

TRIBAL CONSULTATION POLICY

AGENCY OVERVIEW

The mission of the Arizona Department of Education (ADE) is to serve Arizona's education community, and actively engage parents, to ensure that all Arizona children have the knowledge to determine their future, achieve their goals, and be successful citizens. The Office of Indian Education (OIE) at ADE administers federal and state programs to meet the educational and cultural needs of participating local educational agencies (LEAs). In addition, the OIE implements A.R.S. §15-244, Indian Education Act. Outreach is provided to all of Arizona's LEAs on reservations and urban areas with high populations of Native American students. The Director of Indian Education (Director) serves as a liaison between tribal education departments and ADE and facilitates the Superintendent of Public Instruction's initiatives to benefit the academic achievement and cultural awareness of Arizona's indigenous youth.

ADE recognizes the unique sovereign status of the 22 Indian nations, tribes and pueblos within the state and supports the ongoing efforts and commitment by the state and the tribes to strengthen and increase state-tribal collaboration and communication to better serve the Native population. Relationship building and cooperation between all parties will promote the early and integral consultation of tribal governments in the development of ADE programs affecting tribal members.

INTRODUCTION

On September 14, 2006, Governor Janet Napolitano signed Executive Order 2006-14 – Consultation and Cooperation with Arizona Tribes. On November 5, 2009, President Barack Obama signed an executive memorandum reaffirming the government-to-government relationship between American Indian Tribes and the Federal Government, directing each executive department and agency to consult with tribal governments prior to taking actions that affect this population. On July 1, 2016, the Arizona State Senate, via Senate Bill 1237, repealed the Arizona Commission of Indian Affairs and transferred duties to the Governor's Office on Tribal Relations (Office). The Office requires each state agency to create a tribal consultation policy.

PURPOSE

Per S.B. 1237, the purpose of this policy is to seek input from elected or appointed tribal officials before taking an action that may affect a tribal community and to integrate the input generated from tribal consultations into agency decision making processes that recognize the government-to-government relationship between ADE and tribal nations.

ADE recognizes that a standing goal of working with Arizona's Indian Tribes is to increase their knowledge and understanding of ADE programs and policies and for ADE to increase its knowledge and understanding of tribal concerns related to the education of Native American students.

HISTORY

Sovereignty

Under both federal and common law, American Indian Tribes are sovereign nations with recognized powers of self-government. The status of tribes as sovereign nations means that tribes possess the

inherent right to develop their own forms of government, to determine their own citizenship and make their own laws, both civil and criminal, and to be governed by their own judicial systems.

Special Relationship

The special relationship between the Federal Government and American Indian Tribes is affirmed in statutes, legislation, and various Presidential Executive Orders including, but not limited to the following:

- Indian Self-Determination and Education Assistance Act - 1975, P.L. 93-638, as amended
- Presidential Executive Memorandum to the Heads of Executive Departments, April 29, 1994
- President Executive Order on American Indian and Alaska Native Education, April 30, 2004
- Presidential Memorandum on Tribal Consultation, November 5, 2009
- Presidential Executive Order 13592, Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities, December 2, 2011

OBJECTIVES

In order to fully implement this Policy, the OIE will:

- Establish communication channels with the elected leader of each Indian Tribe and the appointed leadership for the Tribal Education Department (TED) of each Indian Tribe.
- Initiate meaningful consultation with Arizona's Indian Tribes regarding programs, policies, and actions that will have a significant impact on Arizona's tribal members prior to taking any action.
- Meet regularly with the Indian Education Advisory Council to ensure consistent application of the Tribal Consultation Policy.
- Provide relevant background information on consultation topics so that Indian Tribes may fully consider information when providing recommendations to ADE.
- Incorporate written recommendations from Indian Tribes which include the desired results of proposed changes into programs and policies affecting Indian Tribes.

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 between ADE and Arizona's tribal nations, communities, and pueblos (Indian Tribes).

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.

High Density School – A school in which 25 percent or more of the student body is Native American, compared to low-density schools where less than 25 percent of the student body is Native American (National Indian Education Study 2011).

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. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of Federally Recognized Tribes.

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

Tribal Government – A governing body of an American Indian or Alaska Native 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.

CONSULTATION PARTICIPANTS AND ROLES

The responsibility for the administration of ADE’s Tribal Consultation Policy lies with the Superintendent of Public Instruction with the coordination of such activities carried out by the Director of Indian Education (Director).

The Director is responsible for monitoring the policy and serves as the agency’s point of contact in accessing information regarding ADE’s Tribal Consultation Policy.

Inasmuch as each division within ADE shares in the agency-wide responsibility to seek input from Indian Tribes with regard to programs affecting tribal members, the Director will communicate the results of consultation with Indian Tribes to each division’s Associate Superintendent. In turn, ADE staff conducting consultation with Indian Tribes will communicate the results of consultation with the Director.

CONSULTATION PROCEDURES

Consultation occurs when the Director meets or exchanges written correspondence with a tribal leader to solicit comments and recommendations on ADE programs and resources as they affect tribal members. However, consultation may also be initiated by tribal leaders or other staff of ADE, including, but not limited to, Associate Superintendents with division oversight and Deputy Associate Superintendents overseeing units within ADE divisions.

Consultation shall occur on a regular basis and may occur on an as-needed basis as well when Indian Tribes or ADE raise issues that need to be addressed regarding use of federal funds and programs

administered by ADE that affect or influence the education of Arizona's tribal members in Pre-K through 12th grade.

