

# Tribal Consultation Under the Every Student Succeeds Act: A Guide for Affected Districts

## Introduction

The 2015 Every Student Succeeds Act (ESSA), Public Law 114-95, requires “affected” school districts (see text box) to consult with tribal governments on the development of district education plan for programs covered by ESSA.

This practice brief is intended to serve as an overview of ESSA tribal consultation requirements and as guidance for school districts in developing consultation plans. This brief does not discuss how ESSA applies to schools that fall under the jurisdiction of the U.S. Secretary of the Interior and the U.S. Bureau of Indian Education.

A more detailed explanation of the different titles of ESSA with potential considerations for tribal consultation is included in Appendix B of this document.

### Affected Districts

Districts required to consult with tribes include districts with:

- An enrollment of 50 percent or greater American Indian or Alaska Native students.
- A Title VII Indian Education grant of more than \$40,000 prior to 2016.
- A Title VI Indian Education grant of more than \$40,000 after 2016.

This practice brief was created in partnership with the Midwest Comprehensive Center and Drs. Nicole Bowman and Martin Reinhardt of Bowman Performance Consulting. MWCC is directed by American Institutes for Research on behalf of the U.S. Department of Education.

## ESSA Tribal Consultation Requirements

ESSA requires that state education agencies (SEAs) and affected school districts consult with tribes in the development of their education plans. SEAs are required by ESSA to engage in meaningful consultation with tribes when developing state plans for Title I, Part A funding. Affected districts that educate American Indian or Alaska Native students are also required to consult with tribes prior to submitting plans or applications for covered programs under ESSA or under Title VI. ESSA requires that tribal consultation be both *timely* and *meaningful*.

Appendix A includes resources from the National Indian Education Association and the U.S. Department of Education’s Office of Indian Education concerning relevant aspects of ESSA. Appendix B features a summary of the different titles of ESSA and questions that will assist states, districts, and tribal leaders in thinking about considerations that may be important to address during consultation.

## Timely

ESSA states that consultation “shall not interfere with the timely submission of the plan.” In a practical sense, this requirement means that the consultation process should begin as early as possible before the submission deadline to ensure that consultation is meaningful and unhurried.

Given that states will be submitting plans to the U.S. Department of Education in May or September 2017, SEAs and districts may confront a time crunch for this first round of planning. Regularly scheduled consultation meetings now and in the future can ensure both that initial feedback can be incorporated into state and district plans and that tribal leaders continue to have a voice in the plan’s ongoing implementation and review process.

## Meaningful

Districts must work collaboratively with tribes to develop a shared understanding of what entails *meaningful consultation*, which is required—but not defined—by ESSA. A key starting point can be building a greater understanding of the infrastructure, processes, and community contexts of the tribes to be consulted.

## District Tribal Consultation Requirements—ESSA Title VI

District consultation requirements apply only to select districts (see “Affected Districts,” below). Districts are required to consult with local tribal officials on plans or applications “for a covered program under [ESSA] or for a program under Title VI of [ESSA].” In practice, this requirement means that districts must engage in consultation well before submitting plans or applications to the state education agency or the U.S. Department of Education.

Districts will need to document their consultation activities and provide an affirmation signed by each consulted tribe in order to verify that appropriate consultation took place. In districts with more than one tribe, respect for the sovereignty and individuality of tribal nations dictates that requests for consultation should be handled separately.

## Affected Districts

Districts required to consult with tribes include districts with:

- An enrollment of 50 percent or greater American Indian or Alaska Native students<sup>1</sup>
- A Title VII Indian Education grant of more than \$40,000 prior to 2016
- A Title VI Indian Education grant of more than \$40,000 after 2016

## Covered Programs

Affected districts are required by ESSA to consult with tribes on plans or applications for programs covered under the following:

- Title I, Part A (Improving Basic Programs Operated by State and Local Educational 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)

---

<sup>1</sup> According to guidance from the U.S. Department of Education, “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 2016–17 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.” See U.S. Department of Education, Office of Elementary and Secondary Education. (2016, September 26). *Dear colleague letter on tribal consultation FAQs*. Washington, DC: Author. Retrieved from <https://www2.ed.gov/policy/elsec/leg/essa/faq/essafaqtribalconsultation.pdf>

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

A summary of ESSA titles with potential considerations for tribal leaders is available in Appendix B of this document for further reference.

