



Tribal Consultation Toolkit

California Department of Education
July 2021

Tribal Consultation Introduction

Tribal consultation is required under the Elementary and Secondary Education Act (ESEA) as reauthorized by the Every Student Succeeds Acts (ESSA). Tribal consultation is a formal process between tribal representatives and local educational agencies (LEAs) that serves the American Indian/Alaska Native (Native American) population. The consultation process is critical to meeting the needs of California's Native American students. Tribal consultation was established to bring in and promote tribal voices on challenges affecting their children's education. The federal trust responsibility, upheld by the Supreme Court, places the responsibility for meaningful consultation on federal agencies. This is reflected in the ESEA section 1111(a)(1)(A) which states that State educational agencies are required to conduct timely and meaningful consultation with Indian tribes, among other entities, prior to submitting their State plan. Tribal consultation recognizes the role of tribal governments as sovereigns in directing the education of Native American students and the teamwork needed between schools and tribal communities to facilitate a child's academic progress and success.

DEFINITIONS

Consultation – Meaningful and timely dialogue with appropriate officials and representatives of tribal governments. Consultation emphasizes trust, respect, and shared responsibility, which requires the open exchange of information, full and candid expression of mutual views, and a commitment to fully consider other views during decision making. Consultation should lead to mutual understanding.

Government-to-Government Relationship – The term was first used by Indian Tribes and the Federal Government, and is grounded in federal treaties, statutes and executive orders. It is also used to describe the relationship between Indian Tribes and State Governments.

Indian Tribe – A federally-recognized American Indian Tribe, Alaska Native Tribe, Band, Nation, Pueblo, Village or Community with whom the Federal Government maintains an official government-to-government relationship, established by a federal treaty, statute, executive order, court order or a federal administrative action is considered a federally recognized Tribe. The Bureau of Indian Affairs maintains and regularly publishes the list of Federally Recognized Tribes (<https://www.bia.gov/bia/ois/tribal-leaders-directory/>).

Sovereignty – The ultimate source of political power from which all specific political powers are derived.

Tribal Government – A governing body of a Native American Tribe, Band, Nation, Pueblo, Village or Community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a.

Tribal Leader – A tribal president, governor, chairperson, and/or elected or appointed representative of an Indian Tribe.

Tribal Self-Governance – The governmental actions of Indian Tribes exercising self-government and self-determination.

Requirement for Tribal Consultation

All districts receiving Title VI Indian Education Grant Awards of more than \$40,000, or have a Native American student population of over 50 percent must engage in tribal consultation (ESEA section 1111(a)(1)(A)). Tribal consultation is required for all Title programs covered by ESSA, not solely Title VI – Indian Education. Beginning with fiscal year 2017, affected LEAs must consult with Indian tribes, or those tribal organizations approved by the tribes located in the area served by the LEA before submitting plans or applications for the following programs under ESEA:

- Title I, Part A (Improving Basic Programs Operated by State and Local Education 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 (SSAE) Grants)
- Title IV, Part B (21st Century Community Learning Centers [21st CCLC])
- Title V, Part B, Subpart 2 (Rural and Low-Income School Program)
- Title VI, Part A, Subpart 1 (Indian Education Formula Grants to LEAs)

It is the responsibility of the LEA to prepare and initiate tribal consultation. To ensure timely and meaningful consultation on issues affecting Native American students, an affected LEA shall consult with tribal leaders from local Indian tribes or tribal organizations. Affected districts, schools and their chosen representatives should begin the conversation with a tribal nation near the school or district. This may be tribally-elected officials or tribal education directors, but it should be up to the tribes to choose who represents their voice in the process of consultation. Tribal parents and local parent advisory committees should also be represented in the collaboration and consultation processes. Members or appropriate officials will include, but are not limited to: tribal chairpersons, tribal councilmembers, tribal education coordinators/directors, and any others recommended by these tribal representatives.

Tribal consultation works best when time is allocated to build authentic trusting relationships.

It is important to understand there is no conventional approach to tribal consultation: it must adapt to the needs of each Native American community, being aware of capacity and the need for ongoing inclusion of tribal perspectives. When starting to plan for tribal consultation, it is critical to learn the history of tribal relations within the state and the community. This goes beyond the basics of identifying tribes and tribal organizations and key issues, but to a deeper understanding of the community, the local Native American community, and the history they have with the state and the local education system. American Indian Tribes have a unique political status that entitles them to a special government-to-government relationship with the United States (U.S.) based on their federally-recognized status as sovereign nations. This relationship extends to LEAs, as the LEA is representing federal programs and federal funds. Formal tribal consultations and ongoing tribal communications are critical components of this relationship. Consultations promote the meaningful exchange of ideas and information while building trusted relationships between the LEA and tribal governments.

