

NMPED INDIAN EDUCATION DIVISION

# Tribal Consultation



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# INDIAN EDUCATION DIVISION (IED)

The Division was created by the Indian Education Act of 2003

## Mission

*To increase American Indian student academic and cultural achievement through culturally-relevant pedagogy, native language, and collaborative partnerships.*

## Vision

*All American Indian students will become proficient in academic, cultural, and leadership standards to become productive and contributing members of their pueblo/tribe/nation and state.*



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# PROFILE OF INDIAN EDUCATION IN NEW MEXICO

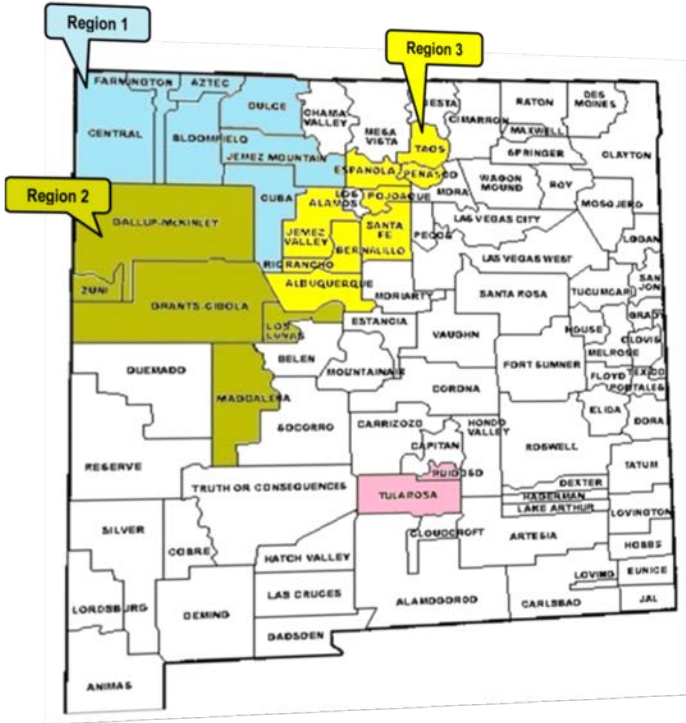
- 23 districts and 6 charter schools identified as native-serving institutions
- Approximately 34,000 American Indian students in public schools
- Approximately 6,000 American Indian students in 28 Bureau of Indian Education (BIE) – operated and tribally controlled schools
- Approximately 2.5 percent of state-wide district staff identified as American Indian
- Of NM students enrolled in higher education in the state. 8.4 percent were American Indian. The higher education graduate rate of our Native students from 2017 – 2018 was 7.4 percent

(Tribal Education Status Report, 2018)



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# NATIVE SERVING SCHOOL DISTRICTS



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# STATUTORY REQUIREMENTS

- Indian Education Act (2003)
  - Assistant Secretary, Indian Education Division, Government to Government, Rule Making and Bureaus
- State Tribal Collaboration Act (2009)
  - PED State-tribal Collaboration and Communication Policy
  - Annual Tribal Leaders Summit
  - Annual Consultation Report
  - Cultural Competency Training
  - Tribal Liaison



# STATUTORY REQUIREMENTS

- Every Student Succeeds Act (Reauthorized 2015)
- SEA Requirement under ESEA Title I
- LEA Requirements
  - Indian Education : Title VI (6114(b)(7), (c)(3)(C))
  - Impact Aid: Title VII (7004; 34 C.F.R. 222.91-.95)



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# NM INDIAN EDUCATION ACT (2003)

## 22-23A-2. Purpose of act

- F. Provide the means for a formal government-to-government relationship between the state and New Mexico tribes and the development of relationships with the education division of the bureau of Indian affairs and other entities that serve American Indian students;
- H. 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;

## 22-23A-4. Rulemaking.

- B. The secretary shall consult on proposed rules implementing the Indian Education Act with the Indian education advisory council and shall present rules for review and comment at the next semiannual government-to-government meeting pursuant to Section 22-23A-5 NMSA 1978.

