



# Our Time Together-Objectives

- **Purpose of the guidance document**
- **History of Indian Education**
- **Understanding Tribal Sovereignty**
- **What is Tribal Consultation**
  - Timely Consultation
  - Meaningful Tribal Consultation
- **Elements for successful consultation**

Investing for tomorrow, delivering today.



# Our Time Together-Objectives

- **Tribal Consultation Checklist**
- **Cultural Consideration Checklist**
- **Suggested Tribal Consultation Meeting Protocol**
- **Agenda/Suggested Data**
- **Indian Policies and Procedures**
- **Federal Law Requiring Tribal Consultation**



# Purpose of the Tribal Consultation Guide

Provides the tools necessary to support successful tribal consultation efforts at the state and local level.

The spirit of the handbook is to provide School Districts and Charter Schools an understanding of the History of Indian Education, What Tribal Sovereignty Is, the Background of Every Student Succeed Act (ESSA) and the importance of working together in a spirit of cooperation and collaboration

Provides an overview of federal and state statutes and regulations, along with providing details of non-regulatory guidance

Serves as a resource

The desired outcome will transform from local level compliance to an environment that ensures equity and inclusion of Native American students, families, Pueblos, Tribes, and Nations.

# History of Indian Education

- Since the early decades of the 19th century indigenous people faced barriers established by federal and state education policies and law.
- Contrary to the inherent sovereign rights of tribes the implications of these policies and laws forced curriculum that neglects indigenous histories, culture, and language.
- This resulted in the loss of language, culture, and access to an adequate education – as a result the rate of dropout, proficiency scores, retention rates, and graduation are significantly poor in comparison to their non-native counterparts.
- The historical events outlined in the next two slides provides some of the landmark decisions regarding tribal sovereignty, including congressional actions pertaining the education of Native American children.

# History of Indian Education:

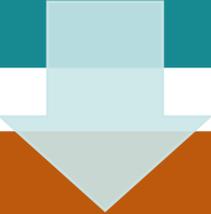
The Indian Civilization Act of 1819 implemented policies establishing and supporting Indian boarding schools across the country. Since the end of the treaty-making period (1871) and onward many federally operated Indian boarding schools were used to culturally assimilate Native American children. Native children were forcibly removed from their families and communities and relocated to distant residential facilities where their Native identities, languages, traditions, and beliefs were forcibly suppressed

1830 'INDIAN REMOVAL' Indian Removal – In 1830 the Indian Removal Act was signed by President Andrew Jackson, giving the federal government the authority to trade Native land east of the Mississippi for land to the west, in the “Indian colonization zone” that the U.S. had acquired during the Louisiana Purchase. The government was required to negotiate treaties fairly, voluntarily, and peacefully; and not coerce Native Nations into giving up their lands. However, President Jackson ignored the law and forcibly removed Native Americans from their aboriginal territories

1880-1920 INDIAN BOARDING SCHOOL MOVEMENT -“Kill the Indian, Save the Man” - Richard Pratt In the effort to fully assimilate Native Americans, it was believed that reservations schools were not sufficient in removing influence of tribal life. In the efforts of immersing Native children into mainstream American life, churches and missionaries were funded to build and run Native Indian Boarding Schools established in white communities. Native children were forcefully removed from their families and communities and enrolled in the schools hundreds of miles away from home.

# History of Indian Education:

1924 – THE SNYDER ACT – THE RIGHT TO VOTE The Snyder Act of 1924 granted Native American full U.S. citizenship. Although the bill had passed, Native Americans were still prevented from participating in elections because the constitution left it up to the state to decide who has the right to vote. Forty years later, all 50 states finally allowed the first Americans to vote.



1934 – WHEELER-HOWARD ACT (INDIAN REORGANIZATION ACT) SHIFTS U.S. POLICY TOWARD NATIVE AMERICAN RIGHT TO SELF-DETERMINATION ON JUNE 18, 1934. In 1934, President Franklin Roosevelt signed the Indian Reorganization Act (IRA), which pushed tribal governments to adopt U.S.–style governance. Through the Indian Reorganization Act, tribes were granted political sovereignty, extended tribal landholdings, and pledged to uphold native customs and language. It marked a partial reversal of the policy of assimilation.”



1934 – JOHNSON O’MALLEY ACT, AND

2017-2018 JOM SUPPLEMENTAL INDIAN EDUCATION PROGRAM MODERNIZATION ACT “The JOM Program awards contracts to tribal organizations, schools, states, and others to educate Indian students. Under the program, the contract amounts are based on the number of students served. Under the bill, contracting parties must annually report to Interior on the number of students they serve and how the amounts for which contract funds were used. If they fail to submit the report, Interior shall not give them program funds for the fiscal year following the academic year for which the report should have been submitted.”

# History of Indian Education:

1953 – THE TERMINATION ERA- “Congress passed the Federal Termination Policy to abolish tribes and relocate Native Americans. This would essentially end all relations between Native Tribes and the federal government. Native Americans were granted all the rights of citizenship, but all federal aid, services, and protection were withdrawn, resulting in an increase in poverty and the end to sovereignty.



1975 – INDIAN SELF DETERMINATION AND EDUCATION ASSISTANCE ACT (P.L. 93-638)- A statutory act gives federally recognized tribes the autonomy to contract for the provision of programs & services previously run by the federal government (i.e., BIE, Tribal grant schools, other; and shift toward tribal self-governance). The act promoted self-governance, and to determine educational programs suitable for children from each respective tribal community.



