

The Every Student Succeeds Act, like its predecessor, calls on government entities to ensure the voice and interest of Native students and communities are represented in the development and implementation of educational policies. It is vital to the success of native students and communities that tribes and pueblos take part in the required, “*intentional and meaningful*” consultations with states and LEAs. Specifically, **Title I and Title VIII** describe how states and LEAs *must* consult tribes and pueblos; in **Title IV**, LEAs must consult with Tribes in the development of applications for formula grants. In **Title VI**, any programs that are funded must also be operated and evaluated in consultation with Native parents, family members, and community representatives. Finally, in **Title IX**, ESSA language encourages tribal organizations to partner with early childhood education services.

Many states, including New Mexico, have developed documents and protocols that outline what tribal consultations should consider and look like. Oftentimes, failure to include tribes/pueblos and urban native organizations as collaborative partners often resulted in ineffective consultation and poor outcomes for native youth and communities. After surveying relevant literature and consulting with several individuals who have taken part in tribal consultations, below is guidance for states and LEAs on best practices—and potential obstacles—to achieving intentional and meaningful tribal consultation. For simplicity, the recommendations are grouped into 4 categories—General/Identification, Notification, Tribal Input/Meetings, and Follow-up. This list is a true amalgamation of resources—the citations provided are for recommendations throughout.

General/Identification

- First and foremost, it is vital to have true government-to-government contact between the Agency and Tribe, and **recognition of sovereignty where the highest level Agency representative meets with Tribal leaders**. Several departmental contacts indicated that tribal leadership often did not attend unless the Governor was also present. A mistake commonly made is having someone of insufficient status directly contact higher status tribal leaders.
- The needs of tribes are different and consultation could range from technical assistance in how best to accomplish goals, to giving more input in order to improve state agency services; consultation should be results oriented and centered on problem solving or decision making between the Tribe and the State
- Not all tribes/pueblos will reach a consensus with one another since they represent varying groups of individuals.
- Consultation should occur **prior** to any new programs, policies, regulations, laws or other actions being implemented; tribe should be given an opportunity to provide inputs in regard to issues, rules, regulations, policies or legislation.
 - Adequacy of information provided to tribes prior to consultation is critical to success. The need to provide comprehensive information in a tangible format is vital; tribal leaders have sometimes had historically negative experiences-- tribal leaders were provided only summaries or portions of text rather than full documents, leading to confusion and misinformation.
 - There is still considerable discretion for states and LEAs to *not* consult with tribes. Historically, if a matter needed to be expedited, sometimes tribes were not consulted, which, in practice, runs counter to the intent of the consultation process and of the government-to-government relationship between tribes/pueblos and government agencies. Overburden has been an historical barrier to successful consultation.
- Instead of a one-off meeting, other states have scheduled a number of regular meetings, bimonthly
 - Hosting a consultation in conjunction with another, important native-centered event, that brings groups of tribal and pueblo leaders together.
- State/LEA staff should be trained in cultural competency/cultural awareness—See **Appendix A & Appendix B**
 - Ensure regular training and education for new state and tribal personnel about consultation processes and relationships.
- Creating surveys to ask tribal and pueblo leaders their preferences, ideas, and availability
- Many policies, particularly in NM, are contingent upon having a tribal liaison. If position is not filled, then the relationship with the local tribe or pueblo is weakened. Relatedly, if there is high turnover in tribal liaisons, it is more difficult for tribes or pueblos to build authentic, trusting relationships with states and LEAs.
- Acknowledge/engage in tribal customs during consultation events as appropriate—See **Appendix A & Appendix B**
- Portion of the agency website specifically set aside for tribal consultation (impacting all stages of process)

Notification

- Establish a process to notify tribes, Indian programs, and urban Indian organizations about new or amended policies. Send notification letter, in a form of a “Dear Tribal Leader” letter at least 60 days prior to submitting the relevant change or policy. In expedited cases, 10-day notice is required. Tribal chairpersons receive a hard copy of the letter, while other receive copies via email.
- All hard copy and emailed letter recipients have 30 days (7 days in expedited cases) to respond with comments or to request in-person meetings or formal consultations. The state documents, reviews, and incorporates (if appropriate) any responses in a revised document. Any requested meetings are also scheduled.
- Multiple contacts that begin early in the planning process and continue throughout the project
- Communicate regularly (via email, phone, etc.) with tribal stakeholders.
- Allow adequate time for information sharing and discussion in preparation for the consultation event.
- Follow-up by telephone to confirm receipt of documents.
- Provide participants with maps, hotel information, a list of all attendees, an agenda, and most importantly, complete project documentation.

