

Tribal Consultation Under the Elementary and Secondary Education Act

Under the Elementary and Secondary Education Act (ESEA), some districts are required to consult with tribal governments on the development of their education plans.¹ This practice brief is intended to serve as an overview of district-level ESEA tribal consultation requirements and as guidance for local education agencies (LEAs). This brief does not discuss state-level consultation for Title I, Part A planning or how ESEA applies to schools that fall under the jurisdiction of the U.S. Secretary of the Interior and the U.S. Bureau of Indian Education.

Affected Districts

ESEA also requires districts with an enrollment of 50% or greater American Indian or Alaska Native students² and/or a Title VI Indian Education grant of more than \$40,000 to consult with tribal nations and communities “for a covered program under [ESEA] or for a program under Title VI of [ESEA]” (Elementary and Secondary Education Act [ESEA] of 1965, 20 U.S.C. § 7918, 2015).

The act requires tribal consultation to be (a) timely and (b) meaningful, but it does not define these terms, only that it “shall be done in a manner and in such time that provides the opportunity for such appropriate officials³ from Indian tribes or Tribal organizations to meaningfully and substantively contribute” (ESEA, 20 U.S.C. § 7918, 2015).

¹ All references to ESEA in this document refer to the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015.

² According to guidance from the U.S. Department of Education, “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” (U.S. Department of Education, Office of Elementary and Secondary Education, 2016).

³ “The term ‘appropriate officials’ means (A) tribal officials who are elected; or (B) appointed tribal leaders or officials designated in writing by an Indian tribe for the specific consultation purpose” (ESEA, 20 U.S.C. § 7918, 2015).

Timely

To provide sufficient opportunity for tribal contribution, consultation processes and meetings should be established on an ongoing basis. Consultation must take place well before plan submission deadlines so that initial feedback can be gathered and incorporated into the plan. Regular meetings thereafter ensure that tribal leaders continue to have a voice in the implementation and review of the plan. The law does not specify forms of recourse available to tribal nations in cases of insufficiently meaningful or timely consultation. If there is insufficient time to conduct consultation that tribes consider meaningful before plans are due, it will be essential for tribal leaders and districts to agree on future consultation processes that will allow for regular, sustainable tribal input.

Meaningful

Districts will need to work collaboratively with tribes to develop shared understandings of “meaningful” consultation, which is required by ESEA but not defined by it. A key starting point is building a greater understanding of the infrastructure, processes, and community contexts of the tribes to be consulted. Tribal nations often have experience with consultation and can help districts construct strong and sustainable consultation processes.

Districts must document their consultation activities and provide the LEA with a copy of an affirmation signed by each consulted tribe to verify that appropriate consultation took place. In districts with more than one tribe represented, respect for the sovereignty and individuality of tribal nations dictates that requests for consultation should be handled separately.

Covered Programs

Affected districts are required by ESEA to consult with tribes on plans or applications for programs covered under the following:

- 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 (21st 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)

Making Tribal Consultations Under ESEA Meaningful

When approaching tribal leaders for consultation, districts can do several key things that can contribute to meaningful consultation:

1. Recognize the sovereign status of tribal nations and the existence of a government-to-government relationship between those nations and the United States federal and state governments.
2. Deliver personal invitations to attend consultations to tribal leaders, providing ample time prior to the event to allow them to arrange their schedules. Invitations should be from senior district leadership with decision-making power, and these leaders should also attend the consultation meetings.
3. Show respect for the tribal nation’s culture and sovereignty by making a genuine effort to learn about their government, culture, and history with the district prior to consultation.

As part of meaningful consultation, tribal leaders should be:

- Informed of dates for upcoming meetings, including both tribal consultation meetings and information or input meetings that are open to the public
- Informed of deadlines for plan development and submission
- Provided with information on proposed programs
- Provided with formats and submission information for tribal input
- Notified of significant changes in plans
- Provided with information on how input was incorporated
- Given a final copy of plans or applications

As part of meaningful consultation, tribal leaders should be provided with, or should be able to receive on request:

- Copies of previous education plans
- Contact information for district personnel or members of committees
- Presentations from state or local representatives about existing programs so that tribes have clarity regarding how the programs operate in the local, district, or state context
- Additional meetings to discuss the education plans or programs
- Information on the evidence on which planned activities are based
- Previous reports and evaluations on education plans or program outcomes

Most affected districts will need to consult regularly with local tribal nations to meet the ESEA requirements given the number of covered programs in the law.