## Making Tribal Consultations Meaningful Under ESSA

When approaching tribal leaders for consultation, several practices can enhance meaningful consultation:

1. Recognize the sovereign status of tribal nations and the existence of a government-to-government relationship between those nations and the United States federal and state governments.
2. Deliver personal invitations to tribal leaders to attend consultations, providing ample time prior to the event to allow for scheduling. Invitations should be from senior district leadership and those leaders should also attend the consultation meetings.
3. Show respect for the tribal nation’s culture and sovereignty by making a genuine effort to learn about their government, culture, and history with the district prior to consultation.

### **As part of meaningful consultation, tribal leaders should be:**

- Informed of dates for upcoming meetings, including both tribal consultation meetings and information or input meetings that are open to the public.
- Informed of deadlines for plan development and submission.
- Provided with information on proposed programs.
- Provided with formats and submission information for tribal input.
- Notified of significant changes in plans.
- Provided with information on how tribal input was incorporated.
- Given a final copy of plans or applications.

### **As part of meaningful consultation, tribal leaders should be provided with, or should be able to receive on request:**

- Copies of previous education plans.
- Contact information for district personnel or members of committees.
- Presentations from state or local representatives about existing programs so that tribes have clarity regarding how the programs operate in the local, district, or state context.
- Additional meetings to discuss the education plans or programs.
- Information on the evidence on which planned activities are based.
- Previous reports and evaluations on education plan or program outcomes.

Given the number of programs covered by the Act, most affected districts will need to consult regularly with local tribal nations to meet the ESSA requirements. If a district receives Impact Aid or funding under the Johnson-O’Malley Act (48 Stat. 596, 1934, as amended [25 U.S.C. 452 et seq.]), it will likely already have some mechanisms in place for consultation. ESSA provides an opportunity to deepen those relationships and dialogues with tribal communities.

## Key Considerations and Questions for Engaging Tribes

In addition to the above criteria for meaningful consultation, there are several essential concepts to bear in mind when working and communicating with tribal nations and communities:

- *Shared responsibility for students.* The education of American Indian youth is a shared, trilateral responsibility among three sovereign units of government: tribal, federal, and state. Districts should always recognize that all parties are united in their concern and responsibility for students.
- *Respect for cultural differences and strengths.* Tribal consultation is a small-scale exercise in international relations. Districts should be respectful and mindful that perceptions related to culture and procedure may differ among stakeholders and can easily lead to misunderstandings.
- *Tribal concerns.* Tribal educational concerns may or may not align with nontribal concerns—or even with the concerns of other tribal nations, depending on the context. Tribal leaders may want to prioritize tribe-specific issues such as their native linguistic and cultural traditions.
- *Tribal administrative capacity.* Among tribes that are going through a process of tribal nation rebuilding, administrative capacity and/or infrastructure considerations are key.
- *The history of American Indian education.* Within living memory, federal and state education policies have caused lasting damage to American Indian families and communities. This reality is part of the historical trauma many American Indians feel and can affect current relationships including the consultation process.

## Guiding Questions for Meaningful Consultation

Given the considerations outlined above, districts may use the following questions to shape plans for the tribal consultation process.

How has the district worked with tribal leaders and community members to:

- Identify tribal needs and priorities with regard to the development of programs to support American Indian student success?
- Develop district plans, policies, goals, objectives, and outcomes for programs that affect American Indian students and families?
- Leverage tribal cultural expertise and knowledge to support district programs involving American Indian students?
- Provide tribal leaders and community members with regular opportunities to offer input and feedback on program implementation?
- Determine effective ways to share and use data to support American Indian students?
- Include culturally appropriate and realistic performance measures and data collection methods?
- Regularly inform tribal leaders and community members of program progress and impacts?

# Appendix A: Resources (Annotated Bibliography)

National Congress of American Indians. (2017). *Tribal nations and the United States: An introduction*. Washington, DC: Author. Retrieved from <http://www.ncai.org/about-tribes>

This NCAI document is a brief but effective introduction to tribal governments and their relationship (political, legal, and practical) to other public governments (federal, state, and local). It covers tribal consultation and how it is conducted when multiple tribal and public government agencies work together on common topics.

National Congress of American Indians, & Pyramid Communications. (n.d.). *Effective tools for communication and leadership in Indian country*. Washington, DC, and Seattle, WA: Authors. Retrieved from [http://www.ncai.org/news/tribal-communicators-resources/ncai\\_conferencebooklet\\_final\\_singlepage.pdf](http://www.ncai.org/news/tribal-communicators-resources/ncai_conferencebooklet_final_singlepage.pdf)

An excellent guide aimed at tribal leaders that can help districts understand how they may see their role as well as shed light on some of the cultural barriers that can impede cross-cultural communication.