This process should incorporate reciprocal leadership at all stages. The invitation to participate should come from the local Superintendent and be addressed to tribal leaders. It is the responsibility of the tribal government to designate their participants for the tribal consultation process. This process will allow collaboration between the tribe and the district to enhance the educational opportunities of Native American students. LEAs who start with a genuine commitment to consensus-based decision making, rooted in respect and knowledge of Native American communities, have a real opportunity to change Native American education, in partnership with tribes and Native American communities.

A list of the components of meaningful tribal consultation, many of which U.S. Department of Education (ED) has outlined in its “Consultation and Coordination with American Indian and Alaska Native Tribal Governments” policy (<https://www2.ed.gov/about/offices/list/oese/oie/tribalpolicyfinal.pdf>):

- Consultation is meaningful when it occurs at the earliest possible stage, prior to the development of a program, initiative, or policy to ensure that tribal views are integrated
- Tribal consultation is most effective when it is seen and understood as a process that requires continuous input and discussion
- Authentic consultation is based on open communication and coordination that actively seeks and considers the views of all participants, and then seeks agreement on how to proceed
- The process of meaningful consultation is equally as important as the product of consultation. If tribal input is not reflected in how education programs and services are administered to Native American students, then we have missed a great opportunity in supporting our nation’s most vulnerable youth
- Establishing a minimum set of requirements and expectations with respect to consultation along with establishing measurable outcomes are necessities for

meaningful consultation

Consultation is a cyclical process that incorporates the initial consultation, agreements, monitoring progress, reporting, and ongoing evaluation. The consultation process should not be linear or stagnant. Effective and ongoing evaluation is critical as districts work to develop and strengthen processes and policies to facilitate meaningful tribal consultation. This process offers a valuable tool to positively impact Native American students.

Below are critical components of the consultation process that LEAs are encouraged to incorporate:

- Identify and contact participants. Tailor communication strategies to ensure that the appropriate method is used for the intended audience (for example, send printed notices via postal mail to tribal leaders to indicate a higher degree of formality)
- Establish a minimum set of requirements and expectations with respect to consultation
- Establish measurable outcomes for meaningful consultation
- Ensure everyone involved understands the objectives of each meeting and the purpose of consultation
- Establish dates for upcoming meetings, including tribal consultation meetings and information or input meetings that are open to the public
- Establish deadlines for plan development and submission
- Distribute and post information on proposed programs prior to the meeting
- Plan presentations about existing programs so that tribes have clarity regarding how the programs operate in the local, district or state context
- Gather relevant data, both local and statewide from a variety of sources including: DataQuest (<https://data1.cde.ca.gov/dataquest/>), California School Dashboard and System of Support (<https://www.cde.ca.gov/ta/ac/cm/>) LEA Accountability Report Card (<https://www.cde.ca.gov/ta/ac/le/>) for Native American students including but not limited to:
 - Percent of 9th grade students on track for graduating
 - Attendance and truancy data
 - Percent enrolled in Career & Technical Education opportunities
 - Percent enrolled in college courses in high school
 - Number of disciplinary actions and push outs

- Number of students in after school programs
- Number of students in alternative education
- Number of students in extra-curricular activities (e.g., band, sports, debate)
- Number of students with individualized education plans
- Number of students in Talented & Gifted programs
- Create submission process for tribal input
- Establish a notification system to make sure all parties are continually updated
- Establish a plan to distribute and post a final copy of plans or applications
- Establish a plan for subsequent years for meetings to review progress, make changes, and incorporate feedback
- Distribute and post contact information for district personnel or members of committees

Evaluate the tribal consultation process. Questions that should guide evaluation include:

- How was outreach conducted to reach groups or individuals whose views have not traditionally been recognized?
- Was the information provided relevant, produced in plain language, and easy to understand?
- Are all consultations accessible and welcoming?
- Did all participants have the opportunity to add their value to the meeting?
- What kind of follow-up was provided after the meeting?
- Did the consultation meeting change the relationship among participants?