1990 – NATIVE AMERICAN LANGUAGE ACT- The Native American Languages Act (NALA) of 1990 (PUBLIC LAW 101-477)— was enacted by Congress on October 30, 1990 and served as a historic repudiation of past policies. Its intent was to "preserve, protect and promote the rights and freedoms of Native Americans to use practice and develop Native American Languages"

# Understanding Tribal Sovereignty

**The United States is made up of three sovereign entities – the Federal government, State governments, and Tribal governments.**



**In New Mexico, treaties were negotiated between all tribes and pueblos and the federal government establishing legal and political status.**



**The tribe's authority to self-govern has been reaffirmed by the Supreme Court, Congress, Presidents of the United States and supported by numerous Treaties; the Supreme Court acknowledged that it is the oldest sovereign on the continent.**

# Tribal Sovereignty and Authority

**To ensure the local governing body and tribal entities are providing adequate services to students, and families:  
tribal consultation shall**

1. Occur between an executive member of the district or charter school (i.e., Superintendent, Associate Superintendent or Charter Leader) and the Tribal Leader or their designee (i.e., Tribal Governor, Lt. Governor, President, Vice-President, or Council member).
2. This guarantees that the ultimate authority and decision-makers are at the table when making decisions that impact tribal educational interests, tribal governments, tribal education departments, Native American students, parents, and families, and approved tribal organizations
3. Conducting a consultation without the proper decision-making authority slows down the process considerably and will result in miscommunication and the deterioration of trust and relationships.

# What is Tribal Consultation



1

## **Formal:**

When required or mandated by federal or state law

2

## **Required:**

ESSA and IEA require tribal consultation for Local Education Agencies (LEAs).

3

## **Develop Relationships:**

It is important to note that the ESSA Tribal Consultation is more than just “checking the box”, tribal consultation is intended to develop trusting relationships that foster transparent dialogue to meet the needs of Native American Students and families.

4

## **Achieve educational attainment:**

NM PED’s Collaboration and Communication Policy establishes agency requirements for government-to-government relations that are designed to achieve educational attainment for Native American students.

# What is Tribal Consultation



## Enhanced Positive Outcomes:

Ideally, this work is meant to be ongoing and evolve into monthly, bimonthly, quarterly, and annual opportunities to improve student achievement for Native American students



*NMPED hopes that the work built within these relationships leads to:*  
strong Tribal Consultation that leads to mutual understanding, respect, and consensus-based decision-making outcomes for Native American students and that resulting relationships and communication will facilitate the development of appropriate curricula, programs, and services.

# Successful Tribal Consultation includes:

## Timely Consultation

- Tribal Consultation generally should occur at the earliest possible stage, prior to the development of a program, initiative or policy, to ensure that tribal views are respected and included in such plans.
- For ESSA purposes, Tribal Consultations with tribal governments, tribal education departments, and approved tribal organizations should also begin at the earliest possible time, prior to the submission of an LEA Education Plans or applications for covered Title Programs

## Timely Consultation

- Too often Tribal Consultations have occurred too late to have real effect on the strategy being developed.
- Consultations required under the IEA or outlined in the NMPED's Tribal Communication and Collaboration Policy should take place prior to an agency activity that impacts tribal interests related to educational resources, curriculum development, or the development, changes, and implementation of educational policies and procedures that address the unique educational needs of New Mexico's Native American students.

# Successful Tribal Consultation includes:

## Meaningful Consultation

- Is when all parties respect, understand, and develop a process for continuous input and discussion. It is through regular communication, and collaboration that trust is established
- Meaningful consultation is based on open communication and coordination that acknowledges and considers the views of all participants. It also seeks agreement on how to provide continuous assistance to address the unique educational needs of Native American students.
- It requires LEAs/Charter Schools and State Agencies to share data and information in sufficient detail to allow tribal leaders and stakeholders to evaluate and understand the issues at hand

## Meaningful Consultation

- It requires that everyone must accept that they operate within specific, often historic contexts that can interfere with the development of trusting relationships unless all participants can avoid defensiveness and remain open to evaluating problems, ideas, and solutions from all perspectives including tribal perspectives with honoring their sovereignty, and continuing to emphasize communication with trust, respect, and reaching a best possible agreement or outcome for the Native American students we all serve.

# Elements for Successful Tribal Consultation

**Consult early and often**, and prior to actions or decisions being made that may impact tribal educational interests, regular outreach to tribal governments, tribal departments of education (this includes approved tribal organizations) with substantive data and information; accept feedback on the subject matter requiring consultation, or elements of the activity or decision to be made.



**share information early and often** as it applies to the educational success of Native American students.



**Establish/create** an agreed upon list that identifies mutual educational priorities, issues, and responsibilities.

# Elements for Successful Tribal Consultation

**Ask tribal stakeholders for advice and collaboration** on cultural awareness and diversity training for LEA leadership and administrators to foster, support, and sustain positive and productive government to government relationships.



**Understand** tribal sovereignty and tribal governmental authority as it relates to tribal educational priorities, educational issues and challenges



**Plan** government-to-government (G2G) consultation and meetings to avoid conflicts with tribal cultural calendars, feast days, and tribal holidays. Pursuant to the Indian Education Act (IEA) 22-23A-5-6,



NMPED and School Leaders shall follow-up with tribal leaders to ensure that communication regarding decisions and consultation issues is timely while honoring tribal sovereignty and authority.

# Examples of Failed Tribal Consultation Attempts

- After-the-fact emails or letters
- Notification of decision-making
- Same day or the week of invitations to participate
- Information posted on website
- Sending information home with students
- Informal conversations

# Tribal Consultation Checklist:

To ensure timely and meaningful tribal consultation as well as enhanced positive outcomes the NMPED, school districts, charter schools are encouraged to create a tribal consultation checklist similar to the chart detailed here.