National Indian Education Association. (2016). *Building relationships with tribes: A Native process for ESSA consultation*. Washington, DC: Author. Retrieved from <http://www.niea.org/wp-content/uploads/2016/02/NIEA-BuildingRelationships-FINAL.pdf>

The National Indian Education Association sets out a Native process for consultation with tribes in the context of ESSA. Major components include sections of ESSA that address consultation and essential elements of consultation.

U.S. Department of Education, Office of Elementary and Secondary Education. (2016, September 26). *Dear colleague letter on tribal consultation FAQs*. Washington, DC: Author. Retrieved from <https://www2.ed.gov/policy/elsec/leg/essa/faq/essafaqtribalconsultation.pdf>

This letter and its accompanying list of frequently asked questions and answers provides basic information for districts about changes to the Elementary and Secondary Education Act of 1965 under ESSA.

U.S. Department of the Interior. (n.d.). *Tribes: Tribal consultation policy* [Webpage]. Washington, DC: Author. Retrieved from <https://www.doi.gov/tribes/Tribal-Consultation-Policy>

This website provides the U.S. Department of the Interior's department-wide policy on tribal consultation. It includes links to other sites that pertain to the ongoing development of a department-wide policy process and to public comments.

# Appendix B: The Elementary and Secondary Education Act as Amended by the Every Student Succeeds Act of 2015: Title Summaries

This document contains summaries of portions of the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act of 2015 (ESSA) that are most relevant to tribal consultation. Each summary is followed by a list of questions that will assist states, districts, and tribal leaders in thinking about considerations that may be important to address during consultation. Considerations specific to state or district consultation have been noted.

The U.S. Department of Education has identified the following titles, parts, and subparts of ESSA as those that require affected districts (as defined by the Act) to engage in consultation with tribal leaders. Other consultation requirements that are not specific to affected districts are also included when they are of particular interest or relevance to tribes.

## Contents

Title I—Improving the Academic Achievement of the Disadvantaged .....	7
Part A—Improving Basic Programs Operated by Local Educational Agencies.....	7
Part C—Education of Migratory Children .....	8
Part D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk ..	8
Potential Considerations for Tribal Consultation for Title I .....	8
Title II—Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders .....	9
Part A—Supporting Effective Instruction .....	9
Potential Considerations for Tribal Consultation for Title II.....	9
Title III—Language Instruction for English Learners and Immigrant Students.....	10
Part A—English Language Acquisition, Language Enhancement, and Academic Achievement Act .....	10
Potential Considerations for Tribal Consultation for Title III.....	10
Title IV—21st Century Schools.....	10
Part A—Student Support and Academic Enrichment Grants .....	10
Part B—21st Century Community Learning Centers .....	10
Potential Considerations for Tribal Consultation for Title IV.....	11
Title V—Flexibility and Accountability.....	11
Part B, Subpart 2—Rural and Low-Income School Program .....	11
Potential Considerations for Tribal Consultation for Title V .....	11
Title VI—American Indian, Native Hawaiian, and Alaska Native Education.....	12
Part A, Subpart 1—(American Indian Education Formula Grants to Local Educational Agencies) .....	12
Potential Considerations for Tribal Consultation for Title VI.....	13
Title VII—Impact Aid .....	14
Consultation Requirements .....	14
Title VIII—General Provisions.....	15

# Title I—Improving the Academic Achievement of the Disadvantaged

## Part A—Improving Basic Programs Operated by Local Educational Agencies

Title I, Part A outlines the programs that provide states with money to fund districts to support schools with significant populations of disadvantaged students and schools that are otherwise low-performing. This section of the law requires challenging academic standards, aligned statewide testing, accountability, and reporting and school improvement activities at the state and local levels. Accountability by student subgroup such as race or ethnicity is required by this section.

Basic grants fund schoolwide programs for schools that meet a schoolwide poverty threshold. Targeted grants are available to LEAs and schools with higher proportions of disadvantaged students. In addition to identifying schools for basic program supports, states must also identify low-performing schools from among public schools statewide for comprehensive support and improvement or targeted support and achievement based on:

- Academic achievement
- Graduation rates
- English learner progress toward English language proficiency
- At least one additional indicator of school quality or student success as determined by the state

Long-term and interim goals must be set for all students and for specific student subgroups (including American Indian students) for the first three indicators, and states must report performance against these targets. States will identify low-performing schools for two types of support:

- *Comprehensive support*—Schools must improve overall student performance.
- *Targeted support*—Schools must improve performance in subgroups for which low performance was identified.