## 22-23A-7. Report

- (10) School district consultations with district Indian education committees, school-site parent advisory councils and tribal , municipal and Indian organizations;



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## COLLABORATION AND COMMUNICATION POLICY

### Key phrases and Language in the STCA:

- Communication and collaboration
- Positive government-to-government relations
- Effective services
- Shall consult with
- Reasonable effort to collaborate
- Shall designate a tribal liaison: implementation of policy, maintain ongoing communication and training on STCA.



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## COLLABORATION AND COMMUNICATION POLICY

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

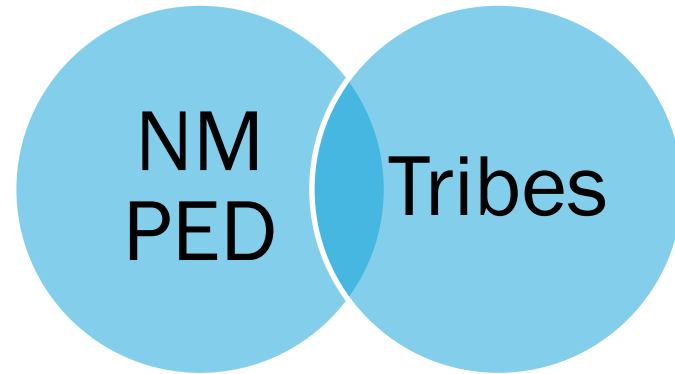
- i. Involves the agency and tribes through their official representatives;
- ii. Actively solicits input and participation by the agency and tribes; and
- iii. Encourages cooperation in reaching agreement on the best possible decision for those affected.



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# TRIBAL CONSULTATION BETWEEN STATE AND TRIBES

- **Bi-Annual Government to Government Meeting**
- **NM PED – IED Initiatives**  
i.e. Indigenous NM curriculum and rulemaking
- **NMPED Tribal Consultation Report submitted to NM Indian Affairs Department annually**
- **Tribes can request formal consultation with PED Leadership.**



# GOVERNMENT TO GOVERNMENT MEETING

- **Day 1**

Indian Education Advisory Council Meeting

Pre-Meeting for Tribal Leaders.

- **Day 2**

G2G meeting between NM PED and Tribal Leadership; meeting is open to the public to observe.

- **Day 3 – 4**

Tribal Leaders provide formal recommendations to NMPED.

Indian Education Summit



# EVERY STUDENT SUCCEEDS ACT (2015)

TRIBAL CONSULTATION  
NMPED STATE PLAN  
(2015)

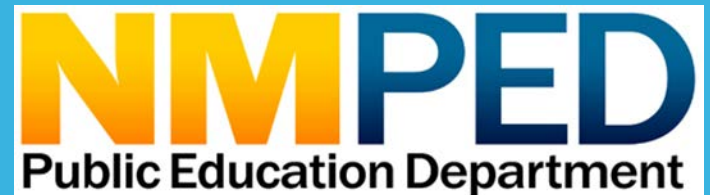


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# EVERY STUDENT SUCCEEDS ACT (2015)

The ESSA requires SEAs to consult with tribal governments prior to the SEA submitting state plans to the Department of Education secretary. The Government to Government meeting took place on November 14, 2016 in Farmington, NM. The first session was a formal consultation with tribal leaders, and the second session included tribal education administrators, teachers, and tribal education stakeholders. In both sessions, participants addressed the following issues associated with ESSA reform:

- School accountability and report cards
- Student assessment and coursework requirements
- Identification and support for English language learners (ELLs)
- Support for low performing schools
- Support and evaluation of teachers and school leaders



# EVERY STUDENT SUCCEEDS ACT (2015)

## TRIBAL CONSULTATION

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



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

September 26, 2016

Dear Colleagues:

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

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

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

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

Sincerely,

/s/

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

Enclosure

<sup>1</sup> Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.  
<sup>2</sup> Under Title I, State educational agencies (SEAs) are also required to conduct timely and meaningful consultation with Indian tribes, among other entities, prior to submitting their State plan to the Secretary (ESEA section 11101(a)(1)).  
<sup>3</sup> The U.S. Department of Education conducted tribal consultations on the changes to the ESEA generally, which included the SEA and LEA consultation requirements, with four meetings which took place on April 14, April 28, May 12, and June 27, 2016. [www.ed.gov](http://www.ed.gov)