Tribal Input/Meeting

- Meeting dates should be selected to accommodate the availability of the tribe’s leadership
- Introduce all participants with their proper titles. Check with your tribal contact beforehand so you know if certain officials or elders should be introduced and acknowledged first
- The place of consultation is a factor in success; conducting consultation at both Agency and Tribal sites or mutually convenient locations shows respect and consideration, and looms large in the attitudes of attendees
- Successful consultation is dependent upon funding for travel and face-to-face meetings. Recognizing that there is a cost to consultation, in both time committed by the participants and the preparation and travel required
- Do not set your own meeting agenda without consulting with tribal representatives to learn what they expect the process and substance to be. Tribes may have their own ways of conducting meetings; allow flexibility and openness (no hidden agendas).
- If possible, the meeting should take place on Tribal territory or at a preferred Tribal location.
 - Some tribes and pueblos are far removed from Santa Fe
- The group may want to have a facilitator conduct the meeting along with a recorder to take minutes and document decisions, disagreements, and/or follow-up items. Facilitators may be an third party, agency rep, or tribal person.
- The ideal type of meeting is face-to-face, issue-oriented and aimed at problem solving; not just agency presentations at meetings which are informative, but not, oftentimes meaningful or collaborative
- *Potentially use video- and tele-conferencing technology or webinars technology (as an option), particularly in remote areas
- Consider the usefulness of visual aids – a map of the area, facility plans, diagrams, organizational and flow charts, and so forth. Visual information is sometimes easier to absorb than the verbal kind.
- Some tribal participants, including the decision makers, may be unfamiliar with technical information and formats
- Commonly, when Indian tribes host meetings, they provide food, and drinks for participants. If the agency is considered the host, try to emulate this by offering similar appropriate food or refreshments as benefit the occasion.
- Take accurate notes during the meeting, or, if the tribe agrees in advance, arrange for meetings to be recorded
- Remember that consent by one tribal member does not necessarily mean consent by the tribe.

Follow-Up

- Promise only what can be delivered
- Document the decisions and expected actions. If needed, schedule future meetings.
- After the meeting, if leaders have time, arrange a 1-on-1 meeting to see if there are any “nonpublic” thoughts that need to be expressed
- It may be a good idea to establish a Memoranda of Understanding with the Tribes, if there is not one already
- Keep everyone informed on a regular basis about the progression of the project or subject of the consultation; whenever possible, this should be done in person with the people designated by the Tribe to work with the Agency.

Appendix A

Preparing for the Consultation Process

There is not one correct way for the Consultation process to operate.

- 1) Understand the History of the Tribe and its current and historical relationship to the U.S. Government.
- 2) Understand the Tribe's culture. Culture is the sum total of how a group's world-view influence their behavior. This includes a tribes government structure, food preferences, religion, burial traditions, natural resource values, wealth, family structure [matriarchy/patriarchy], education, etc.
- 3) Understand the cultural Do's and Don'ts. Observation, reading, and discussions with Tribal members can provide one with pertinent information about the culture in order to minimize cultural mistakes or offensive behavior.
- 4) Understand the tribal perceptions of time and allow enough time to form an ongoing relationship. Time and perceptions of time vary across Tribal cultures.
- 5) Understand the Tribal structure(s) and how it got that way.
- 6) Identify the Tribal Leadership and power brokers. As indicated above, there may be a parallel leadership structure operating in which the formal structure has elected officials and cabinet positions (e.g., Secretary of Agriculture), but a Tribal social structure may produce leaders based on tradition, family lineage, age, spiritual authority, political status, skill-set, or other Tribal considerations.
- 7) Understand the Tribes decision-making process. All Tribes do not use an identical process to make decisions. Consequently, it is important to understand how their decision making process operates. Some Tribes have full democracy in which everyone in the Tribe must vote "yes" for a measure or action to be approved. One dissenter can kill a proposed action. Other Tribes may require a simple majority for approval, while other Tribes have representatives who vote on measures. Finally, still others require only the leader/Chief to give approval to a proposed action. Knowledge of the decision making process can cause an agency representative to proceed quite differently with the consultation process