PLANNING – BEFORE THE MEETINGS	
	Understand the role of tribal leadership (i.e., Governor vs President, Lt. Governor vs Vice-President, Council members, etc.) and structure of tribal government.
	Understand the cultural differences of each Tribe, Nation, and Pueblo. Respect and honor cultural and traditional practices and incorporate into meeting structure.
	Design a one-pager about the district/charter's current initiatives for tribal leaders ( <i>Be advised that tribal leaders may not be familiar with educational content or regulations and programming</i> ).
	Understand tribal sovereignty and tribal governmental authority as it relates to tribal educational priorities, educational issues, and challenges.
	Establish or enhance internal systems and processes to support consulting early and often, and prior to actions or decisions finalized.
	Design the consultation process in partnership with the tribe, nation, and pueblo.
	Ensure that all parties (LEA and Tribes) have agreed to time, place, agenda, and length of meeting. Both parties should identify a point-of-contact to work out the logistics.
	For all Tribal consultations and public meetings, an agenda should be submitted for review and approval. ( <i>Note: the agenda should include date, time, and location</i> ).
	Conduct outreach to tribal governments, tribal departments of education, and approved tribal organizations with the goal of sharing data and information.
	Receive and respond to feedback on the subject matter requested prior, during, or after consultation.
	Share information early and often as it applies to the educational success of Native American students. <ul style="list-style-type: none"> <li>• (i.e., curriculum development, the implementation of education policies and procedures, notice of deadlines for LEA's educational plans and applications; or the allocation of resources that may impact the education of Native American students).</li> <li>• Conduct outreach to tribal governments, tribal education departments, and approved tribal organizations with the goals of sharing data and information.</li> </ul>
	Plan government-to-government consultation and meetings; such gatherings should not conflict with tribal cultural calendars, feast days, tribal holidays, etc.
	Provide notice of deadlines of the school district and charter school's education plans and applications.

# Tribal Consultation Checklist:

DURING THE MEETINGS	
	Share information and presentations on educational programs, policies and data (it is recommended that such documents are shared in advance to allow all parties to review).
	Explain proposed program or policy changes; provide an opportunity for questions and input on the proposed program or policy changes; and respond contemporaneously or as soon as possible thereafter.
	Establish/create and agree upon a list that identifies tribal educational priorities, issues, challenges, and establish a timeline for action items that require a follow up.
	When applicable, ensure that both the tribal official and the school district or charter school leader have signed a consultation agreement.
	Review and update (as needed) points of contact for school districts, charter schools, tribal governments, tribal education departments, and approved tribal organizations.
	Receive and respond to feedback on the subject matter requiring consultation, or elements of the activity or decision to be made.
AFTER THE MEETINGS	
	<p>Ensure that the consultation process includes a timeline and agreements for follow-up and transparency.</p> <ul style="list-style-type: none"> <li>Meeting documents, notes taken for the meeting, and agendas should be considered documentation within the purview of the Public Information Act and should be made available to parents, families, and the community upon request.</li> </ul>

# Cultural Consideration Checklist:

This section is intended for NMPED, school district, and charter school staff who are new, unfamiliar or may need a review or update with cultural considerations to keep in mind with conducting tribal consultation with Native American students and families, tribes, nations, and pueblos.

PRE-PLANNING AND LEARNING	
	<p>Review the link below on the 24 federally recognized tribes, nations, and pueblos as well as their annotated histories, and geographic locations.</p> <p><a href="https://www.newmexico.org/places-to-visit/native-culture/pueblos-tribes-nations/">https://www.newmexico.org/places-to-visit/native-culture/pueblos-tribes-nations/</a></p>
	<p>Each tribe has their own website. Take time to review each site. Review information on the government structure, tribal leadership, linguistic landscape, geographic components, internal departments/entities, education structure, etc.</p> <p><i>(Be aware newly appointed tribal governors/presidents may not be available to meet within the first two months of their appointment.)</i></p> <p><a href="https://www.iad.state.nm.us/#">https://www.iad.state.nm.us/#</a></p>
	<p>Review district and charter school calendars along with the dates of tribal traditional and cultural events to prepare for conversations about tribal students attending event when school is in session.</p> <p>This is a great opportunity to work in collaboration with tribal leaders to place specific feast/cultural days on the calendar for the school board approval for each SY.</p>
	<p>Review State-Tribal Consultation, Collaboration and Communication Policy. See link below:</p> <p><a href="https://webnew.ped.state.nm.us/wp-content/uploads/2019/02/STCR-Policy-with-Colver-Letter.pdf">https://webnew.ped.state.nm.us/wp-content/uploads/2019/02/STCR-Policy-with-Colver-Letter.pdf</a></p>

	<p>When working with a tribe, nation, or pueblo in NM regarding public education, carefully review the NM Public Education Department's Tribal Consultation resources webpage.</p> <p><a href="https://webnew.ped.state.nm.us/bureaus/indian-education/tribal-consultation/">https://webnew.ped.state.nm.us/bureaus/indian-education/tribal-consultation/</a></p>
	<p>Understand the linguistic landscape, tribal language structure, including the preferences by tribes, nations, and pueblos about language use by non-tribal members.</p> <p><i>(For example: If you would like to learn and use a basic welcome/hello/greeting in the tribal language of the tribe(s), nation(s), or pueblo(s) you are meeting with or hosting, seek proper permission to ensure it is permissible.)</i></p>
	<p>Understand the diversity of tribal cultures and language. Within a tribe, nation, or pueblo, tribal members have their own identities. Identities are comprised of many facets (i.e., language, gender, age, religion, sexuality, socioeconomic status, family, class, ethnicity, clan, etc.)</p>