400 MARYLAND AVE., SW, WASHINGTON, DC 20202

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



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# RULEMAKING: TRIBAL CONSULTATION

NMPED engages in tribal consultation with rule making, State Rules Act (Chapter 14 Article 4 NMSA), cited in the Indian Education Act (22-23A-4 NMSA 1978) and NMPED Collaboration and Communication Policy per the State-Tribal Collaboration Act (STCA).

## **Indian Education Act: 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.



# EVERY STUDENT SUCCEEDS ACT (2015)

## Section 8538:

- Native American Tribal Governments and “Approved Organizations.”
- Applies to SEAs and LEAs
- More than \$40,000 for Title VI Federal Indian Education Formula Grant
- 50% Native American Student Enrollment
- “Timely and Meaningful”
- Prior to submission of Education Plan
- Includes “Covered Programs” Titles I – VII



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# TRIBAL CONSULTATION BETWEEN LEAS AND TRIBES

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)

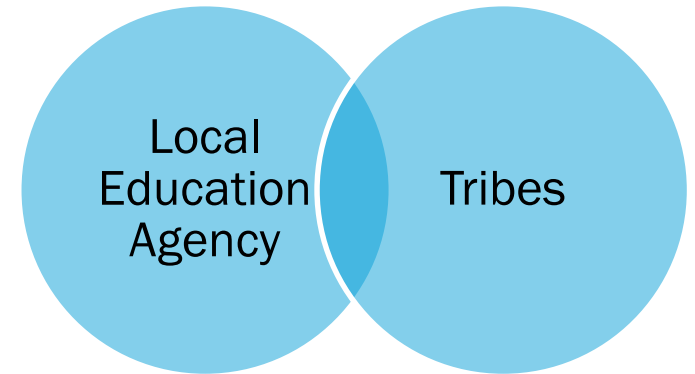
Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act)

Title IV, Part A (Student Support and Academic Enrichment Grants)

Title IV, Part B (21st Century Community Learning Centers)

Title V, Part B, Subpart 2 (Rural and Low-Income School Programs)

Title VI, Part A, Subpart 1 (Federal Indian Education Formula Grants to Local Education Agencies)



# AFFIRMATION OF TRIBAL CONSULTATION

- Document tribal consultation practices between LEAs and Tribes.
- Email Affirmation of Tribal Consultation to Indian Education Division.
- Must be submitted prior to school budget approval.
- Indian Education Division and the Public School Finance and Analysis Bureau work collaboratively to support tribal consultation practices.



## Affirmation of Tribal Consultation For Local Educational Agencies

This Affirmation of Tribal Consultation document must be submitted to the School Budget and Finance Analysis Bureau on an annual basis as part of the Local Educational Agency's (LEA's) budget submission.

The purpose of the Tribal consultation process is to create opportunities for LEAs and Tribal Leaders to work together to improve positive outcomes for Native American students.

Name of LEA:
Superintendent:
Contact Phone:
District Coordinator of Tribal Consultation (Federal Programs Director, Indian Education Director, Tribal Liaison, etc):
Contact Phone:
Contact Email:
Tribal Leader or Designee:
Contact Phone:
Contact Email:

Check here if the Tribe or Tribal organization did not respond to the LEA's repeated good-faith efforts for tribal consultation. Please describe the consultation efforts below and attach any accompanying documentation to this form.

