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New Mexico Public Education Department
Tribal Consultation Guidance:
Every Student Succeeds Act
New Mexico Indian Education Act
NMPED Communication and Collaboration Policy
New Mexico State-Tribal Collaboration Act

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New Mexico Public Education Department
Indian Education Department

Draft NMPED Tribal Consultation Guidance

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I. Background

The State of New Mexico has long been a national leader in state and tribal government and tribal community relations. In 2003, the state passed the Indian Education Act (IEA) creating the Indian Education Department and an assistant secretary of Indian Education to meet the unique needs of the state’s Native American Students. The IEA was followed by the passage of the State-Tribal Collaboration Act (STCA) of 2009, which further supported positive and production state and tribal government-to-government relations.

Since 2011 the New Mexico Public Education Department, along with its Indian Education Department, has worked to implement the amendments to the 1965 Education and Secondary Education Act known as the Every Student Succeeds Act (ESSA). Timely and meaningful tribal consultation with the state’s 23 federally recognized tribes and their communities has been at the core of the federal and state legislative measures created to improve education in New Mexico.

New Mexico School Districts Serving Native American Students

There are twenty-three (23) school districts in New Mexico that serve New Mexico’s federally recognized Native American Pueblos, Tribes and Nations. These school districts are located in three state educational regions:

REGION I		REGION II		REGION III	
School District	Pueblo/Tribe/Nation	School District	Pueblo/Tribe/Nation	School District	Pueblo/Tribe/Nation
Bloomfield	Navajo Nation	Zuni	Zuni	Bernalillo	Cochiti, Santo Domingo, San Felipe, Sandia, and Santa Ana
Farmington Central	Urban Navajo Nation	Magdalena Gallup	Navajo Nation Navajo Nation & Zuni	Albuquerque Espanola	Urban Ohkay Owingeh and Santa Clara
Cuba	Navajo Nation	Grants-Cibola	Laguna, Acoma, Navajo Nation	Pojoaque	San Ildefonso, Nambe, Pojoaque, Santa Clara, Ohkay Owingeh, Tesuque
Aztec	Navajo Nation	Los Lunas	Isleta	Peñasco	Picuris
Jemez Valley	Zia and Jemez	Ruidoso	Mescalero Apache	Taos	Taos
Jemez Mountain	Navajo Nation	Tularosa	Mescalero Apache	Rio Rancho	Urban
				Santa Fe	Urban
				Dulce	Jicarilla Apache

[Current Region I, II, and III list with corresponding Native American Pueblo, Tribe, and Nations]

Section 8538

The ESSA also requires LEAs to consult in a *timely and meaningful* manner with tribal governments and tribal organizations approved by tribal governments in school districts that are served by the LEAs. Tribal consultation is mandated to occur prior to the LEAs submitting education plans or applications for covered programs within the ESSA. The tribal consultation requirement is established by Section 8538 of the ESSA, Public Law 114-95.

An LEA is required to consult with tribal governments or tribally approved organizations when:

- 1) An LEA has fifty percent or more of American Indian/Alaska Native student population;
- 2) Receives a U.S. Department of Education Indian Education Formula Grant of \$40,000 or more; and
- 3) Serves a tribal government or tribally approved organization within the LEAs school district or area.

Furthermore, LEAs are required by ESSA to consult with tribal governments or tribally approved organizations on *education plans* or applications for *covered programs* identified by the ESSA as:

- 1) Title I, Part A (Improving Basic Programs Operated by State and Local Education Agencies)
- 2) Title I, Part C (Education of Migratory Children)
- 3) Title I, Part D (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk)
- 4) Title II, Part A (Supporting Effective Instruction)
- 5) Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act)
- 6) Title IV, Part A (Student Support and Academic Enrichment Grants)
- 7) Title IV, Part B (21st Century Community Learning Centers)
- 8) Title V, Part B, Subpart 2 (Rural and Low-Income School Programs)
- 9) Title VI, Part A, Subpart 1 (Federal Indian Education Formula Grants to Local Education Agencies)

Under the ESSA, LEAs are also required to affirm that consultation has occurred with tribal governments and tribally approved organizations prior to the submission of education plans and applications for covered programs. Finally, tribal consultation “shall not interfere with the submission of the [education] plan [or application for covered programs].”