# Cultural Consideration Checklist:

DURING THE MEETING/EVENT	
	Come to the meeting with an open mind. This is an opportunity for all parties to engage and partner free of biases or stereotypes.
	When hosting a meeting, ensure you include plenty of time for introductions and relationship-building.
	"Wait time" and "reflection time" is appropriate when requesting for information, ideas, etc. These meetings may have long periods of silence; do not try to fill the space or move quickly through your agenda. Certain requests may require official action from tribal council before committing to any work with an organization outside of their tribal structure.
	Understand and respect that your meeting may move slower than you anticipated; new topics may be added to the agenda; or your expected outcomes might change during the meeting. If you are dealing with looming deadlines, be prepared for those not to be met or to request more time. Tribal decisions are often <i>communal</i> , which may differ from what is the norm in your organization.
	Listen and learn. Observe social queues during the meeting/event. Avoid interrupting, talking over people, or raising your hand while someone else is speaking. Take notes and wait until an appropriate time to speak. Be mindful of communication patterns across all cultures.
AFTER YOUR MEETING/EVENT	
	Allow up to 60 days for input from tribal leaders and/or tribal council if your meeting content includes making decisions that directly impact the tribal community. Work with your tribal points of contact.
	Circle back as needed while adhering to the communal norms mentioned in this document.

# What defines a Local Educational Agency (LEA)

- In NM an affected LEA is a school district, tribal school or charter school that received a Federal Title VII Impact Aid
  - that exceeds \$40,000 in the previous fiscal year,
  - or a school district has an enrollment of American Indian/Alaska Native student population of at least 50 percent.

## Frequently Asked Questions

### ESEA, Section 8538, CONSULTATION WITH INDIAN TRIBES AND TRIBAL ORGANIZATIONS

#### 1. What are the consultation requirements under section 8538 of the ESEA<sup>1</sup>?

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 ESSA<sup>1</sup>, 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](mailto: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.

# Background

- Every *Student Succeed Act (ESSA)* allows educational stakeholders to enter a new era of education that requires timely and meaningful consultation. Meaningful tribal consultation, both in process and product, is the foundation that will best support Native American students.
- A key component in working with tribal representatives and supporting Native American Students is trust, respect and transparency . As such, fostering and developing a mutually respectful relationship with tribes will be beneficial when districts and schools approach consultation.



Under the Congressional Review Act, Congress has passed, and the President has signed, a resolution of disapproval of the accountability and State plans 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 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,<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 Advisor 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 1111(a)(1)(A)).  
<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 24, April 28, May 12, and June 27, 2016.  
[www.ed.gov](http://www.ed.gov)

# Federal Law Requiring Tribal Consultation

The federal Every Student Succeeds Act (ESSA), which is the reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965, was enacted into law on December 10, 2015. Provisions within ESSA detail specific tribal consultation requirements. Below is the detailed language of such requirements:

## SEC. 8538. [20 U.S.C. 7918] CONSULTATION WITH INDIAN TRIBES AND TRIBAL ORGANIZATIONS

(a) IN GENERAL.—To ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students, an affected local educational agency shall consult with appropriate officials from Indian tribes or tribal organizations approved by the tribes located in the area served by the local educational agency prior to the affected local educational agency's submission of a required plan or application for a covered program under this Act or for a program under title VI of this Act. *Such consultation shall be done in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or tribal organizations to contribute to such plan meaningfully and substantively.*

(b) DOCUMENTATION. —*Each affected local educational agency 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.* If such officials do not provide such affirmation within a reasonable period, the affected local educational agency shall forward documentation that such consultation has taken place to the State educational agency.

# Impact Aid- Title VII

Impact Aid provides assistance to school districts with concentrations of children residing on Indian lands, military bases, or other Federal properties and, to a lesser extent, concentrations of children who have parents in the uniformed services or employed on eligible Federal properties who do not live on Federal property.