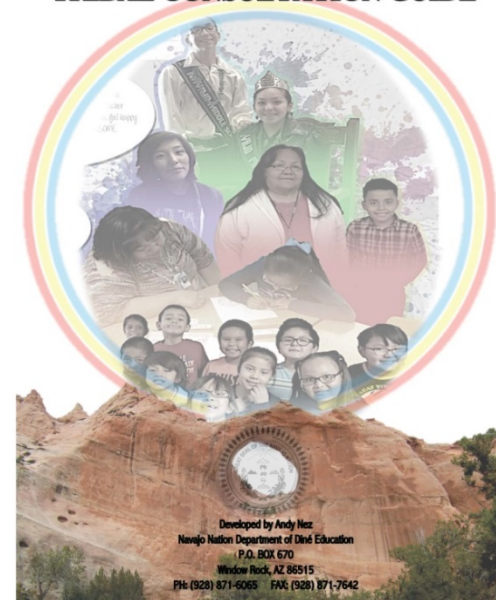
If consultation occurred, check the boxes and comment on topics discussed during the consultation process:



# TRIBAL CONSULTATION GUIDE

- Tribal Governments may have their own Tribal Consultation forms i.e. Navajo Nation.
- Navajo Nation (NN) is exercising their Tribal sovereignty over education.
- NN has developed their own format for Tribal Consultation
- NN has their own Tribal Consultation Team
- NN developed Q&A for talking points and data
- NN Affirmation of Consultation with Tribal Representatives
- Submitted Tribal form to Indian Education Division

## Navajo Nation Department of Diné Education TRIBAL CONSULTATION GUIDE



[navajonationdode.org](http://navajonationdode.org)



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# SECTION 7004

## INDIAN POLICIES AND PROCEDURES

Any LEA that claims children residing on Indian lands for the [purpose of receiving funds under section 7003](#) must establish Indian policies and procedures (IPPs) to ensure that the LEA meets the following requirements:

- Give the tribal officials and parents of Indian children an [opportunity to comment](#) on whether Indian children participate on an equal basis with non-Indian children in the educational program and activities provided by the LEA;
- Assess the extent to which Indian children participate on an equal basis with non-Indian children served by the LEA;
- Modify, if necessary, its educational program to ensure that Indian children participate on an equal basis with non-Indian children served by the LEA;
- Disseminate relevant applications, evaluations, program plans, and information related to the educational programs of the LEA in sufficient time to allow the tribes and parents of Indian children an [opportunity to review the materials and make recommendations](#) on the needs of the Indian children and how the LEA may help those children realize the benefits of the LEA's education programs and activities;
- [Gather information](#) concerning the Indian community views education issues, including the frequency, location and time of meetings;
- [Notify the Indian parents and tribes of the locations and times of meetings](#);
- [Consult and involve](#) tribal officials and parents of Indian children in the planning and development of the LEA's educational programs and activities; and
- Modify the IPPs, if necessary, [based upon an assessment](#) by the tribes and parents of the effectiveness of their input regarding the development and implementation of the IPPs



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# SECTION 7004

## INDIAN POLICIES AND PROCEDURES

### Waiver Requirements

For any year in which an LEA receives a written statement from the Indian tribe or tribes whose children attend the LEAs schools that the LEA need not comply with the IPP requirements because the tribe(s) is satisfied with the LEA's provision of educational services to such children, the LEA must include the written statement with its application in lieu of IPPs. This statement constitutes a waiver of the IPP requirements of the LEA for that year.

### Compliance

The LEA should [review its IPPs annually](#) to ensure compliance with statutory and regulatory requirements. The Impact Aid Program also determines whether the LEA is in compliance by periodically reviewing the LEA's documentation of its IPP compliance activities (the LEA must maintain records documenting such activities). The Impact Aid Program offers technical assistance to LEAs, parents and Indian tribes to enable them to carry out the IPPs.

If an Indian tribe whose children attend school in an LEA believes the LEA is not complying with the required IPPs, the tribe may file a complaint with the Secretary of Education against the LEA. Both the LEA and the Indian community will have an opportunity to participate in a hearing. The Secretary will make a final written determination, based on the findings and recommendations of the hearing examiner, describing how the complaint will be resolved.

The Secretary is also charged with enforcing IPP compliance through withholding funds or taking other appropriate actions. The LEA and the Indian community will have an opportunity to express their views prior to any such action.



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# US DEPARTMENT OF EDUCATION

## THE IMPACT AID PROGRAM

Eligible local educational agencies that wish to apply for Impact Aid must submit an application each year using the Department's on line application system, e-Application, on the Internet at [G5.gov](http://G5.gov).