I. Initiating Consultation:

- a. The Director will communicate with tribal leaders and council members of all Indian Tribes affected by ADE programs. That communication will:
 - i. provide relevant background information on the purpose and use of specific funds so that Indian Tribes may fully consider information when providing recommendations to OIE;
 - ii. include the manner and the timeframe by which the Indian Tribes may provide feedback regarding consultation time and mechanisms, which may include mailings, in-person meetings, roundtable discussions, teleconferences, electronic/computer based meetings, and email; and
 - iii. include OIE contact information.
- b. If one or more Indian Tribes initiate consultation with OIE first, the Director or OIE staff members shall respond within five (5) business days via email and follow the communication process outlined above. Additionally, the Director shall provide the Communications team with the correspondence for reporting purposes.
- c. Together, OIE and Indian Tribes shall determine when initial consultation will begin and which consultation mechanisms to employ.

II. Conducting Consultation:

- a. An agenda will be created by the Director and sent to Indian Tribes at least one business day prior to initial consultation taking place. Subsequent agendas shall be developed with stakeholders.
- b. OIE will request formal written recommendations from Indian Tribes that include desired impacts of proposed use of applicable funds to be provided to OIE within 15 business days of initial consultation.
- c. The Director will present the Indian Tribes' recommendations to appropriate ADE staff.
- d. The Director will report to applicable LEAs the outcomes of the consultation within 15 business days of final consultation.

LIMITATIONS ON CONSULTATION

- I. This policy shall not diminish any administrative or legal remedies otherwise available by law to ADE or Indian Tribes.
- II. This policy does not prevent ADE and Indian Tribes from entering into memoranda of understanding, intergovernmental agreements, joint powers agreements, professional service contracts, or other established administrative procedures and practices mandated by federal, state or tribal laws or regulations.
- III. Final Decision-Making Authority: ADE retains the final decision-making authority with respect to actions undertaken by ADE and within ADE's jurisdiction. In no way should this policy impede ADE's ability to manage its operations.

EVALUATION

- I. Pursuant to S.B. 1237, once annually, the Governor is required to hold a State-Tribal Summit to address issues of mutual concern with the 22 Tribal Nations and Communities in Arizona. Representatives from all Indian Tribes, members of the State Board of Education, the Governor's Office on Tribal Relations, the Inter Tribal Council of Arizona, the State Legislature, the Superintendent of Public Instruction and the Indian Education Advisory Council (IEAC) shall meet to assist in evaluating, consolidating, and coordinating all activities relating to the education of Native American pupils, including the effectiveness of this Tribal Consultation Policy.
- II. ADE shall conduct additional evaluation of this policy through the following:
 - a. Tribal Council and TED Satisfaction Surveys
 - b. IEAC Tribal Consultation Sub-committee Evaluation Rubric

The results of this evaluation will be compiled and the resulting report will be disseminated to participating parties.

ESSA CONSULTATION WITH INDIAN TRIBES AND TRIBAL ORGANIZATIONS

INTRODUCTION

Public Law 114-95, the Every Student Succeeds Act (ESSA), was signed by President Obama on December 10, 2015. It reauthorizes the 50-year-old Elementary and Secondary Education Act (ESEA). The previous version of the law, the No Child Left Behind (NCLB) Act, was enacted in 2002.

HISTORY

ESEA – The Elementary and Secondary Education Act (ESEA) was signed into law in 1965 by President Lyndon Johnson, who believed that "full educational opportunity" should be "our first national goal." From its inception, ESEA was a civil rights law.

ESEA offered new grants to districts serving low-income students, federal grants for textbooks and library books, funding for special education centers, and scholarships for low-income college students. Additionally, the law provided federal grants to state educational agencies to improve the quality of elementary and secondary education.

NCLB – The No Child Left Behind Act put in place measures that exposed achievement gaps among traditionally underserved students and their peers and spurred an important national dialogue on education improvement. This focus on accountability has been critical to ensuring a quality education for all children, but also revealed challenges to the effective implementation of this goal.

Parents, educators, and elected officials across the country recognized that a strong, updated law was necessary to expand opportunity to all students; support schools, teachers, and principals; and to strengthen our education system and economy.

In 2012, the Obama administration began granting flexibility to states regarding specific requirements of NCLB in exchange for rigorous and comprehensive state-developed plans designed to close achievement gaps, increase equity, improve the quality of instruction, and increase outcomes for all students.

ESSA CONSULTATION

Per *ESSA, Section 1111 – State Plans*, states are required to file a plan that is developed with timely and meaningful consultation with the Governor, members of the State legislature and 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, specialized instructional support personnel, paraprofessionals, administrators, other staff, and parents. The new language demonstrates that Congress intended to improve consultation and make sure that key stakeholders who have been historically underrepresented are integrally involved in state plans.

Per *ESSA, Section 8535 – Consultation with Indian Tribes and Tribal Organizations*, local districts and charter schools must also consult with appropriate officials from tribes or local tribal organizations before the local educational agency submits an application for a covered program under ESSA. In addition, consultation shall take place prior to approval of LEA applications for use of funds under ESSA as administered by ADE.

PROGRESS REPORTS

- I. Periodically, the Director will obtain feedback from LEAs regarding progress made by tribal members participating in programs under ESSA.
- II. OIE shall, in turn, provide updates to individual Indian Tribes, which will include program information, grant deadlines, policy changes, etc.

CONCLUSION

This policy creates a solid foundation to ensure that parents, families, and Indian Tribes are meaningfully engaged in ongoing implementation of ESSA and other ADE programs as they relate to Arizona's tribal members. ADE looks forward to working with Indian Tribes, school districts and charter schools, and parents of Native American children to ensure that all ADE programs are implemented with the goal of preparing every student for success in life.