed by individual schools and districts
ESEA	Elementary and Secondary Education Act of 1965, as amended
ESL	English as a second language is an educational approach in which English learners/limited English proficient students are instructed in the use of the English language. Instruction is based on a special curriculum that typically involves little or no use of the Native language, focuses on language (as opposed to other content), and is usually taught during specific school periods.
Evaluation	Appraising or judging persons, organizations, or things in relation to stated objectives, standards, or criteria to also include methods of observation through defined objective or subjective procedures used to obtain and organize information for appraisal in relation to stated objectives, standards, or criteria.
FEP	Fluent English proficient are students, who are able to speak, read, write, and understand the English language at levels comparable to their grade-level English proficient peers, as determined by objective measures of proficiency normed for language minority students.
FY	Fiscal year
G2G	Government-to-government
HED	New Mexico's Higher Education Department
Heritage Language (Home Language)	The language, other than English that is inherited from a family, Tribe, community, or country of origin, whether or not the student is proficient in the language
IAD	New Mexico's Indian Affairs Department
IEA	New Mexico's Indian Education Act (Chapter 22, Article 23A NMSA 1978)
IEC	Indian Education Committee (district level)
IED	NM PED Indian Education Division
IHE	Institutions of Higher Education (e.g., UNM, NMSU, WNMU, NTC )
Indigenous	Native or tribal groups of the Americas that maintain a cultural identity separate from the surrounding dominant cultures

Indigenous Research	Study of the unique, traditional, local knowledge existing within, and developed around, the specific conditions of persons indigenous to a particular geographic area, and validated through measurements established within educational systems
IPP	Indian Policies and Procedures—an LEA that claims children residing on Indian lands for Title VIII Impact Aid funding shall develop and implement policies and procedures. The LEA shall establish these policies and procedures in consultation with, and based on information from, tribal officials and parents of those children residing on Indian lands who are Indian children (CFR, Title 34 - Education, Chapter. II - OESE, DOE, Part 222).
JOM	Johnson O'Malley. This program is a trust responsibility under the Department of Interior and not the Department of Education.
Language Acquisition	The process of acquiring a language
Language Proficiency	Measure of how well an individual can speak, read, write, and comprehend a language, comparable to the standard expected for native speakers of the language. Language proficiency is composed of oral (listening and speaking) and written (reading and writing) components, as well as academic and non-academic language and comprehension of said language.
Language Majority	A person or language community that is associated with the dominant language of the country
Language Minority	A person or language community that is different from the dominant language of the country
LEA	Local educational agency, usually a district or a State charter school
LEP	Limited English proficient is a term used by the Federal government, most states, and local school districts to identify those students who have insufficient English to succeed in English-only classrooms. The preferred term is English language learner.
Linguistic Competency	A speaker's internalized knowledge of a language that enables the speaker to communicate effectively and convey information in a manner that is easily understood by culturally diverse audiences
MOA/MOU	Memorandum of Agreement/Memorandum of Understanding
NA	Native American, same as AI
NALC	Native American language and culture license. Teachers certified by Tribal governments to teach their Native language in NM public schools
Native Language	The language a person acquires first in life or identifies with as a member of an ethnic group. NM recognizes this as any of the eight Native American languages spoken by NM tribes and pueblos (Jicarilla Apache, Mescalero Apache, Diné, Keres, Tewa, Tiwa, Towa, and Zuni).
Native Language Instruction	The use of a child's home language (generally by a classroom teacher) to provide lessons in academic subjects
Native Language Maintenance Program	The continuation, preservation, and on-going development of aspects inclusive of a Native language program to be implemented into an academic system

Native Language Revitalization Program	The use, instruction, and development of a Native language program to ensure the survival of the indigenous home language to be sustained in the tribe and community
New Mexico Assessments	See the description on the last page of this report.
NIEA	National Indian Education Association
NL and C	Native language and culture
NM IEAC	New Mexico Indian Education Advisory Committee
ODLA	Oral Diné Language Assessment. The Navajo Nation's assessment of language proficiency
PAC	District-level parent advisory committee
PD	Professional development
NM PED	New Mexico's Public Education Department
PHLOTE	Primary (first learned) or home/heritage language other than English
RFI-RFA-RFP	Request for Information - Request for Application - Request for Proposals
SEA	State educational agency
Stakeholders	A person, group, organization, or system that affects, or can be affected by, an organization's actions
STARS	Student Teacher Accountability Reporting System (STARS) is a collaborative effort of the New Mexico Public Schools and the NM PED. STARS is a comprehensive student and staff information system that provides a standard data set for each student served by New Mexico's 3Y–12 public education system.
STL	Strengthening Tribal Languages
Sustainability Standards	Education standards, based on tribal and cultural values and teachings
SWD	Students with disabilities
SY	School year
TA	Technical assistance provided to foster the educational success of American Indian students
TEA	Tribal education agency—same as TED
TED	Tribal Department of Education or division within the tribal organizational structure delegated with the function of planning and coordinating all educational programs of the Tribe, Nation, or Pueblo. Same as TEA.
TESR	The Tribal Education Status Report, originally called the Indian Education Status Report (IESR).
Title III	Language instruction for LEP and immigrant students to attain English language proficiency, to develop high levels of academic attainment in core academic subjects, and meet the same challenging state academic standards as all children are expected to meet
Title VII	Indian Education (Indian, Native Hawaiian, and Alaska Native education) designed to meet the unique educational and culturally related academic needs of American Indian and Alaska Native students, so these students can meet the same challenging State academic standards as all other students are expected to meet.