The application usually is published each year in November and must be submitted by the following January 31.

### Contact:

Impact Aid Program  
U.S. Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202-6244

202-260-3858 Phone

866-799-1272 e-fax

Web address: <http://www.ed.gov/programs/8003/>

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

Director: Marilyn Hall, [Marilyn.Hall@ed.gov](mailto:Marilyn.Hall@ed.gov)



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# INDIAN EDUCATION ACT – NATIVE LANGUAGES

B. ensure maintenance of [native languages](#);

- (2) provide assistance to school districts and New Mexico tribes in the planning, development, implementation and evaluation of curricula in [native languages](#), culture and history designed for tribal and nontribal students as approved by New Mexico tribes
- (4) provide assistance to school districts, public post-secondary schools and New Mexico tribes to develop curricula and instructional materials in [native languages](#), culture and history in conjunction and by contract with [native language](#) practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;



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# BILINGUAL MULTICULTURAL EDUCATION ACT

B. the state's bilingual multicultural education program goals are for all students, including English language learners, to:

(1) become bilingual and biliterate in English and a second language, including Spanish, a Native American language, [where a written form exists and there is tribal approval](#), or another language; and

J. a standardized curriculum, including instructional materials with scope and sequence, is necessary to ensure that the bilingual multicultural education program is consistent and building on the language skills the students have previously learned. The instructional materials for Native American bilingual multicultural education programs shall be written, [when permitted by the Indian nation, tribe or pueblo](#), and if written materials are not available, an oral standardized curriculum shall be implemented;







# NATIVE LANGUAGE TEACHER INPUT

## Initial Recommendations to consider

- Improve scheduling and classroom assignment
- Provide training on pedagogy and classroom management
- Promote Professional Learning Communities among language teachers
- Clarify different types of language programs and provide guidelines and expectations for teachers of different programs
- K-12 curriculum and learning standards
- Archiving of lessons and supports
- Teacher Observation and Feedback
- Opportunities for advancement (additional certifications and endorsements)



# LEA-TRIBAL MEMORANDUM OF AGREEMENT FOR SCHOOL-BASED NATIVE AMERICAN LANGUAGE PROGRAMS

## NMAC 6.32.2 Educational Standards – Bilingual Multicultural Education Guidelines for Implementing Bilingual Multicultural Education Programs

*I. Public schools providing a Native heritage language revitalization programs (or other approved bilingual education model) shall obtain appropriate approval from Tribal councils or from other appropriate tribal entities with authority to make educational decisions on behalf of Native American children.*

### **II. Components for Consideration Within MOA**

1. Program Type (Heritage; dual language, etc.)
2. Student Eligibility for Program
3. Scheduling (grades; length of class)
4. Teacher Assignment (grade level; learning levels – for example: beginner, intermediate, advanced)
5. Class size
6. Professional Development
7. Teacher Compensation
8. Teacher Evaluation
9. Program Evaluation
10. Student Assessment
11. Data Reporting and Sharing
12. Effective Date and Term of Agreement
13. Bilingual Seal

(Bilingual Multicultural Education Bureau Technical Assistance Manual, 2017)



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# TIMELY CONSULTATION

The local education agency (LEA) is responsible for initiating the contact with a tribal leader. This should be done before making any significant decisions regarding plans or applications to ensure that “appropriate officials from Indian tribes or tribal organizations ... meaningfully and substantively contribute” to an LEA’s plan (section 85378 (a), ESSA). If consultation is not initiated by the LEA, tribes can formally request that the process begin as soon as possible.

- To ensure timely consultation
- LEAs should schedule regular meetings
- Introductory hearing to gather tribal feedback
- Schedule ongoing meetings that provide opportunities for feedback on how plans are finalized, submitted, implemented, and reviewed.