## Impact Aid Funds/Payments

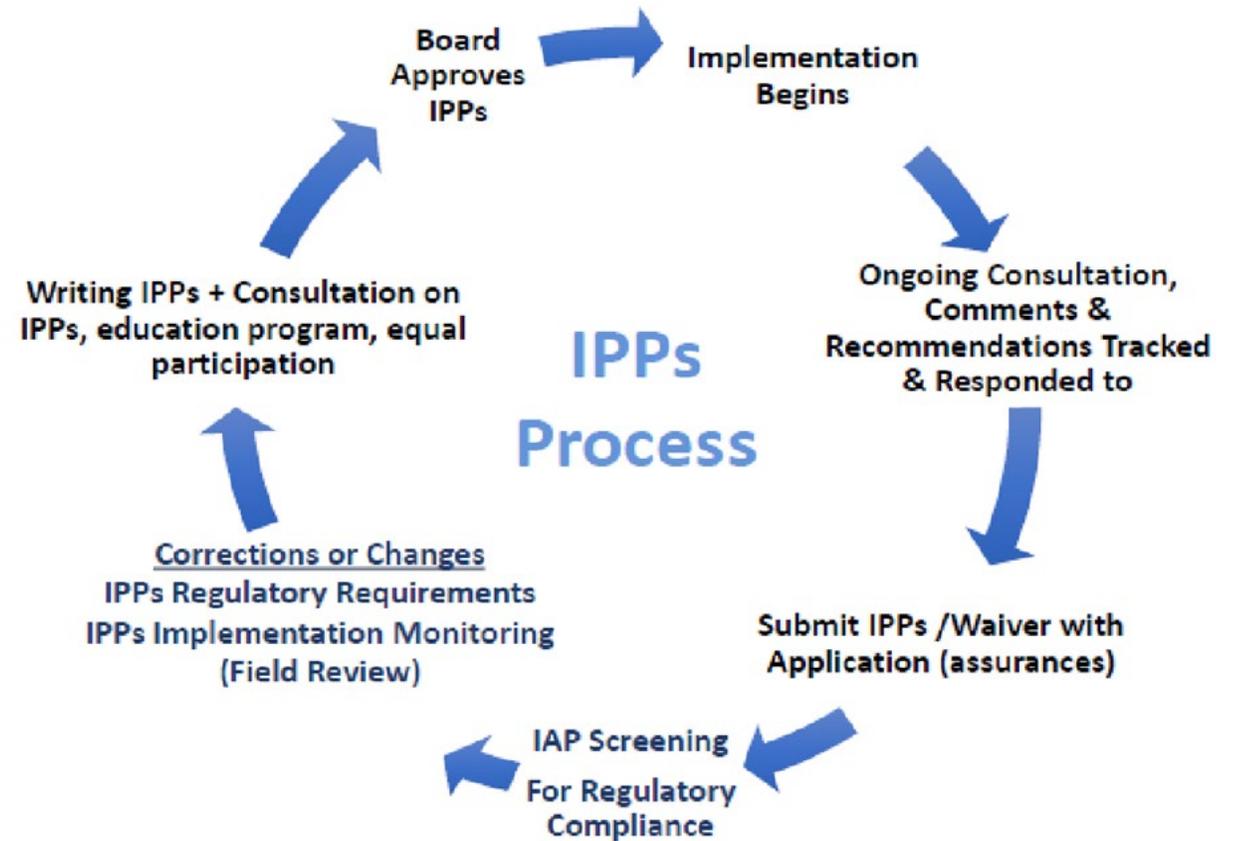
- Payments, are considered general aid to the recipient school districts; these districts may use the funds in whatever manner they choose in accordance with their local and State requirements.
- School districts may use Impact Aid for a wide variety of expenses, including the salaries of teachers, teacher aides; purchasing textbooks, computers, and other equipment; after-school programs and remedial tutoring; advanced placement classes; and special enrichment programs.

- Most Impact Aid funds, except for the additional payments for children with disabilities and construction
- Payments for Children with Disabilities must be used for the extra costs of educating these children.

# Indian Policies and Procedures

**The purpose of the Indian Policies and Procedures (IPPs) is to:**

- 1.) grant equal participation of Indian children in LEA's educational programs and activities; and
- 2.) improve communication and cooperation between LEA and tribal community (to include parents and tribal officials in planning and developing educational programs and activities).



# Suggested Tribal Consultation Meeting Protocol

MEETING ONE	MEETING TWO	MEETING THREE	MEETING FOUR
<p>Onboarding and Building Relationships</p>	<p>Building Background and Information Sharing</p>	<p>Compliance, Funding, and Data Review</p>	<p>Consensus, Agreement, and Formalization</p>
<p>Take the time to share, listen, and learn.</p> <p>Design meeting procedures and norms together.</p> <p>Create a list of active participants, list documents needed, and build a mechanism to share items openly and honestly.</p> <p>GOAL: Establish common understanding along with building trust.</p>	<p>Gather all pertinent information that is important to everyone regarding tribal consultation.</p> <p>Ensure everyone has an opportunity to speak and that all voices are heard.</p> <p>Make a list of must-haves, agreements, and items that can be achieved together.</p> <p>Ask for continued feedback and proactive active listening.</p>	<p>Conduct a data workshop.</p> <p>Learn about laws, regulations, policies, funding, and data.</p> <p>Ensure that everyone understands the non-negotiables and facts that surround the tribal consultation topic.</p>	<p>Come to an understanding, consensus, or agreement, and formalize the consultation, when appropriate.</p>

# Agenda Template

## AGENDA Tribal Consultation

Date

Start Time – End Time

Meeting called by:

Attendees:

Please read:

Please bring:

Attendee Names

Reading List

Supply List

Start Time – End Time	Introduction	Location
Start Time – End Time	Item #1 Topic 1: Review Applicable Title Funds and other Funding Sources	Location
Start Time – End Time	Item #2 Topic 2: Review Data	Location
Start Time – End Time	Item #3 Topic 3: Review Program and Services for Students	Location
Start Time – End Time	Item #4 Topic 4: Additional topics and open Q&A	Location

Additional Instruction:

Use this section for additional instructions, comments, or directions.

# Additional items to include as part of the consultation

Tribal Consultation with <i>Name of Tribe, Nation, or Pueblo</i>	DATE Month Day Year
DEMOGRAPHICS	DATA
TOTAL SCHOOL/DISTRICT ENROLLMENT	
TOTAL AMERICAN INDIAN STUDENTS (DISTRICT-WIDE)	
TOTAL PUEBLO STUDENTS (DISTRICT-WIDE)	
TOTAL AMERICAN INDIAN STAFF (ALL POSITIONS/DISTRICT-WIDE)	/
Total Personnel (Administrators, teachers (ALT, Level 1, 2, 3), EAs, Subs, and Ancillary, NALC, etc.	
Total Personal above broken down by Native American Staff	

1. For funding amounts, include the most recent funding allocation.
2. Complete as applicable to school/district

FUNDING SOURCE DESCRIPTION	DISTRICT AMOUNT RECEIVED AND PRIMARY PURPOSE	TOPICS FOR POINTS/RECOMMENDATIONS
<b>TITLE I:</b> This section of the law requires challenging academic standards, aligned statewide testing, reporting and school improvement activities at the state and local levels. This section requires accountability by student subgroup such as race or ethnicity.		
<b>PART A</b> Improving Basic Programs Operated by State and Local Educational Agency	\$ • •	
<b>PART C</b> Education of Migratory Children	\$ • •	
<b>PART D</b> Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk	\$ • •	
<b>TITLE II, Part A-</b> Supporting Effective Instruction	\$ • •	