Title VIII	Impact Aid provides assistance to local school districts with concentrations of children residing on Indian lands, military bases, low-rent housing properties, or other Federal properties and, to a lesser extent, concentrations of children who have parents in the uniformed services or employed on eligible Federal properties, who do not live on Federal property.
Tribal Curriculum	All courses of study offered by an educational institution that pertains to the characteristics or customs of a Tribe (or Tribes)
Tribe, Nation, or Pueblo	An Indian Tribe, Pueblo, or Nation that is federally recognized by the US Government and the State of New Mexico: Acoma Pueblo, Cochiti Pueblo, Isleta Pueblo, Jemez Pueblo, Nambé Pueblo, Laguna Pueblo, Pojoaque Pueblo, Picuris Pueblo, Sandia Pueblo, San Felipe Pueblo, San Ildefonso Pueblo, San Juan Pueblo, Santa Ana Pueblo, Santa Clara Pueblo, Kewa (Santo Domingo) Pueblo, Taos Pueblo, Tesuque Pueblo, Zia Pueblo, Zuni Pueblo, Jicarilla Apache, Mescalero Apache, and Navajo Diné Nation.

## APPENDIX B: DEAR COLLEAGUE LETTER- ESEA, Sec. 8538

Under the Congressional Review Act, Congress has passed, and the President has signed, a resolution of disapproval of the accountability and State plans final regulations that were published on November 29, 2016 (81 FR 86076). This guidance document is unaffected by that resolution and remains applicable.



### UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

September 26, 2016

Dear Colleague:

Thank you for your hard work and commitment in implementing the new requirements of the Every Student Succeeds Act (ESSA), the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). The ESSA represents a unique opportunity to increase equity and access for all children. I write today to offer guidance on a provision in the law that is of particular importance to our Nation's tribal communities: the new requirement under section 8538 of the ESEA, as amended by the ESSA,<sup>1</sup> for affected local educational agencies (LEAs) to consult with Indian tribes and tribal organizations on issues affecting Native students.<sup>2</sup>

Consultation will create opportunities for LEAs and tribal leaders to work together on behalf of American Indian and Alaska Native students. The consultation process will allow affected LEAs to gather input from Indian tribes and tribal organizations, fostering the collaboration that is a critical part of improving academic outcomes for Native students.<sup>3</sup>

The enclosed Frequently Asked Questions provide basic information to assist LEAs in ensuring that this process drives positive outcomes for administrators, Indian tribes and tribal representatives, and, most importantly, Native students.

I look forward to continuing to work with you and your staff to address the needs of our Native students.

Sincerely,

/s/

Ann Whalen  
Senior Advisor to the Secretary Delegated  
the Duties of Assistant Secretary for  
Elementary and Secondary Education

Enclosure

<sup>1</sup> Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

<sup>2</sup> Under Title I, State educational agencies (SEAs) are also required to conduct timely and meaningful consultation with Indian tribes, among other entities, prior to submitting their State plan to the Secretary (ESEA section 1111(a)(1)(A)).

<sup>3</sup> The U.S. Department of Education conducted tribal consultations on the changes to the ESEA generally, which included the SEA and LEA consultation requirements, with four meetings which took place on April 24, April 28, May 12, and June 27, 2016.  
[www.ed.gov](http://www.ed.gov)

400 MARYLAND AVE., SW, WASHINGTON, DC 20202

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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**Frequently Asked Questions**  
**ESEA, Section 8538, CONSULTATION WITH INDIAN TRIBES AND TRIBAL**  
**ORGANIZATIONS**

**1. What are the consultation requirements under section 8538 of the ESEA<sup>1</sup>?**

In general, section 8538 requires affected local educational agencies (LEAs) (see Question 3 for definition of “affected LEA”) to consult with Indian tribes, or those tribal organizations approved by the tribes located in the area served by the LEA, prior to submitting a plan or application for covered programs (see Question 5 for more information on the programs covered by section 8538). This requirement is designed “to ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students.” The consultation must be done “in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or tribal organizations to meaningfully and substantively contribute” to plans under covered programs.

**2. When do the consultation requirements under section 8538 of the ESEA begin?**

Consultation requirements under section 8538 of the ESEA begin with the plans or applications for fiscal year (FY) 2017 formula grant funding, or for the 2017-2018 school year. Affected LEAs (see Question 3) that educate American Indian/Alaska Native (AI/AN) students will be required to consult with local Indian tribes prior to submitting a plan or application under covered ESEA formula grant programs (see Question 5).

**3. Which LEAs must consult with Indian tribes in accordance with section 8538 of the ESEA?**

Under section 8538, an affected LEA is one that either: 1) has 50 percent or more of its student enrollment made up of AI/AN students; *or* 2) received an Indian education formula grant under Title VI of the ESEA, as amended by the ESSA<sup>1</sup>, in the previous fiscal year that exceeds \$40,000. In order to determine whether an LEA has 50 percent or more of its enrollment made up of AI/AN students, an LEA should use the enrollment data from the 2016-2017 school year to determine whether it is an affected LEA in FY 2017. The total AI/AN enrollment data would include those students who self-identify as AI/AN alone and AI/AN in combination with one or more races, regardless of Hispanic ethnicity. An LEA that receives an Indian education formula grant award greater than \$40,000 in FY 2016 is an affected LEA for consultation purposes in FY 2017. Please contact Bernard Garcia, at [bernard.garcia@ed.gov](mailto:bernard.garcia@ed.gov), Group Lead for Title VI Indian Education Formula Program, Office of Indian Education, OESE, for assistance in determining whether an LEA is an affected LEA under section 8538 of the ESEA.

**4. How can an LEA find information about tribes?**

The Bureau of Indian Affairs (BIA) publishes an official list of federally recognized tribes each year. This list is available at the Title VI community of practice website under “Additional Resources”: <https://easie.grads360.org/#communities/pdc/documents/9980>. To find tribal addresses, see the list at the National Congress of American Indians (NCAI) website: <http://www.ncai.org/tribal-directory>. If you need information about the tribes in your service area, contact your respective state office for assistance.

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<sup>1</sup> Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.