# MEANINGFUL CONSULTATION

- Dates for upcoming meetings, including school improvement meetings, tribal consultation meetings, and information or input meetings that are open to the public
- Formats and submission information for tribal input
- Contact information for district personnel or members of committees
- American Indian student data, including:
  - Population numbers by grade, dropout rates, participation rates in free or reduced-price lunch programs, rates of students with an individualized education program (IEP) or identified for English language learner (ELL) status, students in alternative education programs, numbers of students concurrently enrolled in college
  - State and local assessments on students' academic progress and growth over time
  - Presentations from state or local representatives about existing school programs so that tribes have clarity regarding how the programs operate in the local, district, or state context
  - Deadlines for school district plans (including those required under ESSA)
  - Notification of significant changes in plans
  - A final copy of plans or applications



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# GOALS FOR CONSULTATION

- Clarity on project, issues, & work
- Confirm roles & responsibilities
- Share information & encourage transparency
- Establish open ended & inclusive agendas
- Identify areas of agreement & differences

*“There is no one-size-fits all approach to stakeholder engagement. It must be tailored to the status, capacity, and needs of each community. In Indian Country, this process must be taken one step further – from engagement to consultation—to meet the trust agreement with tribal nations and comply with the requirements of ESSA.” – National Indian Education Association*



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# PLANNING AND PREPARATION CHECKLIST

- Share your understanding of consultation at the federal level and state level
- Share your understanding of your state's ESSA plans
- Review current Memoranda of Understandings or Agreements
- Review any current state education acts/bills/policies related to Indian Education
- Articulate clarity on consultation goals:
  - What does a successful consultation look like?
  - What is your tribe's commitment to the consultation process?
  - What concerns do you have about this process?
- What data do we have, and what data do we need?
- What are the outcomes and objectives of the consultation?
- Review the guide and answer questions or adjust the form accordingly
- Follow-up/support
  - Meeting facilitation?
  - Help with logistics (e.g., location, AV needs, transportation)
  - Who is representing your tribe at the consultation?



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# DATA REVIEW FOR CONSULTATION

Indian Education Act: 22-23A-7, Report,

- statewide tribal education status report no later than November 15 to all New Mexico tribes.
  - district wide tribal education status report to all New Mexico tribes represented within the school district boundaries.
- (1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity;
  - (2) school safety;
  - (3) graduation rates;
  - (4) attendance;
  - (5) parent and community involvement;
  - (6) educational programs targeting tribal students;
  - (7) financial reports;
  - (8) current status of federal Indian education policies and procedures;
  - (9) school district initiatives to decrease the number of student dropouts and increase attendance;
  - (10) public school use of variable school calendars;
  - (11) school district consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal and Indian organizations; and
  - (12) indigenous research and evaluation measures and results for effective curricula for tribal students.



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# RECOMMENDED ONGOING TRIBAL CONSULTATION TIMELINE

Complete Tribal  
Education Status Report  
and submit local Tribal  
leaders

Quarterly meeting to  
discuss progress of  
improvement strategies  
and review of data;  
discussion on next steps  
leading to Impact Aid  
application submission;  
scheduling of meetings

June

July/August

October

January

Meet to discuss data in  
report, student needs  
and improvement  
framework/strategies

Submission of Impact Aid  
Application and Indian  
Policies and Procedures



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# RECOMMENDED ONGOING TRIBAL CONSULTATION TIMELINE

Quarterly meeting to discuss progress of improvement strategies and review of data;

- identification of spring semester interventions and supports;
- discussion on upcoming budget
- submission and new or continued improvement strategies for upcoming school year;
- scheduling of meetings leading up to budget submission

Quarterly meeting to discuss final outcomes of improvement strategies and review data

February

March – April

May

June

Submission of **Affirmation of Tribal Consultation** to PED Public School Finance and Analysis Bureau and Indian Education Division.

Complete and submit local **Tribal Education Status Report** to Tribal Leaders



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**RESOURCES WEBLINK:**  
**INDIAN EDUCATION DIVISION TRIBAL**  
**CONSULTATION**

**QUESTIONS?**  
**THANK YOU**



# IED CONTACT INFORMATION

## **Santa Fe PED Office**

**Kara Bobroff, Deputy Secretary of Identity,  
Equity, Transformation**

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## **Gallup Office**

Vacant

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