Federal Title Programs

The following is a list of programs, including program descriptions and California Department of Education (CDE) contact information, which require an affected LEA to consult with Native American tribes or tribal organizations prior to submitting plans or applications under ESEA. LEAs should conduct their consultation in advance of making significant decisions regarding plans or applications for covered programs, to ensure an “opportunity for tribal representatives designated to consult on behalf of the tribe.

Title I, Part A

Improving Basic Programs Operated by State and LEAs

Title I, Part A (<https://www.cde.ca.gov/sp/sw/t1/>) — Federal funds help to meet the educational needs of students in California schools. Funds are used to support effective, evidence-based educational strategies that close the achievement gap and enable the students to meet the state's challenging academic standards. Title I-funded schools are either Targeted Assistance Schools (TAS) or Schoolwide Program (SWP) schools.

Authorized Use of Funds

Title I, Part A federal funds help to meet the educational needs of students in California (<https://www.cde.ca.gov/sp/sw/t1/authuseoffunds.asp>).

The CDE recommends that LEAs, county offices of education, and direct funded charter schools consider the following general criteria when approving activities or expenditures supported with Title I, Part A funds:

- The activity/expenditure is aligned to meet the challenging State academic content standards (ESSA sections 1112[a][3][B][i] and 1112[b]);
- The activity/expenditure is an evidenced-based educational strategy (ESSA sections 1003[b][1][B]; 1114[d]; and 1115[h]);
- The activity/expenditure is reasonable, necessary, and allocable cost to the program (2 *CFR* 200.404–200.405);
- Title I, Part A funds used supplement the funds that would, in the absence of such funds, be made available from State and local sources, and do not supplant such funds (ESSA Section 1118[b][1]); and
- Title I, Part A funds used are current Federal fiscal year or the subsequent fiscal year (ESSA Section 1127[a])

Title I SWPs should consider the following general criteria when approving activities or expenditures supported with Title I, Part A funds:

- The activity/expenditure meets a need identified in the comprehensive needs assessment (ESSA Section 1114[b][6]);
- The activity/expenditure is included in the Single Plan for Student Achievement (SPSA) (*Education Code [EC] Section 64001[g][C][3]*);
- The SPSA has been approved by the local governing board (*EC Section 64001[i]*);
- The School-site Council (SSC) annually evaluates and monitors the implementation of the SPSA and progress towards accomplishing the goals (*EC Section*

64001[g][2][B] and [i]); and

- The activity/expenditure has been reviewed, approved, and recommended by the SSC to the local governing board (EC Section 64001[d])

Title I TASs should consider the following general criteria when approving activities or expenditures supported with Title I, Part A funds:

- The activity/expenditure serves the needs of students that are identified as failing, or most at risk of failing to meet challenging State academic standards on the basis of multiple, educational related, objective criteria established by the LEA and supplemented by the school (ESSA Section 1115[c][1][B])
- The activity/expenditure is included on an ongoing basis, review of the progress of eligible children and revise the TAS program, if necessary, to provide additional assistance, to enable such children to meet the challenging State academic standards (ESSA Section 1115[b][G][iii])
- Staff members paid with Title I funds may assume limited duties that are assigned to similar personnel who are not so paid, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school (ESSA Section 1115[d][2])

The McKinney-Vento Homeless Assistance Act (Subtitle B – Education for Homeless Children and Youth), reauthorized under ESSA, ensures educational rights and protections for children and youth experiencing homelessness (42 U.S. Code [U.S.C.] Section 11434). This overview explains the legislation and offers strategies for implementing it.

- Homeless children are automatically eligible for Title I services, regardless of their current academic performance (20 U.S.C. Section 6315[c][2][E])
- LEAs must reserve funds, as necessary, to provide comparable services to homeless students regardless of their school of attendance (20 U.S.C. Section 6313[c][3][A])
- Homeless students at non-Title I schools are entitled to academic support comparable to students attending Title I schools (20 U.S.C. Section 6313[c][3][C][i])
- Title I does not have a formal definition of comparable services
- Only 15 percent of Title I funds can be carried over to the next year
- Title I, Part A reservation funds for homeless education can be used to support homeless students (20 U.S.C. Section 6315[c][2][E])

If an expenditure/activity does not meet all of the above rationale, it is not likely to be an authorized use of Title I, Part A funds.

Contact the CDE's Title I Policy, Program, and Support Office at TitleI@cde.ca.gov or by phone at 916-319-0917.