New Mexico Indian Education Act

New Mexico's Indian Education Act (IEA) of 2003 was enacted to address the unique educational needs of New Mexico's Native American Students in twenty-three school districts throughout the State of New Mexico. The IEA also establishes an assistant secretary of Indian Education and an Indian Education Division within the New Mexico Public Education Department.

The purpose of the IEA is to:

- 1) ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;
- 2) ensure maintenance of native languages;
- 3) provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students;
- 4) ensure that the department of education *partners* with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities;
- 5) 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;
- 6) 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;
- 7) 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;
- 8) ensure that parents; tribal departments of education; community-based organizations; the department of education; universities; and tribal, state and local policymakers *work together* to find ways to improve educational opportunities for American Indian students;
- 9) ensure that *tribes are notified of all curricula development* for their approval and support;
- 10) encourage an agreement regarding the alignment of the bureau of Indian affairs and state assessment programs so that comparable information is provided to parents and tribes; and encourage and foster parental involvement in the education of Indian students.

The IEA does not define tribal consultation. However, four of the ten purposes of the IEA articulate the State of New Mexico partnering with tribes to increase tribal involvement in education; establishing government to government relationships with New Mexico tribes and the federal Bureau of Indian Education; urban Indian communities; and providing notice and approval for curriculum development.

Additionally, the IEA establishes an Indian Education Advisory Council (IEAC) and directs the secretary of the New Mexico Public Education Department to consult with the IEAC on rule making. The assistance secretary of the Indian Education Division is directed to undertake coordinating and implementing the IEA within the New Mexico Public Education Department,

as well as convening semi-annual government to government meetings with New Mexico Indian Tribes, Pueblos, and Nations, and to develop and evaluate curricula that supports native language, history, culture, and government; support the IEAC, and similar to the ESSA Confirmation of Consultation documentation, the assistance secretary of the Indian Education Division is directed to obtain signatures from New Mexico Indian Tribes, Pueblos, and Nations approving education policies and procedures.

Among other legislatively mandated activities, the IEA also directs the Indian Education Division, in collaboration with LEAs, to issue a report on the status of Indian Education. Similarly, LEAs, or school districts within tribal lands are directed to issue a brief report on the status of Indian education and students within the school district. Annually, the New Mexico Public Education Department issues a Tribal Education Status Report that is due on November 15th. The report characterizes the implementation of the ESSA and IEA, as well as the status of educational developments supporting the state's Native American students. Similarly, the NMPED submits an annual STCA report on the department's efforts implementing the STCA and services provided to Native American students.

New Mexico State-Tribal Collaboration Act

In 2009, the New Mexico state legislature passed the State-Tribal Collaboration Act (STCA). The STCA's three overarching goals are to establish:

- 1) positive government to government relationships between the state and New Mexico's 23 federally recognized Indian Tribes, Pueblos, and Nations;
- 2) effective communication and collaboration; and
- 3) cultural competency for state personnel with ongoing communication with tribal governments.

The STCA also mandates the state to:

- 1) designate tribal liaisons within each state agency;
- 2) develop and participate in cultural competency training;
- 3) Issue annual reports detailing state agency and tribal collaboration, issues, and services provided;
- 4) host an annual state-tribal government to government summit; and
- 5) develop and implement an agency communication and collaboration policy.

New Mexico Public Education Department Tribal Communication and Collaboration Policy

Consistent with the STCA mandates for state agencies, the New Mexico Public Education Department, in collaboration with tribal governments and educational leadership, developed NMPED's Tribal Communication and Collaboration Policy. The policy seeks to improve and maintain agency and tribal partnerships, as well as to build upon previously agreed to processes when the agency develops, changes, or implements policies, programs or services that impact tribal sovereignty and self-governance.

The policy further establishes communication and collaboration policy principles recognizes and respects tribal sovereignty, values the importance of positive government to government relationships, and intergovernmental collaboration and coordination, among other principles, designed to better collaborate and communicate educational issues of mutual concerns.

For the purposes of guidance on tribal consultation for the New Mexico Public Education Department, it is notable that the communication and collaboration policy defines both consultation and collaboration.

Consultation Defined within the Communication and Collaboration Policy

The New Mexico Public Education Department's Tribal Communication and Collaboration Policy defines 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 particularly process that: (a) involves the Agency and Tribes through their official representatives; (b) actively solicits input and participation by the Agency and Tribes; and (c) 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. Consultation with Tribes is uniquely a government-to-government process with three main goals: (a) to reach consensus in decision-making; and (b) whether or not consensus is reached, to have considered each other's perspectives and concerns and honored each other's sovereignty; and (c) more importantly, consultations should result in documentation and shared agreements that seek and find alternatives.