**5. On which programs must an affected LEA consult with Indian tribes?**

Beginning with FY 2017, affected LEAs must consult with Indian tribes before submitting plans or applications for the following programs under ESEA:

- Title I, Part A (Improving Basic Programs Operated by State and Local Educational Agencies)
- Title I, Part C (Education of Migratory Children)
- Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk)
- Title II, Part A (Supporting Effective Instruction)
- Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act)
- Title IV, Part A (Student Support and Academic Enrichment Grants)
- Title IV, Part B (21<sup>st</sup> Century Community Learning Centers)
- Title V, Part B, subpart 2 (Rural and Low-Income School Program)
- Title VI, Part A, subpart 1 (Indian Education Formula Grants to Local Educational Agencies)

**6. When should affected LEAs conduct the consultation required under section 8538 of the ESEA?**

LEAs should conduct their consultation in advance of making significant decisions regarding plans or applications for covered programs, to ensure an “opportunity for . . . appropriate officials from Indian tribes or tribal organizations to meaningfully and substantively contribute” to an LEA’s plan (section 8538(a)). The timeline for each consultation is dictated by requirements of the relevant formula grant program, which have different application deadlines. For example, a State may have a deadline for LEAs to submit a consolidated local plan to the State by a certain date in 2017, so for those programs the consultation must be completed before that date. Given that tribes may receive multiple requests for consultation, LEAs should consider arranging for informational meetings prior to consultation.

**7. What should an LEA do to ensure “meaningful consultation”?**

In order to ensure that consultation is meaningful, LEAs should provide Indian tribes, or those tribal organizations approved by the tribes located in the area served by the LEA, an opportunity to provide input and feedback to the LEA on plans for any covered program. An LEA should consider providing a list of issues or questions on which the LEA seeks input, or provide draft plans for this purpose, in advance of the consultation. An LEA should consult before it makes a final decision on significant and substantive issues related to the content of the plans. In addition, an LEA should consider providing written responses to tribal input received during consultation to explain how input was considered.

**8. What documentation is required for consultation with Indian tribes under section 8538 of the ESEA?**

Each LEA must maintain in the agency’s records and, for State-administered ESEA programs, provide to the SEA, a written affirmation signed by the appropriate officials of the participating tribes (or tribal organizations approved by the tribes) that the required consultation occurred. If tribal officials do not provide such affirmation within a reasonable period of time, the LEA must forward to the SEA documentation that consultation has taken place.

**9. May an LEA combine this consultation with other requirements regarding tribal or parent involvement?**

Yes, an LEA may coordinate or consolidate the required ESEA consultation with the parent activities required under the Indian Education formula grant program, the Impact Aid program, and the Johnson O'Malley program. An LEA may only do so, however, if the activity in question – *i.e.*, the consultation – meets all of the requirements of each program. For example, an LEA may plan a public hearing or meeting with its local tribe regarding its education program generally in order to meet the Impact Aid requirements for Indian Policies and Procedures; that hearing with the tribe could incorporate the elements of the LEA's proposed plans under the covered programs, rather than hold a separate consultation event. The LEA should involve the local tribe or tribes in planning the best approach that satisfies the needs of the tribe(s) and the LEA in a time-effective manner, and that meets the requirements of the various programs.

**10. If an LEA has multiple tribes in the geographic area it serves, or if there is one tribe and multiple LEAs, must there be separate consultations with each tribe or LEA?**

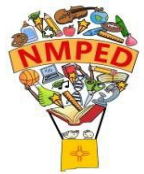
Where there are multiple tribes and a single LEA, the LEA may hold a consultation that includes all affected local tribes. Similarly, where there are multiple LEAs and one tribe, there is no federal prohibition against a joint consultation held by several LEAs. In both cases the LEA must ensure that the tribe or tribes have a meaningful and timely opportunity to give input into an LEA's plans or applications.

**11. Can the Department provide additional information?**

Yes, the Department may offer assistance or provide other information upon request. Please contact the Office of Indian Education (OIE) at [IndianEducation@ed.gov](mailto:IndianEducation@ed.gov).



## APPENDIX C: AFFIRMATION OF TRIBAL CONSULTATION FOR LOCAL EDUCATIONAL AGENCIES



This Affirmation of Tribal Consultation document must be submitted to the School Budget and Finance Analysis Bureau on an annual basis as part the Local Educational Agency's (LEA's) budget submission along with the Indian Education Division. Please use the form below. This form is available on the IED webpage: <https://webnew.ped.state.nm.us/bureaus/indian-education/tribal-consultation/>.

The purpose of the tribal consultation process is to create opportunities for school districts/charter schools and tribal leaders to work together to make equitable program and funding decisions for Native American students and families.

<b>Name of LEA:</b>
Superintendent: Contact Phone: Contact Email:
<b>District Coordinator of Tribal Consultation (Federal Programs Director, Indian Education Director, Tribal Liaison, etc.):</b>
Name and Title: Contact Phone: Contact Email:
<b>Tribal Leader or Designee:</b>
Name and Title: Contact Phone: Contact Email:
<input type="checkbox"/> Check here if the Tribe or Tribal organizations did not respond to the LEA's repeated good-faith efforts for tribal consultation. Please describe the consultation efforts below and attach any accompanying documentation to this form (emails, letters, etc.)
Please list dates of attempts to conduct tribal consultation and tribal representative contacted, along with providing relevant documentation, letters sent, emails, etc.:

## Section 1

If consultation occurred, check the boxes and comment on topics discussed during the consultation process:

<input type="checkbox"/> How students' academic, cultural and linguistic needs will be identified and supported	<input type="checkbox"/> Parental Engagement
<input type="checkbox"/> Services that will be offered to support students' academic, cultural and linguistic needs	<input type="checkbox"/> Federal Title Programs
<input type="checkbox"/> Plan for delivery of services	<input type="checkbox"/> State grants opportunities
<input type="checkbox"/> Timeline of when services will be assessed and evaluated and communicated to Tribal partners	<input type="checkbox"/> Funding and equitable allocation of resources
<input type="checkbox"/> Student needs Assessment	<input type="checkbox"/> Systemic framework
<input type="checkbox"/> Accountability tool	<input type="checkbox"/> State Seal of Bilingualism-Biliteracy on Diploma of Excellence - Tribal Language Proficiency Certification for Students (High School Only)
<input type="checkbox"/> Other topics – please explain:	

## AFFIRMATION AND SIGNATURES

### Section 2

We agree that timely and meaningful consultation occurred prior to the submission of this Affirmation of Tribal Consultation document. We agree that we have participated in timely and meaningful discussion on the programs, budget and available resources below, but not limited to:

<input type="checkbox"/> Understanding Title I: Parts A, C and D	<p>A. Improving Basic Programs Operated by State and Local Educational Agency</p> <p>C. Education of Migratory Children</p> <p>D. Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk</p>
<input type="checkbox"/> Understanding Title II, Part A	Supporting Effective Instruction

<input type="checkbox"/> Understanding Title III, Part A	English Language Acquisition, Language Enhancement, and Academic Achievement
<input type="checkbox"/> Understanding Title IV, Parts A & B	A: Student Support and Academic Enrichment Grants B: 21 <sup>st</sup> Century Community Learning Centers
<input type="checkbox"/> Understanding Title V, Part B Subpart 2	Rural and Low Income School Program
<input type="checkbox"/> Title VI, Part A, Subpart 1	Indian Education Formula Grants to Local Educational Agencies
<input type="checkbox"/> Title VII, Impact Aid	Indian Policies and Procedures Assurance tribal/parent input, Public Hearings, written input
<input type="checkbox"/> State grant opportunities	Indian Education Act , Indigenous Education Initiative Bilingual Multicultural Education Program Other-PED Grants
<input type="checkbox"/> Other Grants- please provide:	
<hr/> <b>Printed Name</b> of Superintendent or Designee	
<hr/> <b>Signature</b> of Superintendent or Designee	
<hr/> Date	
<hr/> <b>Printed Name of</b> Tribal Leader or Proxy	
<hr/> <b>Signature of</b> Tribal Leader or Proxy	
<hr/> Date	

Each LEA must maintain this document in the agency's records and forward to the School Budget and Finance Analysis Bureau to be kept on file with the budget submission of the school district or charter school. For questions or more information, please contact the Indian Education Division at (505) 372-9458.

## APPENDIX D: TITLE SUMMARIES

### Appendix B: The Elementary and Secondary Education Act as Amended by the Every Student Succeeds Act of 2015: Title Summaries

This document contains summaries of portions of the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act of 2015 (ESSA) that are most relevant to tribal consultation. Each summary is followed by a list of questions that will assist states, districts, and tribal leaders in thinking about considerations that may be important to address during consultation. Considerations specific to state or district consultation have been noted.

The U.S. Department of Education has identified the following titles, parts, and subparts of ESSA as those that require affected districts (as defined by the Act) to engage in consultation with tribal leaders. Other consultation requirements that are not specific to affected districts are also included when they are of particular interest or relevance to tribes.

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# Title I—Improving the Academic Achievement of the Disadvantaged

## Part A—Improving Basic Programs Operated by Local Educational Agencies

Title I, Part A outlines the programs that provide states with money to fund districts to support schools with significant populations of disadvantaged students and schools that are otherwise low-performing. This section of the law requires challenging academic standards, aligned statewide testing, accountability, and reporting and school improvement activities at the state and local levels. Accountability by student subgroup such as race or ethnicity is required by this section.

Basic grants fund schoolwide programs for schools that meet a schoolwide poverty threshold. Targeted grants are available to LEAs and schools with higher proportions of disadvantaged students. In addition to identifying schools for basic program supports, states must also identify low-performing schools from among public schools statewide for comprehensive support and improvement or targeted support and achievement based on:

- Academic achievement
- Graduation rates
- English learner progress toward English language proficiency
- At least one additional indicator of school quality or student success as determined by the state

Long-term and interim goals must be set for all students and for specific student subgroups (including American Indian students) for the first three indicators, and states must report performance against these targets. States will identify low-performing schools for two types of support:

- *Comprehensive support*—Schools must improve overall student performance.
- *Targeted support*—Schools must improve performance in subgroups for which low performance was identified.

States, districts, and schools must report annually, in a clear public report card format, on performance on each of the required accountability indicators.

A state is required to consult with tribes in the development of its Title I plans and to notify tribes about state standards, academic assessments, and the state accountability system.

### SECTION 1111: STATE PLANS.

#### “(a) FILING FOR GRANTS—

“(1) IN GENERAL. —For any State desiring to receive a grant under this part, the State educational agency shall file with the Secretary a plan that is—

“(A) developed by the State educational agency with timely and meaningful consultation with the Governor, members of the State legislature and State board of education (if the State has a State board of education), local educational agencies (including those located in rural areas), representatives of Indian tribes located in the State, teachers, principals, other school leaders, charter school leaders (if the State has charter schools), specialized instructional support personnel, paraprofessionals, administrators, other staff, and parents....

“(2) LIMITATION—Consultation required under paragraph (1)(A) shall not interfere with the timely submission of the plan required under this section.”

### SECTION 111 (a)(2):

“(B) the State educational agency will notify local educational agencies, Indian tribes and Tribal organizations, schools, teachers, parents, and the public of the challenging State academic standards, academic assessments, and State accountability system, developed under this section....”

**Several other provisions of Title I, Part A contain consultation or cooperation requirements that may be relevant to tribal leaders:**

- The state will ensure that districts will, to the extent feasible, work in consultation with outside intermediary organizations that have practical expertise in the development or use of evidence-based strategies and programs. (Sec. 1111(g)(2))
- District plans for meaningful family engagement should be developed jointly with parents and family members; the district will provide supports to build the capacity of all participating schools to plan and carry out the family engagement policy, which may include meaningful consultation with "individuals with expertise in effectively engaging parents and family members in education." (Sec. 1116(a)(2)(B))
- District plans must address how districts will coordinate and integrate Title I services "with other educational services at the local educational agency or individual school level, such as services for ... American Indian, Alaska Native, and Native Hawaiian children, and homeless children and youths, in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program." (Sec. 1112(c)(4))

## **Part C—Education of Migratory Children**

This part provides funding supports for programs and provision to assist migrant children.

## **Part D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk**

This part provides funding supports for programs that assist children and youth who are neglected, delinquent or at risk. The definition of "at risk" includes students who are a year or more behind their peers academically or who have high rates of absenteeism, as well as those with addictions, histories of abuse, or other major risk factors. Title I, Part D applies to children and youth in local, tribal, and state institutions and provides support for programs that equalize student opportunities for academic achievement, prevent dropouts, and support transitions from correctional facilities to employment or further schooling.