Title I, Part C

Education of Migratory Children

Title I, Part C (<https://www.cde.ca.gov/sp/me/mt/>) — The purpose of the Migrant Education Program is to assist in supporting high quality and comprehensive educational programs and services for migratory children during and beyond the school year and to help reduce the educational disruptions and other problems that result from repeated moves.

Authorized Use of Funds

- Identification and recruitment (ID & R) of migratory children (ages 3–21)
- Instructional and support services
- ID & R training
- Interstate and intrastate coordination
- Advocacy
- Family Engagement
- Migrant Student Records Exchange

Contact the CDE's Migrant Education Office at MMallory@cde.ca.gov or by phone at 916-319-0851.

Title I, Part D

Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk

Title I, Part D (<https://www.cde.ca.gov/sp/sw/pi/index.asp>) — Subgrants to support the operation of LEAs to provide educational programs that prepare children and youth for further education, employment training, and successful transition from a correctional facility. Funds are used to improve educational services that enable the students to meet the state's challenging academic standards and provide successful transition from institutionalization to further schooling or employment (ESSA Section 1401).

Title I, Part D, Subpart 1 (<https://www.cde.ca.gov/sp/sw/pi/titleipartdsubpart1.asp>) — Subgrants for State Agencies (SAs) to provide a free public education for children and youth in institutions for neglected or delinquent children and youth attending community day programs for neglected or delinquent children and youth, or in adult correctional institutions.

Eligibility

The SA Application for the Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent or At-Risk grant, also known as the Title I, Part D, Subpart 1 program, is available to any California SA that is responsible for providing free public education for children and youth:

- in institutions for neglected or delinquent children and youth;
- attending community day programs for neglected or delinquent children and youth; or
- in adult correctional institutions

Purpose

According to ESSA Section 1401(a), the purposes of Title I, Part D, Subpart 1 is to:

1. to improve educational services for children and youth in local and tribal State institutions for neglected or delinquent children and youth so that such children and youth have the opportunity to meet the same challenging State academic standards that all children in the State are expected to meet;
2. to provide such children and youth with the services needed to make a successful transition from institutionalization to further schooling or employment; and
3. to prevent at-risk youth from dropping out of school, and to provide dropouts, and children and youth returning from correctional facilities or institutions for neglected or delinquent children and youth, with a support system to ensure their continued education and the involvement of their families and communities

Title I, Part D, Subpart 2 (<https://www.cde.ca.gov/sp/sw/t1/nord.asp>) — Subgrants for LEAs

to improve educational services for children and youth in local, tribal, and State institutions for neglected or delinquent children and youth so that such children and youth have the opportunity to meet the same challenging State academic standards.

Purpose

The purpose of Subpart 2 is to support the operation of LEA programs that involve collaboration with locally operated correctional facilities (ESSA Section 1421[1]-[3]):

- To carry out high quality education programs to prepare children and youth for secondary school completion, training, employment, or further education;
- To provide activities to facilitate the transition of such children and youth from the correctional program to further education or employment; and
- To operate programs in local schools for children and youth returning from correctional facilities, and programs which may serve at-risk children and youth

Contact Sherry Davis at SDavis@cde.ca.gov or by phone at 916-445-4904.

Title II, Part A

Supporting Effective Instruction

Title II, Part A (<https://www.cde.ca.gov/fq/aa/ca/titleii.asp>) — A federal program that increases student academic achievement through strategies such as improving teacher and principal quality. Title II, Part A, Supporting Effective Instruction is a federal categorical program contained in the Consolidated Application. The purpose of Title II, Part A is to increase the academic achievement of all students by helping schools and districts: (1) improve teacher and principal quality through professional development and other activities, and (2) provide low-income and minority students greater access to effective teachers, principals, and other school leaders.

Purpose

The purpose of Title II is to provide supplemental activities that strengthen the quality and effectiveness of teachers, principals, and other school leaders which includes:

- Increasing student achievement consistent with the challenging state academic standards;
- Improving the quality and effectiveness of teachers, principals, and other school leaders;
- Increasing the number of teachers, principals, and other school leaders who are effective in improving student academic achievement in schools; and
- Providing low-income and minority students greater access to effective teachers, principals, and other school leaders

Title II, Part A can be used to improve teacher and principal quality, which includes induction programs, professional development and support of professional growth, equitable access to quality educators, and recruitment for hard-to-find educator positions. Title II, Part A equitable services must be offered to eligible nonprofit private schools located within the LEA boundaries. LEAs must consult with participating private schools.