States, districts, and schools must report annually, in a clear public report card format, on performance on each of the required accountability indicators.

A state is required to consult with tribes in the development of its Title I plans and to notify tribes about state standards, academic assessments, and the state accountability system.

### SECTION 1111: STATE PLANS.

“(a) FILING FOR GRANTS—

“(1) IN GENERAL. —For any State desiring to receive a grant under this part, the State educational agency shall file with the Secretary a plan that is—

“(A) developed by the State educational agency with timely and meaningful consultation with the Governor, members of the State legislature and State board of education (if the State has a State board of education), local educational agencies (including those located in rural areas), representatives of Indian tribes located in the State, teachers, principals, other school leaders, charter school leaders (if the State has charter schools), specialized instructional support personnel, paraprofessionals, administrators, other staff, and parents....

“(2) LIMITATION—Consultation required under paragraph (1)(A) shall not interfere with the timely submission of the plan required under this section.”

### SECTION 111 (a)(2):

“(B) the State educational agency will notify local educational agencies, Indian tribes and Tribal organizations, schools, teachers, parents, and the public of the challenging State academic standards, academic assessments, and State accountability system, developed under this section...”.

**Several other provisions of Title I, Part A contain consultation or cooperation requirements that may be relevant to tribal leaders:**

- The state will ensure that districts will, to the extent feasible, work in consultation with outside intermediary organizations that have practical expertise in the development or use of evidence-based strategies and programs. (Sec. 1111(g)(2))
- District plans for meaningful family engagement should be developed jointly with parents and family members; the district will provide supports to build the capacity of all participating schools to plan and carry out the family engagement policy, which may include meaningful consultation with “individuals with expertise in effectively engaging parents and family members in education.” (Sec. 1116(a)(2)(B))
- District plans must address how districts will coordinate and integrate Title I services “with other educational services at the local educational agency or individual school level, such as services for ... American Indian, Alaska Native, and Native Hawaiian children, and homeless children and youths, in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program.” (Sec. 1112(c)(4))

## **Part C—Education of Migratory Children**

This part provides funding supports for programs and provision to assist migrant children.

## **Part D—Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk**

This part provides funding supports for programs that assist children and youth who are neglected, delinquent or at risk. The definition of “at risk” includes students who are a year or more behind their peers academically or who have high rates of absenteeism, as well as those with addictions, histories of abuse, or other major risk factors. Title I, Part D applies to children and youth in local, tribal, and state institutions and provides support for programs that equalize student opportunities for academic achievement, prevent dropouts, and support transitions from correctional facilities to employment or further schooling.

Subgrant funding to districts under this part can also be used to coordinate health and social services for at-risk children and youth, meet the “unique academic needs” of participating children and youth, and provide programs for at-risk American Indian children and youth.

## **Potential Considerations for Tribal Consultation for Title I**

- *Tribal representatives.* Which tribal representatives will review state and local plans, attend important meetings, and make recommendations on behalf of the tribe about Title I programs?
- *Changes to plan.* What do previous plans under this part look like? What has changed and why?
- *Assessments used for Title I accountability.* Have the assessments used in their students’ schools been reviewed for bias against tribal students? What were the results?
- *Data use and access.* How can tribes help ensure that data about tribal students are included in state and local accountability plans in a meaningful way?
  - *n-size.* What is the state’s *n-size* (i.e., the smallest number of students who will be included in district and school outcome reporting) for subgroup reporting?
  - *Tribal access.* How can tribes access data about their youth in Title I programs?
  - *Local data sharing.* Can data sharing agreements be developed between the tribe and the district to provide both entities with more information on tribal youth?
- *Supports for tribal youth.* Are American Indian students included in any comprehensive support or targeted support schools? How will supports address the needs of those students? What kinds of technical assistance will be provided?

- *Exploring best practices.* How are best practices in the education of tribal youth specifically being addressed in state and local school improvement efforts? What is the definition of “evidence-based” programs, and how does that definition apply to specific strategies for supporting tribal youth?
- *Early Childhood.* Are there plans to initiate/implement early childhood (pre-K) programs to increase potential for school readiness?
- *All Youth in Juvenile Justice System.* What are the critical partnerships that need to be formed for American Indian students who are involved in the juvenile justice system or are at risk of becoming involved?

## Title II—Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders

### Part A—Supporting Effective Instruction

Title II is focused on improving educator quality and on increasing the number of teachers, principals, and other school leaders who are effective in improving student academic achievement. It also contains provisions intended to provide low-income and minority students with greater access to effective teachers, principals, and other school leaders.