Subgrant funding to districts under this part can also be used to coordinate health and social services for at-risk children and youth, meet the "unique academic needs" of participating children and youth, and provide programs for at-risk American Indian children and youth.

## **Potential Considerations for Tribal Consultation for Title I**

- *Tribal representatives.* Which tribal representatives will review state and local plans, attend important meetings, and make recommendations on behalf of the tribe about Title I programs?
- *Changes to plan.* What do previous plans under this part look like? What has changed and why?
- *Assessments used for Title I accountability.* Have the assessments used in their students' schools been reviewed for bias against tribal students? What were the results?
- *Data use and access.* How can tribes help ensure that data about tribal students are included in state and local accountability plans in a meaningful way?
  - *n-size.* What is the state's n-size (i.e., the smallest number of students who will be included in district and school outcome reporting) for subgroup reporting?
  - *Tribal access.* How can tribes access data about their youth in Title I programs?
  - *Local data sharing.* Can data sharing agreements be developed between the tribe and the district to provide both entities with more information on tribal youth?
- *Supports for tribal youth.* Are American Indian students included in any comprehensive support or targeted support schools? How will supports address the needs of those students? What kinds of technical assistance will be provided?



- *Exploring best practices.* How are best practices in the education of tribal youth specifically being addressed in state and local school improvement efforts? What is the definition of “evidence-based” programs, and how does that definition apply to specific strategies for supporting tribal youth?
- *Early Childhood.* Are there plans to initiate/implement early childhood (pre-K) programs to increase potential for school readiness?
- *AI Youth in Juvenile Justice System.* What are the critical partnerships that need to be formed for American Indian students who are involved in the juvenile justice system or are at risk of becoming involved?

## **Title II—Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders**

### **Part A—Supporting Effective Instruction**

Title II is focused on improving educator quality and on increasing the number of teachers, principals, and other school leaders who are effective in improving student academic achievement. It also contains provisions intended to provide low-income and minority students with greater access to effective teachers, principals, and other school leaders.

Grants under this part can cover, among other state initiatives, those that establish or expand alternative certification for subject areas with shortages of teachers, support districts in recruiting or retaining effective minority teachers, or support collaboration on early childhood transitions to elementary school.

Grants for districts under Title II, Part A can include, among many other things, programs intended to:

- Assist schools in recruiting and retaining effective teachers.
- Support mentorship or induction programs for new teachers.
- Provide evidence-based professional development for teachers on engaging parents and the community and coordinating services.
- Conduct in-service trainings on working with students who have experienced trauma or have been exposed to trauma and forming mental health partnerships with community organizations.

### **Consultation**

Section 2012 requires districts submitting applications for subgrants to consult with “...parents, community partners, and other organizations or partners with relevant and demonstrated expertise in programs and activities designed to meet the purpose of this title ... regarding how best to improve the local educational agency’s activities.”

### **Potential Considerations for Tribal Consultation for Title II**

- *Educator preparation to work with tribal youth.* What is the state or district doing to prepare, train, and recruit teachers, principals, and other school leaders concerning American Indian education specifically? What are ways tribes can provide input on teacher preparation in the area of cultural foundational principles of educating American Indian students?
- *Training to support tribal youth.* What skills, competencies, and capacities will be developed in training programs to support American Indian students and their education? Is there evidence that these approaches work specifically with American Indian students? Does the tribe have information it can share with the state or district on educational approaches that are proven to work with American Indian children or youth?
- *Identification of essential knowledge and skills.* What do new and current educators need to know to work effectively with American Indian students from this tribe?
- *High quality instructional standards.* What are the standards for recruiting and retaining teachers who provide high quality, culturally appropriate, and relevant instruction? Do these standards include attention both to process (e.g., high quality interactions between teacher and student) and to structural factors (e.g., class size)?
- *Professional development.* Has the district applied for—or does it intend to apply for—grants for professional development of teachers and education professionals?



## Title III—Language Instruction for English Learners and Immigrant Students

### Part A—English Language Acquisition, Language Enhancement, and Academic Achievement Act

This title addresses efforts to ensure that students who have limited English proficiency or limited native language proficiency attain high levels of proficiency in these respective languages as well as high levels of achievement in other academic subjects in these respective languages. It describes eligible uses of funds, including specific guidelines for supporting such efforts and guidelines for subgrants to districts and other organizations.

#### Potential Considerations for Tribal Consultation for Title III

- *Native language programs alignment.* If the tribe has a native language program, how does it align with programs for English learners (ELs) proposed by the state or district? For example, is the reading/language arts portion of the English language instruction program administered, or offered to be administered, in the EL's native language?
- *Data collection on native languages.* What data on ELs is collected regarding tribal background and the unique relationship between tribal languages and EL programs? For example, is the native language used at home by parents, elders, or other relatives asked about when students are assessed for EL inclusion? If so, does this qualify an American Indian student to be classified as an EL?
- *Language immersion.* What Indigenous and culturally responsive language immersion models will be used with American Indian students? Will participation in native language immersion programs be acknowledged as an effort toward becoming biliterate and bilingual?
- *Professional development to support tribal youth.* What professional development will non-native partners implementing language and English learner programs receive to prepare them to effectively support American Indian students and their education? Can partnerships with tribal colleges be developed to support this professional development?

## Title IV—21st Century Schools

### Part A—Student Support and Academic Enrichment Grants

Title IV Part A provides funding to improve students' academic achievement by increasing access to a well-rounded education, improving conditions for learning, and leveraging the use of technology to improve the digital literacy and academic achievement of all students.

Activities and programs under this title must be coordinated with other schools and with community-based services and programs and may include partnerships with higher education institutions, businesses, nonprofits, community-based organizations, tribes, and other, similar entities.