# Additional items to include as part of the consultation

TITLE III, Part A- English Language Acquisition, Language Enhancement, and Academic Achievement	\$ • •	
TITLE IV, Part A & B A: Student Support and Academic Enrichment Grants 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	\$ • •	
TITLE VII, Impact Aid Indian Policies and Procedures Assurance tribal/parent input, Public Hearings, written input	\$ • •	
JOHNSON O'MALLEY	\$ • •	
MCKINNEY VENTO	\$ • •	
OTHER FUNDING SOURCES (Private donors, state grants, etc.)		
ESSER III =		
Bilingual Multicultural Education Program (BMEP) =		
Indian Education Act =		
IDEA-B=		

# Additional items to include as part of the consultation

**TYPES OF PROFESSIONAL DEVELOPMENT (Consultants, purpose, etc.)**

PD provided at \_\_\_\_\_ in the following topics:

- 

**DATA COLLECTION**

School/District Truancy %

Absenteeism:

Behavioral/At-risk %

Graduation Rate  
Percentage:

**FOLLOW UP**

# Another example of an Agenda

## AGENDA Tribal Consultation

Date  
Start Time – End Time  
Meeting called  
by: Attendees:                      Attendee Names  
Please read:                              Reading List  
Location:

Start Time – End Time	Introduction	Notes
Start Time – End Time	Item #1 Topic 1: What has occurred over the past year; also, provide some background information about what the purpose of ESSA Tribal Consultation is for those new to the process.	
Start Time – End Time	Item #2 Topic 2: Background information to include: Teachers who are fully certified, on Alt Licenses, or Waivers, total number or Subs, EAs, NALC, Counselors, Social Workers, Etc. to include Native American Teachers/All Staff. Data that is specific to the tribes (specific student or staff population and how it is relevant to the community), number of students taking native language classes by language.	
Start Time – End Time	Item #3 Topic 3: How students' academic, cultural and linguistic needs will be identified, supported and what services will be offered.	
Start Time – End Time	Item #4 Topic 4: Parental Engagement	

**Additional Instruction:**  
Use this section for additional instructions, comments, or directions.

# Suggested data to provide

- Test scores disaggregated by grade level
- State and local assessments on students' academic progress and growth over time
- Average GPA (secondary students only)
- Students who have dropped out of school
- Transfer students
- Students enrolled in career technical education
- Students enrolled in AP, Dual Credit,
- At-risk students

- Numbers of students concurrently enrolled in college
- Students with disciplinary concerns
- Students involved in extracurricular programs (sports, band, choir, academic team, FFA, etc.)
- Students with high mobility
- Students participating in free and reduced lunch programs
- Students identified as English language learners (ELL)

- Students identified for truancy services
- Teachers who are fully certified, Teachers on Alt. Licenses or Waivers.
- Total # of Subs, EAs, NALC, Counselors, SW, ETC
- To include # of Native American Staff/All Staff
- Data that is specific to the tribes (specifically student or staff population and how it's relevant to the community)
- # of students taking native language classes by language

# Suggested data to provide

## AI/AN student population by tribe and grade:

- Elementary
- Middle School
- Junior High School
- High School

## AI/AN student assessment scores:

- Reading
- Mathematics
- Science

## Federal Program Funding

What funding amount do you receive per program and what is this money spent on?

- Title I, Parts A, C & D
- Title II Part A
- Title III Part A
- Title IV, Parts A & B
- Title V, Part B subpart 2
- Title VI Part A subpart 1
- Title VII, Impact Aid
- State Grant Opportunities
- Other

# Example of a data sharing agreement

## **DATA SHARING AGREEMENT**

**BY AND BETWEEN \_\_\_\_\_ MUNICIPAL SCHOOL DISTRICT AND \_\_\_\_\_ PUEBLO  
Including the \_\_\_\_\_ PUEBLO EDUCATION AND TRAINING DIVISION**

This Data Sharing Agreement ("Agreement") is entered into by the \_\_\_\_\_ Municipal School District ("\_\_\_\_"), also known as the Local Educational Agencies (LEA), and \_\_\_\_\_ Pueblo, including \_\_\_\_\_ Pueblo Education and Training Division (\_\_\_\_), also known as the Tribal Education Agency (\_\_\_\_) for the purpose of sharing information between the parties in a manner consistent with the Family Education Records Privacy Act of 1974 ("FERPA"). The information will be used by \_\_\_\_\_ Pueblo and its designee to assist Native American and \_\_\_\_\_ Pueblo students in school success (including program improvement, increasing school attendance, credit recovery, academic intervention support, applying to college and for scholarships, etc.). In order to assist students with the above, \_\_\_\_\_ Pueblo and \_\_\_\_\_ requires the use of student data from \_\_\_\_\_.