Used alternately within the state's IEA and the NMPED's Tribal Communication and Collaboration Policy is the term collaboration. Collaboration is defined in the policy 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 applicability and focus, as well as areas of consultation. Consultation is initiated through written notification of consultation by either NMPED or tribal governments.

III. Tribal Consultation

Whether within the context of the federal ESEA as amended by the ESSA, or the State of New Mexico's IEA or NMPED's Tribal Communication and Collaboration Policy, tribal consultation is an integral part of addressing the unique needs of Native American students through the development of appropriate curricula, the allocation of resources, and the intergovernmental coordination of NMPED, the state's school districts within tribal lands, and tribal governments and tribal education departments.

Two critical components of successful tribal consultation are the timeliness of tribal consultation, and meaningful tribal consultation.

Timely Tribal Consultation

Timely consultation means that consultation with tribal governments, tribal education departments, and tribally approved tribal organizations should begin at the earliest possible time prior to the submission of LEA education plans or applications for covered programs in the case of the ESSA, or in the case of the NMPED and the IEA and the Tribal Communication and Collaboration Policy - prior to a decision being made that impacts tribal interests as it relates to determination of resources, curriculum development, and in the development, changes, and implementation of policies and procedures related to the unique needs of Native American students.

An additional consideration, as it applies to the ESSA, tribal consultation "shall not interfere with the timely submission of the [LEAs education] plan." As such, tribal consultation with tribal governments and tribal education department, and approved tribal organizations, as mentioned above, should be initiated at the earliest possible time *prior* to the education plan submission deadline.

Meaningful Tribal Consultation

Meaningful tribal consultation refers to a government to government relationship between NMPED and state school districts on the one part, and tribal governments and education departments and approved tribal organizations on the other. Meaningful consultation is an intergovernmental relationship that is built upon mutual respect and trust, ongoing interactions and communications, and coordination of government resources to address the unique educational needs of Native American Students within 23 state school districts.

As an example, NMPED engages in tribal consultation with rule making cited in the Indian Education Act (22-23A-4 NMSA 19780):

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.

Tribal consultation, in practice, entails tribal notification and information sharing with tribal leadership and education directors, and approved tribal organizations. This is followed up with government-to-government meetings designed to provide information and to receive tribal feedback on the proposed rulemaking implementing the IEA. Consultation also involves reporting outcomes and developments based on the tribal consultation process.

Elements for Successful NMPED, State School District, and Tribal Consultation
In order to support positive tribal consultation, consider the following:

- 1) Consult early and often, and prior to decisions being made conduct outreach to tribal governments and education departments, and approved tribal organizations on the elements of the decisions that may impact tribal education interests;
- 2) Information sharing: NMPED, School Districts, Tribal governments and education departments, 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, development, changes, and implementation of education policies and procedures, or the allocation of resources that may impact the education of Native American Students;
 - a. Including dates for tribal consultation meetings and public meetings
 - b. Deadlines for LEA education plans and applications
 - c. Information and presentations on educational programs and policies
 - d. Notification of program or policy changes, including invitations for tribal input on the proposed program or policy changes
 - e. Information on LEA and tribal government and tribal education department, and approved tribal organization points of contact
- 3) Establish/create and agree upon a list that identifies tribal educational priorities, issues, and challenges;
- 4) Provide cultural awareness and diversity training for LEA leadership and administrators to foster, support, and sustain positive and productive government to government relationships;
- 5) Understand tribal sovereignty and tribal governmental authority as it related to tribal educational priorities, issues and challenges; and
- 6) Plan government to government consultation and meetings around tribal cultural calendars, feast days, and tribal holidays.

IV. Tribal Consultation Tool Kit

- 1) Every Student Succeeds Act Section 8538
- 2) New Mexico Indian Education Act of 2003
- 3) New Mexico State-Tribal Collaboration Act of 2009
- 4) New Mexico Public Education Department Communication and Collaboration Policy
- 5) New Mexico Public Education Guide for Tribal Cultural Competency
- 6) New Mexico Public Education Department Indian Education Division Directory *Needed
- 7) New Mexico Tribal Leaders and Approved Tribal Organization Directory
- 8) New Mexico Tribal Education Directors Directory *Needed
- 9) Resources

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