### Part B—21st Century Community Learning Centers

Title IV Part B funds the establishment and expansion of community learning centers that provide programming and services to meet the academic and nonacademic needs of students and their families including outside of regularly-established school hours. Programs can support a well-rounded education, include counseling programs, programs for students suspended or expelled, credit recovery programs, and programs that collaborate with employer-partners, among others.



## Potential Considerations for Tribal Consultation for Title IV

- *Culturally-based discipline approaches.* Are there discrepancies in school discipline between tribal and nontribal youth in the state or district? How could disparities be addressed through culturally-based programs?
- *American Indian studies.* Are there opportunities within the state or districts to address native language and cultural immersion needs in the context of a well-rounded education or technology supports? Is there opportunity to provide instruction on the history, government, and culture of the tribal nation(s) to all students?
- *Statewide programs.* Is there potential for a statewide initiative on American Indian education focused on academic achievement of tribal students?
- *Online access.* What opportunities exist, or could be developed, to establish or expand educational Internet access for tribal youth?
- *Community learning center approaches.* What community learning centers exist that currently serve tribal youth, and how do the centers address the culturally related academic needs of American Indian students?
- *Tribal community outreach.* What comprehensive community programs are currently in existence? How do those programs incorporate tribes?
- *Support for nonacademic needs.* How can these programs be leveraged to address the nonacademic needs of students; e.g., through content (such as nutrition, physical education) or counseling?
- *School reform models.* What school reform models will be used with American Indian students under programs funded through Title IV? Do schools have the resources, staff, and infrastructure they need to meet the needs of American Indian students and families?
- *Transportation.* Will there be opportunities or options for transportation to and from community learning centers for students and/or their families?

## Title V—Flexibility and Accountability

### Part B, Subpart 2—Rural and Low-Income School Program

Part B, subpart 2 of Title V specifies the criteria for district eligibility for rural and low-income subgrants from the state and the method by which those grant awards should be calculated.

## Potential Considerations for Tribal Consultation for Title V

- *Supporting innovation and flexibility.* What models and strategies have non-native partners used (or propose to use) to support innovation, flexibility, and collaboration with tribal governments for supporting rural native students and their education?
- *Activities eligible for funding.* What activities that are culturally appropriate for rural American Indian students would be eligible for funding?

## Title VI—American Indian, Native Hawaiian, and Alaska Native Education

### Part A, Subpart 1—(American Indian Education Formula Grants to Local Educational Agencies)

Districts, tribes, and local consortia are eligible to apply for grants under Part A, subpart 1 if their student enrollment: (a) includes 10 or more American Indian students; or (b) is comprised of 25 percent or more American Indian students.<sup>8</sup>

Plans are provided first to the state, which may choose to review and comment, and then to the U.S. Department of Education. If a state chooses to comment on one district's application, it must comment on all district applications.

Title VI grants can be used to carry out a number of activities in support of the American Indian students in the district, tribe, or consortium. Such grants can be used to:

- Meet culturally-related academic needs of American Indian students, including:
  - Native language revitalization programs
  - Culturally related activities in support of Title VI grant programs
  - Childhood and family programs that support school readiness
  - Enrichment programs focused on problem solving and cognitive skill development
  - Integration of educational services, including programs that promote parental involvement
  - Career preparation activities
  - Violence, suicide, and substance-abuse prevention
  - Supports for culturally responsive teaching and learning
  - Family literacy services
  - Dropout prevention
  - Meeting the needs of incarcerated youth, including transition supports
- Provide professional development to ensure that new teachers and staff are prepared to work with American Indian students and that teachers involved with the programs covered by the grant have been properly trained. Grantees must evaluate how all American Indian students are doing (including those who do not participate in the program) and provide that information to the community and to tribes.

Activities under these grants may incorporate appropriately qualified tribal elders, including as native language instructors.

### Consultation

District applications for subgrant funding must include a description of "the process the [district] used to meaningfully collaborate with [American] Indian tribes located in the community in a timely, active, and ongoing manner."

The district also must report to the U.S. Department of Education on how the funds were used, how they addressed the "unique cultural, language, and educational needs" of the American Indian students, information on how those needs were determined and how the program was staffed to meet them, and how the district "developed [its program plan] in open consultation with [American Indian stakeholders] including through public hearings ... to provide ... a full opportunity to understand the program and to offer recommendations regarding the program."

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<sup>8</sup> Does not apply to tribes in Alaska, California, or Oklahoma or to districts located on or near reservation lands. Tribes or consortia of tribes are eligible to apply to develop elementary and secondary school programs for Indian students if youth from their tribe(s) represent more than 50 percent of the Indian children in an eligible district and the district has not formed a Title VI committee as required in Section 6114(c)(4). Tribes may also apply on behalf of eligible districts or consortia of districts.



## Title VI—American Indian, Native Hawaiian, and Alaska Native Education

### Part A, Subpart 1—(American Indian Education Formula Grants to Local Educational Agencies)

Districts, tribes, and local consortia are eligible to apply for grants under Part A, subpart 1 if their student enrollment: (a) includes 10 or more American Indian students; or (b) is comprised of 25 percent or more American Indian students.<sup>8</sup>

Plans are provided first to the state, which may choose to review and comment, and then to the U.S. Department of Education. If a state chooses to comment on one district's application, it must comment on all district applications.

Title VI grants can be used to carry out a number of activities in support of the American Indian students in the district, tribe, or consortium. Such grants can be used to:

- Meet culturally-related academic needs of American Indian students, including:
  - Native language revitalization programs
  - Culturally related activities in support of Title VI grant programs
  - Childhood and family programs that support school readiness
  - Enrichment programs focused on problem solving and cognitive skill development
  - Integration of educational services, including programs that promote parental involvement
  - Career preparation activities
  - Violence, suicide, and substance-abuse prevention
  - Supports for culturally responsive teaching and learning
  - Family literacy services
  - Dropout prevention
  - Meeting the needs of incarcerated youth, including transition supports
- Provide professional development to ensure that new teachers and staff are prepared to work with American Indian students and that teachers involved with the programs covered by the grant have been properly trained. Grantees must evaluate how all American Indian students are doing (including those who do not participate in the program) and provide that information to the community and to tribes.