Key Considerations and Questions for Engaging Tribes

In addition to the above criteria for meaningful consultation, there are several essential understandings to keep in mind when working with, and communicating with, tribal nations and communities:

- *Shared responsibility for students.* The education of tribal youth is a shared responsibility among three sovereign units of government: tribal, federal, and state. Districts should always recognize that all parties are united in their concern and responsibility for students.
- *Respect for cultural differences and strengths.* Districts should be respectful and mindful that perceptions related to culture and procedure may differ among stakeholders and can easily lead to misunderstandings.
- *Tribal concerns.* Tribal educational concerns may or may not align with nontribal concerns—or even with the concerns of other tribes, depending on the context. Tribes may want to prioritize tribe-specific issues such as their native linguistic and cultural traditions.
- *The history of American Indian education is complex.* The U.S. federal government and state education policies have caused lasting damage to American Indian families and communities. This reality forms part of the historical trauma many American Indians feel and can affect the present relationships in very real ways.

With respect to the considerations outlined above, and with regard to ESEA, suggested elements for districts to consider during the tribal consultation process are listed below.

Guiding Questions for Meaningful Consultation

How has the district worked with tribal leaders and community members to:

- Identify tribal needs and priorities with regard to the development of programs to support American Indian student success?
- Develop district plans, policies, goals, objectives, and outcomes for programs that affect American Indian students and families?
- Leverage tribal cultural expertise and knowledge to support district programs involving American Indian students?
- Provide tribal leaders and community members with regular opportunities to offer input and feedback on program implementation?
- Determine effective ways to share and use data to support American Indian students?
- Include culturally appropriate and realistic performance measures and data collection methods?
- Regularly inform tribal leaders and community members of program progress and impacts?

Appendix A. Resources (Annotated Bibliography)

Elementary and Secondary Education Act of 1965, 20 U.S.C. §§ 6301–7981 (2015). Retrieved from <https://www2.ed.gov/documents/essa-act-of-1965.pdf>

This is the full text of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015.

National Congress of American Indians. (2017). *Tribal nations and the United States: An introduction*. Washington, DC: Author. Retrieved from <http://www.ncai.org/about-tribes>

This NCAI document is an introduction to tribal governments and their relationship (political, legal, and practical) to other public governments (federal, state, and local). It covers tribal consultation and how it is conducted when multiple tribal and public government agencies work together on common topics.

National Congress of American Indians, & Pyramid Communications. (n.d.). *Effective tools for communications and leadership in Indian country*. Washington, DC, and Seattle, WA: Authors. Retrieved from http://www.ncai.org/news/Tribal-communicators-resources/ncai_conferencebooklet_final_singlepage.pdf

This communications guide aimed at tribal leaders may also be helpful to districts wishing to understand some of the potential barriers to cross-cultural communication.

National Indian Education Association. (2016). *Building relationships with tribes: A Native process for ESSA consultation*. Washington, DC: Author. Retrieved from <http://www.niea.org/wp-content/uploads/2016/02/NIEA-BuildingRelationships-FINAL.pdf>

The National Indian Education Association sets out a Native process for consultation with tribes in the context of ESEA. Major components include sections of ESEA that address consultation and essential elements of consultation.

Oklahoma State Department of Education. (2017). *Oklahoma tribal consultation guide*. Oklahoma City, OK: Author. Retrieved from <http://sde.ok.gov/sde/sites/ok.gov.sde/files/Tribal%20Consulation%20Guide.pdf>

This guide was developed in 2017 by the Oklahoma Department of Education, the Chickasaw Nation, the Cheyenne & Arapaho Tribes, and the Muscogee (Creek) Nation.

U.S. Department of Education, Office of Elementary and Secondary Education. (2016, September 26). *Dear colleague letter on tribal consultation FAQs*. Washington, DC: Author. Retrieved from <https://www2.ed.gov/policy/elsec/leg/essa/faq/essafaqtribalconsultation.pdf>

This letter and its accompanying list of frequently asked questions and answers provides basic information for districts about changes to the Elementary and Secondary Education Act of 1965.

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.



1000 Thomas Jefferson Street NW
Washington, DC 20007-3835
877.322.8700 | 202.223.6690