### **RECITALS**

**WHEREAS**, In December of 2015, the Every Student Succeeds Act (ESSA) was signed into law and New Mexico's state plan includes a continued commitment to robust college and career ready standards and assessments, meaningful school accountability, a commitment to ensure that all students are served by excellent educators, and dynamic strategies for turning around the state's struggling schools;

**WHEREAS**, New Mexico adopted the Common Core State Standards (CCSS), a set of high-quality standards for social studies, science, technical subjects and adding an additional 15% of state-specific standards focusing on culturally relevant texts and instruction to the CCSS in English language arts (ELA);

**WHEREAS**, The mission of \_\_\_\_\_ Municipal Schools is to "Prepare all students academically, socially, physically and emotionally to succeed as responsible citizens;" and,

**WHEREAS**, \_\_\_\_\_ Pueblo is a federally recognized Sovereign Government composed of the Tribal Council, Governor's Office and War Chiefs Office; and,

**WHEREAS**, The \_\_\_\_\_ Pueblo Tribal Council is the legislative authority and acts in the best interest of \_\_\_\_\_ Pueblo; and,

**WHEREAS**, The \_\_\_\_\_ Pueblo Governor's Office, as an executive branch of \_\_\_\_\_ Pueblo Tribal Government, has responsibility to oversee the education of its tribal members; and

**WHEREAS**, the Indian Self-Determination and Education Assistance Act 25 USC 450 (P. L. 93-638 enacted January 4, 1975) and the Indian Employment, Training, and Related Services Demonstration Act 25 USC 3401 (P. L. 102-477, enacted October 23, 1992) authorize and delegate to \_\_\_\_\_ Pueblo the responsibility to operate programs on behalf of the federal government. This responsibility is carried out through the \_\_\_\_\_ Pueblo Central Management Systems. Under CMS, the \_\_\_\_\_ Pueblo Education & Training Division is responsible to design and establish education programs, functions, services and activities that benefit tribal members; and

**WHEREAS**, \_\_\_\_\_ Pueblo Tribal Council (\_\_\_\_) Resolution No. 2006-27, "Establishment of the Pueblo of \_\_\_\_\_ Board of Education pursuant to \_\_\_\_\_ Resolution No. 2005-11 (April 1, 2005), wherein By this Charter and the regulations adopted under it, the Pueblo of \_\_\_\_\_ intends to ensure that the education of Pueblo of \_\_\_\_\_ members is a quality education that will prepare them for meaningful employment while addressing the unique needs of the Pueblo collectively to preserve its heritage; natural resources, and way of life."

**WHEREAS**, \_\_\_\_\_ Resolution No. 2006-27, Article II, 1, (b), (3) The Board of Education shall "monitor the delivery and effectiveness of education services provided by tribal, state, federal, and other entities to ensure that Pueblo of \_\_\_\_\_ members receive a quality education; and,

**WHEREAS**, \_\_\_\_\_ Pueblo designates the \_\_\_\_\_ Pueblo Education and Training Division as a federally defined Tribal Education Agency (TEA) of the Pueblo whose goal is to support Native American and \_\_\_\_\_ Pueblo students attain the highest possible level of education while attending schools in the \_\_\_\_\_ Municipal School system and affiliated institutions.

### **AGREEMENT**

**I. PARTIES.** \_\_\_\_\_ Pueblo and \_\_\_\_\_ affirm that they are authorized to receive information from local educational authorities (LEAs/ TMS) subject to FERPA. The parties wish to share data collected by \_\_\_\_\_.

- **SCOPE OF DATA TO BE DISCLOSED.** In order to fulfill the objectives of this Agreement, the following data must be provided to \_\_\_\_\_ Pueblo and \_\_\_\_\_. This data includes some personally identifiable information:

-iStation K-3 Literacy Assessment Data by school, by grade, by subgroup beginning in 2018-19 and annually thereafter;

-PARCC proficiency data by school, by grade, by subgroup beginning in 2017-18 and annually thereafter;

-Information regarding students who are in danger of failing or are in need of credit recovery to increase graduation success and to support the \_\_\_\_\_ Summer School Program and,

-Early Warning System Attendance Information for \_\_\_\_\_ Pueblo students with 5 or more days absent.

Data shall be provided to \_\_\_\_\_ Pueblo and \_\_\_\_\_ for K-12 \_\_\_\_\_ Pueblo students in \_\_\_\_\_ Municipal Schools.

**II. COMPLIANCE WITH FERPA.** To effect the transfer of data subject to FERPA, \_\_\_\_\_ Pueblo and \_\_\_\_\_ agrees to:

- a. In all respects, comply with the provisions of FERPA. For purposes of this agreement, FERPA includes any amendments or other relevant provisions of federal law, as well as requirements of Chapter 99, Title 34 of the Code of Federal Regulations. Nothing in this agreement may be construed to allow either party to maintain, use, disclose or share student information in a manner not allowed by FERPA.

# Example of a data sharing agreement

- b. Use of the data shared under this agreement shall be for no purpose other than to support the academic success of students and to offer services to Native American and \_\_\_\_\_ Pueblo families.
- c. Require all employees, contractors and agents of any kind to comply with all applicable provisions of FERPA and other federal laws with respect to the data shared under this agreement. \_\_\_\_\_ Pueblo and \_\_\_\_\_ agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this agreement. Nothing in this paragraph authorizes sharing data provided under this Agreement with any other entity for any purpose other than completing \_\_\_\_\_ Pueblo and \_\_\_\_\_'s work authorized under this Agreement.
- d. Maintain all data obtained pursuant to this agreement in a secure computer environment and will not copy, reproduce, or transmit data obtained pursuant to this agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modification or additions to data from any source that contains information regarding students, are subject to the provisions of this agreement in the same manner as the original data. The ability to access or maintain data under this agreement shall not under any circumstances transfer from \_\_\_\_\_ Pueblo and \_\_\_\_\_ to any other institution or entity.
- e. Not to disclose any data obtained under this agreement in a manner that could identify an individual student to any other entity, nor attempt to infer or deduce the identity of any individual student based on data provided by School District Name, nor claim to have identified or deduced the identity of any student based on data provided by School District Name.
- f. Not to provide any data obtained under this agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity.
- g. Provide to School District Name any materials designed for public dissemination, based in whole or in part on data obtained under this agreement, at least ten days prior to dissemination.
- h. Promptly after termination of this Agreement pursuant to Paragraph VII, destroy all data obtained under this agreement in accordance with 34 CFR Section 99.35(b)(2). Nothing in this agreement authorizes either party to maintain data beyond the time period reasonably needed to complete the purpose of this data. \_\_\_\_\_ Pueblo and \_\_\_\_\_ agrees to require all employees, contractors, or agents of any kind to comply with this provision.