Activities under these grants may incorporate appropriately qualified tribal elders, including as native language instructors.

### Consultation

District applications for subgrant funding must include a description of “the process the [district] used to meaningfully collaborate with [American] Indian tribes located in the community in a timely, active, and ongoing manner.”

The district also must report to the U.S. Department of Education on how the funds were used, how they addressed the “unique cultural, language, and educational needs” of the American Indian students, information on how those needs were determined and how the program was staffed to meet them, and how the district “developed [its program plan] in open consultation with [American Indian stakeholders] including through public hearings ... to provide ... a full opportunity to understand the program and to offer recommendations regarding the program.”

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<sup>8</sup> Does not apply to tribes in Alaska, California, or Oklahoma or to districts located on or near reservation lands. Tribes or consortia of tribes are eligible to apply to develop elementary and secondary school programs for Indian students if youth from their tribe(s) represent more than 50 percent of the Indian children in an eligible district and the district has not formed a Title VI committee as required in Section 6114(c)(4). Tribes may also apply on behalf of eligible districts or consortia of districts.

## Consultation Language in Other Titles

Although affected districts under ESSA are not required to consult on Titles VII or VIII of the legislation, brief summaries of key points are included here. Title VII requires consultation from “federally impacted” districts (different from, but in many cases overlapping with, “affected districts” under ESSA), while Title VIII contains the specific language of the affected district consultation mandate.

## Title VII—Impact Aid

Impact Aid affects districts whose boundaries include federal land or land removed from the tax code, including reservation land. Impact Aid funds supplement these districts to compensate for their reduced tax base. ESSA includes new language that should allow for more timely payments of Impact Aid funds, a provision designed to help districts avoid sudden funding shortfalls, changes to the funding formula to increase equity, and increased appropriations authorizations.<sup>9</sup>

Some of the funding for Impact Aid is directly tied to the number of children residing on federal or nontaxed land, making accurate counts of those populations (which may be done by parent-pupil survey or by a tribal official) essential.

## Consultation Requirements

Consultation is required under Title VII for federally impacted districts serving children from Indian lands. These may or may not also be districts that are required to consult with tribes as “affected districts” under section 8538 of ESSA.

Section 7004 of Title VII requires that parents of children on Indian lands must be consulted on school programs and involved in school plans; and plans, evaluations, and applications for these programs must be provided to parents and tribal leaders. Districts are required to develop “Indian policies and procedures” (IPPs) to outline how and when the district will take these actions, and IPPs are evaluated yearly. If a tribe does not feel that a district is following the federal requirements, it may lodge a formal complaint with the U.S. Department of Education. Tribes may also waive their right to Section 7004 activities and policies by sending a letter to the district expressing satisfaction with the educational services provided by the school to students living on Indian lands.

Districts apply annually for funding directly to the U.S. Department of Education, usually in January. Impact Aid does not pass through the state; funding comes directly to districts.<sup>10</sup>

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<sup>9</sup> National Indian Education Association. (n.d.). *Every Student Succeeds Act primer: Impact Aid*. Washington, DC: Author. Retrieved from <http://www.niea.org.php56-15.dfw3-2.websitetestlink.com/wp-content/uploads/2016/02/Impact-Aid-FINAL-2.pdf>

<sup>10</sup> National Association of Federally Impacted Schools. (2016). *The basics of Impact Aid*. Retrieved from [http://media.wix.com/ugd/423d5a\\_58add7d7c31d445ea2ecdb55b7701.pdf](http://media.wix.com/ugd/423d5a_58add7d7c31d445ea2ecdb55b7701.pdf)



## Title VIII—General Provisions

The provisions of ESSA that relate specifically to schools funded through the Bureau of Indian Education are not included in this title summary, but Title VIII does contain some language specifying circumstances in which those schools must be given the same consideration as LEAs.

### SEC. 8103. 20 U.S.C. 7803: APPLICABILITY TO BUREAU OF INDIAN EDUCATION OPERATED SCHOOLS.

For the purpose of any competitive program under this Act—

- (1) a consortium of schools operated by the Bureau of Indian Education;
- (2) a school operated under a contract or grant with the Bureau of Indian Education in consortium with another contract or grant school or a tribal or community organization; or
- (3) a Bureau of Indian Education school in consortium with an institution of higher education, a contract or grant school, or a tribal or community organization, shall be given the same consideration as a local educational agency.

Title VIII contains specific language requiring “affected districts” to consult with tribes and tribal organizations.

### SEC. 8538. CONSULTATION WITH INDIAN TRIBES AND TRIBAL ORGANIZATIONS.

“(a) IN GENERAL—To ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students, an affected local educational agency shall consult with appropriate officials from Indian tribes or Tribal organizations approved by the tribes located in the area served by the local educational agency prior to the affected local educational agency’s submission of a required plan or application for a covered program under this Act or for a program under Title VI of this Act.<sup>11</sup> Such consultation shall be done in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or Tribal organizations to meaningfully and substantively contribute to such plan.”

“(b) DOCUMENTATION. —Each affected local educational agency shall maintain in the agency’s records and provide to the State educational agency a written affirmation signed by the appropriate officials of the participating tribes or Tribal organizations approved by the tribes that the consultation required by this section has occurred. If such officials do not provide such affirmation within a reasonable period of time, the affected local educational agency shall forward documentation that such consultation has taken place to the State educational agency.”

<sup>11</sup> A brief note on “tribal organizations approved by the tribes located in the area served”: Some affected districts, particularly large or urban districts falling under the Title VI funding provision, may not have specific local tribes with lands or seats of government located in the areas they serve. Guidance from the U.S. Department of Education has not yet been issued regarding how such districts should best proceed with consultation, but the districts are still legally obligated to consult and to either provide written affirmation of consultation from tribal leaders or document their efforts toward consultation. Many urban areas will have Indian cultural centers, but these are not generally authorized to represent any specific tribal nation or nations in consultation.