Meeting Format

- Go into the consultation with the assumption that agency personnel will, initially, do more listening than speaking
- Tribal Chairperson will normally open the meeting and call on the person designated to say the opening prayer (they will always know the appropriate person in the room—it could be them, a vice chair, or an elder spiritual leader). This is often done in their language. A translation may or may not be provided. Normally, all stand during the prayer out of respect for the Tribe and the concept of a higher being.
- Introductions will likely follow the prayer. Often, introductions are far more than just providing the group with your name, position, and office location. People may include information about themselves and their family. Agency participants should follow the lead of the Tribal people. Introductions can be a long process, so relax and listen.
- A Tribal leader may call on someone to speak about the history or the culture of the Tribe.
- Once called upon to speak the agency should thank the Chairperson for their time and words, thank the person who shared the prayer, and thank the person who shared the history. It is then a good idea to give the Tribe a short history of the agency and the program, with emphasis on values, especially in regard to working with the Tribes.
- Next, it may be time to explain the project the agency is present to discuss. In doing so, try to use as many "values statements" as possible; minimizing the amount of administrative language.
- Be prepared for some of the input to be stories that can take some time. Storytelling is an important part of many cultures, and is used to express the person's way of relating concerns or insights.
- Then engage the Tribal leaders in discussions about concerns and what the agency can do to work with the Tribe to solve issues or minimize impacts. As a general rule, try to say "yes" to anything you can.
- When "yes" is not an option, try to explain why. Once decisions are made and agreed upon, make sure they are recorded and read back to the group so that all have the same understanding.

Appendix B

Protocol Guidelines: Consulting with Indian Tribal Governments, an abbreviated list

- **English as a Second Language.** For some Indians, especially the elders or more traditional tribal members, English was learned in forced academic settings or fairly late in life. Thus the English language may have unpleasant connotations or it may be spoken awkwardly or uncomfortably. Others, however, may exert a command of the English language that attests to their facility in moving through the dominant Euro-American culture of the United States. Given this range, Reclamation employees need to be mindful of the fact that differences in English speaking abilities can create communication problems, misunderstandings, or inaccurate expectations. Although most tribes have their own language, they generally will conduct meetings in English or arrange to have translators available. Sometimes this means that the translator will interpret alternately in English for Reclamation's participants and in the tribe's language for the Indian participants.
- **Humor.** Reclamation employees should be cautious about attempts to be humorous, particularly early in the relationship-building process. Humor sometimes does not translate well between people from different cultures and can occasionally lead to misunderstandings. Indian humor is frequently subtle or understated. Occasionally, tribal participants may exchange jokes in their own language (or they at least appear to be laughing about something). In those situations, Reclamation employees are encouraged to display patience and the tribal participants may decide to let the non-Indian participants in on the humor.
- **Being Greeted With Silence.** Indians sometimes speak very little at meetings. This is often because many Indian cultures frequently value and encourage quiet and reserved personalities. Always assume that they are listening, even if they may not be actively engaging in conversation. Sometimes in meetings Indian participants may be waiting to discuss matters more fully with other tribal members, elders, or an attorney before making any verbal statements or commitments.
- **Attorney's Role.** Often, a tribal delegation will ask its attorney to attend meetings with federal officials. Some attorneys will speak for the tribal delegation; others may explain some legal and technical points to the tribal delegation. The attorney is representing the interests of the client tribe, and tribal delegation decides the attorney's role.
- **Tribal Caucus.** Sometimes during meetings a tribal delegation may request a break to have a tribal caucus, a private internal meeting and discussion among the members of the tribal delegation. If a separate breakout room is not available, the non-Indian attendees may be requested to leave the meeting room so the tribal delegation can conduct a caucus. Reclamation employees should be respectful of the tribe's request and willing to accommodate the tribal delegation's need to confer with its leaders, members, attorney, or technical experts. The amount of time that a tribe will need for its caucus is frequently open ended and will vary in duration depending on subject matter and complexity of the topic that the tribes needs to discuss or evaluate. Be prepared to be patient and flexible.
- **Duration of Meetings.** Generally, Indian people start meetings when everyone arrives and they finish when everyone has had a "say." Meeting can start fifteen minutes to one hour after the scheduled start time and last several hours. This is sometimes referred to as "Indian time." Understanding and accepting that other cultures place different priorities on the concept of time will go a long way toward establishing a strong, positive relationship with a tribe. While waiting for meetings to start, Reclamation employees may want to interact with tribal members, make additional meeting preparations, or relax.
- **Proper Titles for Tribal Delegates.** Because meetings with tribal leaders are official meetings with another government, it is important that all tribal delegates are treated with respect and addressed by their proper titles. This can be achieved by finding out in advance the proper terms for addressing their leaders: Chief, President, Governor, Chairperson, and so forth.
- **Conflict or Anger.** The history of federal-tribal relations has left an indelible mark on Indian tribes. Indians, like other people, sometimes view federal employees with distrust or apprehension. If the federal government is perceived as having a record of breaking its promises, or using manipulation and deceptive tactics in its relationships, the people who feel that they have been let down may view federal representatives with anger or suspicion.