### III. DATA REQUESTS.

- a. School District Name may decline to comply with a request if it determines that providing the data in the manner requested would violate FERPA and/or would not be in the best interest of current or former students in the District. All requests shall include a

statement of the purpose for which it is requested, and an estimation of the time needed to complete the project for which the data is requested. Data requests may be submitted by post, electronic mail, or facsimile.

- b. \_\_\_\_\_ Pueblo and \_\_\_\_\_ agrees that School District Name makes no warranty concerning the accuracy of the student data provided.

**IV. AUTHORIZED REPRESENTATIVE.** \_\_\_\_\_ Pueblo and \_\_\_\_\_ has designated herein a single authorized representative able to request data under this agreement. The authorized representative shall be responsible for transmitting all data requests and maintaining a log or other record of all data requests and received pursuant to this agreement, including confirmation of the completion of any projects and the return or destruction of data as required by this agreement. School District Name or its agents may upon request review the records required to be kept under this section. The name and contact information of the designated authorized representative for \_\_\_\_\_ Pueblo and School District Name is: Director, \_\_\_\_\_ Pueblo Education and Training Division, address, city, NM 87571 phone number; email address

**V. RELATED PARTIES.** \_\_\_\_\_ Pueblo and \_\_\_\_\_ represents that it is authorized to bind to the terms of this contract, including confidentiality and destruction or return of student data, all related or associated institutions, individuals, employees or contractors who may have access to the data or may own, lease or control equipment or facilities of any kind where the data is stored, maintained or used in any way by \_\_\_\_\_ Pueblo and \_\_\_\_\_. This Agreement takes effect only upon acceptance by an authorized representative of, by which that institution agrees to abide by its terms and return or destroy all student data upon completion of the research for which it was intended or upon the termination of its current relationship with \_\_\_\_\_ Pueblo and \_\_\_\_\_.

**VI. TERM.** This Agreement shall take effect upon signature by the authorized representatives of School District Name and \_\_\_\_\_ Pueblo, and shall remain in effect until June 30, 20\_\_\_\_. The parties to this Agreement shall review this Agreement annually and may elect to renew this Agreement through subsequent annual agreements (or up to three years) running from July 1 of the then-current year to June 30 of the successive year. The Agreement may also be terminated by School District Name or \_\_\_\_\_ Pueblo and \_\_\_\_\_ upon fourteen days written notice pursuant to Paragraph VII herein.

**VII. TERMINATION.** This Agreement may be terminated by School District Name or \_\_\_\_\_ Pueblo and \_\_\_\_\_ upon written notice delivered to the other not less than fourteen (14) days prior to the intended termination date. By such termination notice, neither School District Name nor \_\_\_\_\_ Pueblo and \_\_\_\_\_ shall negate obligations already incurred or required to be performed prior to the effective date of termination. School District Name specifically reserves the right to immediately cancel this agreement should School District Name, in its sole discretion, determine that student information has been released in a manner inconsistent with this agreement, has not been maintained in a secure manner, or that substantially similar data access has become generally available for research purposes through any other mechanism approved by the School District Name. In the event of immediate cancellation, a notice specifying the reasons for cancellation shall be sent as soon as possible after the cancellation to the persons signing the agreement.

# Example of a data sharing agreement

**VIII. BREACH AND DEFAULT.** Upon breach of any of the provisions, obligations, or duties embedded in this agreement, the parties may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not a waiver of such subsequent occurrences, and the parties retain the right to exercise all remedies mentioned herein.

**IX. AMENDMENT.** This agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the parties to this agreement. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this agreement, without the necessity for executing written amendment.

**X. ASSIGNMENT OF RIGHTS.** Neither this agreement, nor any rights, duties, nor obligations described herein shall be assigned by \_\_\_\_\_ Pueblo and \_\_\_\_\_ without the prior express written consent of School District Name.

**XI. GOVERNING LAW; CONSTRUCTION.** This Agreement will be governed, construed and enforced under Federal Law and jurisdiction for any dispute will be in the U.S. Federal Courts for the District of New Mexico. This Agreement will be construed neutrally and not in favor or against any party. Nothing in this agreement shall be construed as a waiver of sovereign immunity of \_\_\_\_\_ Pueblo, its affiliated organizations and programs, and \_\_\_\_\_.

**XII. ENTIRETY OF AGREEMENT.** All terms and conditions of this agreement are embodied herein. No other terms and conditions will be considered a part of this agreement unless expressly agreed upon in writing and signed by both parties.

**IN WITNESS WHEREOF,** the parties have caused this Memorandum to be executed on the year and date indicated, with the effective date being the most recent signature.

**Reviewed and Agreed Upon by:**

\_\_\_\_\_  
Type out Name,  
Governor, \_\_\_\_\_ Pueblo

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type out Name,  
President, \_\_\_\_\_ Municipal School Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type out Name,  
Superintendent, \_\_\_\_\_ Municipal Schools

\_\_\_\_\_  
Date

\_\_\_\_\_  
Type out Name,  
Chairman, \_\_\_\_\_ Pueblo Board of Education

\_\_\_\_\_  
Date



# Questions & Answers



# Contact Us:

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