## About AIR

Established in 1946, with headquarters in Washington, D.C., American Institutes for Research (AIR) is an independent, nonpartisan, not-for-profit organization that conducts behavioral and social science research and delivers technical assistance both domestically and internationally. As one of the largest behavioral and social science research organizations in the world, AIR is committed to empowering communities and institutions with innovative solutions to the most critical challenges in education, health, workforce, and international development.



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877.322.8700 | 202.223.6690

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## APPENDIX E: EVERY STUDENT SUCCEEDS ACT TRIBAL CONSULTATION PRE-PLANNING TOOL FOR TRIBES

DESCRIPTION	PRIOR KNOWLEDGE/ RELATED EXPERIENCES AND/OR PREVIOUS TRIBAL INPUT	TRIBAL SUPPORT TO SCHOOLS ON THIS TOPIC (PAST AND CURRENT)	RELEVANT TRIBAL NEEDS FOR TOPIC	FUTURE TRIBAL SUPPORT ON THIS TOPIC, INCLUDING (BUT NOT LIMITED TO) TRIBAL GOVERNMENT RESOLUTIONS	QUESTIONS FOR SEA (STATE EDUCATION AGENCY)	QUESTIONS FOR LEA (LOCAL EDUCATION AGENCY)	LANGUAGE AND CULTURE SUPPORTS	AGREEMENTS AND NEXT STEPS
<b>TITLE I</b> <b>Improving the Academic Achievement of the Disadvantaged</b> <b>Part A-Improving Basic Programs Operated by LEAs</b> <b>Part C-Education of Migratory Children</b>								
<b>TITLE II</b> <b>Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders</b> <b>Part A-Supporting Effective Instruction</b> <i>Possible topics:</i>  <i>Indian Education at the state level</i>  <i>Teacher preparation</i>  <i>Effective educator development (professional development) on culturally responsive pedagogy and instructional practices</i>								

DESCRIPTION	PRIOR KNOWLEDGE/ RELATED EXPERIENCES AND/OR PREVIOUS TRIBAL INPUT	TRIBAL SUPPORT TO SCHOOLS ON THIS TOPIC (PAST AND CURRENT)	RELEVANT TRIBAL NEEDS FOR TOPIC	FUTURE TRIBAL SUPPORT ON THIS TOPIC, INCLUDING (BUT NOT LIMITED TO) TRIBAL GOVERNMENT RESOLUTIONS	QUESTIONS FOR SEA (STATE EDUCATION AGENCY)	QUESTIONS FOR LEA (LOCAL EDUCATION AGENCY)	LANGUAGE AND CULTURE SUPPORTS	AGREEMENTS AND NEXT STEPS
<p>TITLE III</p> <p>Language Instruction for English Learners and Immigrant Students</p> <p>Part A-English Language Acquisition, Language Enhancement, and Academic Achievement</p> <p>Possible topic:</p> <p>Native language assessment</p>								
<p>TITLE IV</p> <p>21st Century Schools</p> <p>Part A-Student Support and Academic Enrichment Grants</p> <p>Part B-21st Century Community Learning Centers</p> <p>Possible topics:</p> <p>Before- and after-school academic enrichment</p> <p>Courses and curriculum on tribal histories to provide access to a well-rounded education</p>								

**\*\*Northwest Comprehensive Center of Education Northwest\*\***

DESCRIPTION	PRIOR KNOWLEDGE / RELATED EXPERIENCES AND/OR PREVIOUS TRIBAL INPUT	TRIBAL SUPPORT TO SCHOOLS ON THIS TOPIC (PAST AND CURRENT)	RELEVANT TRIBAL NEEDS FOR TOPIC	FUTURE TRIBAL SUPPORT ON THIS TOPIC, INCLUDING (BUT NOT LIMITED TO) TRIBAL GOVERNMENT RESOLUTIONS	QUESTIONS FOR SEA (STATE EDUCATION AGENCY)	QUESTIONS FOR LEA (LOCAL EDUCATION AGENCY)	LANGUAGE AND CULTURE SUPPORTS	AGREEMENTS AND NEXT STEPS
<b><i>TITLE V Flexibility and Accountability Part B, Subpart 2-Rural and Low-Income School Program</i></b>								
<b><i>TITLE VI American Indian, Native Hawaiian, and Alaska Native Education Part A, Subpart 1- American Indian Education Formula Grants to LEAs Possible topic: Data and identification of AI/AN students</i></b>								
<b><i>TITLE VII Impact Aid</i></b>								

**\*\*Northwest Comprehensive Center of Education Northwest\*\***



DESCRIPTION	PRIOR KNOWLEDGE / RELATED EXPERIENCES AND/OR PREVIOUS TRIBAL INPUT	TRIBAL SUPPORT TO SCHOOLS ON THIS TOPIC (PAST AND CURRENT)	RELEVANT TRIBAL NEEDS FOR TOPIC	FUTURE TRIBAL SUPPORT ON THIS TOPIC, INCLUDING (BUT NOT LIMITED TO) TRIBAL GOVERNMENT RESOLUTIONS	QUESTIONS FOR SEA (STATE EDUCATION AGENCY)	QUESTIONS FOR LEA (LOCAL EDUCATION AGENCY)	LANGUAGE AND CULTURE SUPPORTS	AGREEMENTS AND NEXT STEPS
<b>TITLE VIII</b> <b>General Provisions</b> <i>Possible programs:</i> <i>Increase opportunities in schools located in or near reservations of dual-enrollment or concurrent and early college programs on relevant coursework that is in alignment with a postsecondary certification or degree</i> <i>Tribal college partnerships</i>								
<b>OTHER</b>								
<b>Transportation</b>								
<b>Special Education</b>								
<b>English Language Learners</b>								
<b>Professional Development</b>								

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# TRIBAL CONSULTATION GUIDE 2022



## Language and Culture in Motion



**Acoma**  
Pottery



**Mescalero**  
Apache Tribe



**Matachine**  
Dancers



📍 300 Don Gaspar Santa Fe, NM  
✉ PED.HelpDesk@state.nm.us  
🌐 <https://webnew.ped.state.nm.us/bureaus/indian-education/>

**Contact Us**  
**505-827-5800**