Contact the CDE's Educator Excellence and Equity Division Office by phone at 916-323-6400. The Title II, Part A program contact is Lisa Fassett (LFassett@cde.ca.gov, 916-323-4963) and the fiscal contact is the Categorical Allocations & Audit Resolution office (CAAR@cde.ca.gov).

Title III, Part A

Language Instruction for English learners and Immigrant Students

Title III, Part A (<https://www.cde.ca.gov/sp/el/t3/>) — Language instruction for English learner and immigrant students.

Purpose

The purpose of the Title III Language Instruction for English learners and Immigrant Students program is to ensure that all English learners attain English language proficiency, develop high levels of academic attainment in English, and meet the same challenging state academic standards as all other students (20 U.S.C. §§1703(f), 6825(a)).

Authorized Uses of Funds

Funds must be used for the following supplemental services as part of the language instruction program for English learners and immigrant children and youth:

- Developing and implementing new language instruction educational programs, academic content instructional programs including early childhood education programs, elementary school programs, secondary school programs, and dual enrollment programs
- Highly focused, innovative, locally-designed activities to expand or enhance existing language instruction educational programs
- Implementing SWPs for restructuring, reforming, and upgrading language instruction educational programs and academic content instruction
- Implementing agency-wide programs for restructuring, reforming, and upgrading programs, activities relating to language instructional education programs and academic content instruction

Contact the CDE's Language Policy and Leadership Office by phone at 916-319-0845. The Title II, Part A program contact is Geoffrey Ndirangu (GNdirang@cde.ca.gov, 916-323-5831) and the fiscal contact is Cristina Echols Gollas (CEcholsgollas@cde.ca.gov, 916-323-5124).

Title IV, Part A

Student Support and Academic Enrichment

Title IV, Part A (<https://www.cde.ca.gov/sp/st/>) — SSAE program federal funds are to improve students' academic achievement by increasing LEAs, schools, and local communities capacity.

Purpose

The purpose of Title IV, Part A is to improve students' academic achievement by increasing the capacity of states, LEAs, schools, and local communities to

1. provide all students with access to a well-rounded education;
2. improve school conditions for student learning; and
3. improve the use of technology in order to improve the academic achievement and digital literacy of all students

Eligibility

To qualify for Title IV, Part A funds, LEAs must (1) submit an application, known as the Local Control and Accountability Plan Federal Addendum in California, to the State educational agency; and (2) complete a needs assessment (ESSA Section 4106[a]).

Contact Kevin Donnelly at TitleIV@cde.ca.gov, or by phone at 916-319-0942.

Title IV, Part B

21st Century Community Learning Centers

Title IV, Part B (<https://www.cde.ca.gov/fq/aa/co/ca19assurancet4centschls.asp>) — The purpose of the 21st CCLC program is to provide grants to local school districts and community learning centers for afterschool programs serving students in low-performing schools.

Purpose

The purpose of Title IV, Part B is to provide opportunities for communities to establish or expand activities in community learning centers that:

1. provide opportunities for academic enrichment, including providing tutorial services to help students, particularly students who attend low-performing schools, to meet State and local student academic achievement standards in core academic subjects, such as reading and mathematics;
2. offer students a broad array of additional services, programs, and activities, such as youth development activities, drug and violence prevention programs, counseling programs, art, music, and recreation programs, technology education programs, and character education programs, that are designed to reinforce and complement the regular academic program of participating students; and
3. offer families of students served by community learning centers opportunities for literacy and related educational development

Contact the CDE's Expanded Learning Division at ExpandedLearning@cde.ca.gov, or by phone at 916-319-0923.

Title V, Part B, Subpart 2

Rural and Low-Income School Program

Title V, Part B, Subpart 2 (<https://www.cde.ca.gov/fq/aa/rp/>) —ESEA, reauthorized as ESSA, includes the Rural Education Achievement Program Initiative, designed to address the unique needs of rural school districts that frequently: (1) lack the personnel and resources needed to compete effectively for federal competitive grants; and (2) receive formula grant allocations in amounts too small to be effective in meeting their intended purposes (ESSA Section 5202). An LEA is eligible for the Rural and Low-Income Schools (RLIS) program if 20 percent or more of the children served by the LEA are from families with incomes below the poverty line, and all of the schools served by the LEA are designated with a school locale code of 32, 33, 41, 42, or 43 by the National Center for Education Statistics (NCES) (ESSA Section 5221[b][1]).

Eligibility

An LEA is eligible for RLIS if 20 percent or more of the children served by the LEA are from families with incomes below poverty, and all of the schools served by the LEA are designated with a school locale code of 32, 33, 41, 42, or 43 by the NCES (ESSA Section 5221[b][1]).

Current year RLIS allocations are based on an LEA's student low income percentage reported two years before by the NCES.

Authorized Uses of Funds

An LEA may use RLIS funds for the following activities (ESSA Section 5222[a]):

- Title I, Part A
- Title II, Part A
- Title III
- Title IV, Part A
- Parental involvement activities

Contact Patricia Ramirez at REAP@cde.ca.gov or by phone at 916-319-0787.

Title VI, Part A, Subpart 1

Indian Education Formula Grants to LEAs

Title VI, Part A, Subpart 1 (<https://www2.ed.gov/programs/indianformula/index.html>) — It is the policy of the U.S. to fulfill the Federal Government's unique and continuing relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with LEAs, Indian tribes and organizations, postsecondary institutions, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children. It is further the policy of the U.S. to ensure that Indian children do not attend school in buildings that are dilapidated or deteriorating, which may negatively affect the academic success of such children.

Purpose

It is the purpose of this part to support the efforts of LEAs, Indian tribes and organizations, postsecondary institutions, and other entities:

1. to meet the unique educational and culturally related academic needs of Indian students, so that such students can meet the challenging State academic standards;
2. to ensure that Native American students gain knowledge and understanding of Native communities, languages, tribal histories, traditions, and cultures; and
3. to ensure that teachers, principals, other school leaders, and other staff who serve Indian students have the ability to provide culturally appropriate and effective instruction and supports to such students

The ED's Indian Education Formula Grant specialists are Annabelle Toledo (Annabelle.Toledo@ed.gov, 202-260-1581), Kimberly Smith (Kimberly.Smith@ed.gov, 202-453-6459) and Wanda Lee (Wanda.Lee@ed.gov, 202-453-7262).

Contact Judy Delgado at JDelgado@cde.ca.gov or by phone at 916-319-0506.



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,¹ for affected local educational agencies (LEAs) to consult with Indian tribes and tribal organizations on issues affecting Native students.²

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.³

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

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

² 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)).

³ 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

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

1. What are the consultation requirements under section 8538 of the ESEA¹?

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 ESSA¹, 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, 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.

¹ 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 (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)

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.



Tribal Consultation Fillable Form

Tribal Consultation Affirmation

School Year ending June 30, 20

PL.114-95 § 8538 states that:

DOCUMENTATION—Each affected LEA 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.

Local Education Agency

Name of LEA: _____ SD # _____

LEA Superintendent:

Email: _____ Phone: _____

LEA ESSA Coordinator:

Email: _____ Phone: _____

Tribal Representatives

Name of Tribe/Organization:

Name: _____ Title: _____

Email: _____ Phone: _____

Name:

Title:

Email:

Phone:

Affirmations

We agree that timely and meaningful consultation occurred before the LEA submitted plans or applications for the following Title programs under ESSA.

We agree that we have participated in meaningful and timely discussion on each Title under ESSA and have chosen to participate in the programs marked below:

Title I, Part A (Improving Basic Programs Operated by State and LEAs)

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 (SSAE Grants)

Title IV, Part B (21st CCLC)

Title V, Part B, Subpart 2 (Rural and Low-income School Program)

Title VI, Part A, Subpart 1 (Indian Education Formula Grants to LEAs)

Consultation Topics

Check to affirm that all the required topics were discussed during the consultation process:

How students' needs will be identified (culturally, linguistically, and academically)

Proportion of funds allocation for services

What services will be offered

Title programs under ESSA

Size and scope of equitable services

How, where, when, and by whom services will be provided

Equitable services to teachers and parents

How services will be assessed, and improved based on assessment results

How and when decisions about the delivery of services will be made

Parent and tribal engagement

We agree that timely and meaningful consultation shall continue throughout the implementation and assessment of services provided under Section 8535 on the following dates:

Superintendent (or designee):

Date:

Tribal Representative:

Date:

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 (ED).

This form must be kept on file at the LEA Title I office.