Grants under this part can cover, among other state initiatives, those that establish or expand alternative certification for subject areas with shortages of teachers, support districts in recruiting or retaining effective minority teachers, or support collaboration on early childhood transitions to elementary school.

Grants for districts under Title II, Part A can include, among many other things, programs intended to:

- Assist schools in recruiting and retaining effective teachers.
- Support mentorship or induction programs for new teachers.
- Provide evidence-based professional development for teachers on engaging parents and the community and coordinating services.
- Conduct in-service trainings on working with students who have experienced trauma or have been exposed to trauma and forming mental health partnerships with community organizations.

### Consultation

Section 2012 requires districts submitting applications for subgrants to consult with “...parents, community partners, and other organizations or partners with relevant and demonstrated expertise in programs and activities designed to meet the purpose of this title ... regarding how best to improve the local educational agency’s activities.”

### Potential Considerations for Tribal Consultation for Title II

- *Educator preparation to work with tribal youth.* What is the state or district doing to prepare, train, and recruit teachers, principals, and other school leaders concerning American Indian education specifically? What are ways tribes can provide input on teacher preparation in the area of cultural foundational principles of educating American Indian students?
- *Training to support tribal youth.* What skills, competencies, and capacities will be developed in training programs to support American Indian students and their education? Is there evidence that these approaches work specifically with American Indian students? Does the tribe have information it can share with the state or district on educational approaches that are proven to work with American Indian children or youth?
- *Identification of essential knowledge and skills.* What do new and current educators need to know to work effectively with American Indian students from this tribe?
- *High quality instructional standards.* What are the standards for recruiting and retaining teachers who provide high quality, culturally appropriate, and relevant instruction? Do these standards include attention both to process (e.g., high quality interactions between teacher and student) and to structural factors (e.g., class size)?
- *Professional development.* Has the district applied for—or does it intend to apply for—grants for professional development of teachers and education professionals?

## Title III—Language Instruction for English Learners and Immigrant Students

### Part A—English Language Acquisition, Language Enhancement, and Academic Achievement Act

This title addresses efforts to ensure that students who have limited English proficiency or limited native language proficiency attain high levels of proficiency in these respective languages as well as high levels of achievement in other academic subjects in these respective languages. It describes eligible uses of funds, including specific guidelines for supporting such efforts and guidelines for subgrants to districts and other organizations.

#### Potential Considerations for Tribal Consultation for Title III

- *Native language programs alignment.* If the tribe has a native language program, how does it align with programs for English learners (ELs) proposed by the state or district? For example, is the reading/language arts portion of the English language instruction program administered, or offered to be administered, in the EL's native language?
- *Data collection on native languages.* What data on ELs is collected regarding tribal background and the unique relationship between tribal languages and EL programs? For example, is the native language used at home by parents, elders, or other relatives asked about when students are assessed for EL inclusion? If so, does this qualify an American Indian student to be classified as an EL?
- *Language immersion.* What Indigenous and culturally responsive language immersion models will be used with American Indian students? Will participation in native language immersion programs be acknowledged as an effort toward becoming biliterate and bilingual?
- *Professional development to support tribal youth.* What professional development will non-native partners implementing language and English learner programs receive to prepare them to effectively support American Indian students and their education? Can partnerships with tribal colleges be developed to support this professional development?

## Title IV—21st Century Schools

### Part A—Student Support and Academic Enrichment Grants

Title IV Part A provides funding to improve students' academic achievement by increasing access to a well-rounded education, improving conditions for learning, and leveraging the use of technology to improve the digital literacy and academic achievement of all students.

Activities and programs under this title must be coordinated with other schools and with community-based services and programs and may include partnerships with higher education institutions, businesses, nonprofits, community-based organizations, tribes, and other, similar entities.

### Part B—21st Century Community Learning Centers

Title IV Part B funds the establishment and expansion of community learning centers that provide programming and services to meet the academic and nonacademic needs of students and their families including outside of regularly-established school hours. Programs can support a well-rounded education, include counseling programs, programs for students suspended or expelled, credit recovery programs, and programs that collaborate with employer-partners, among others.

## Potential Considerations for Tribal Consultation for Title IV

- *Culturally-based discipline approaches.* Are there discrepancies in school discipline between tribal and nontribal youth in the state or district? How could disparities be addressed through culturally-based programs?
- *American Indian studies.* Are there opportunities within the state or districts to address native language and cultural immersion needs in the context of a well-rounded education or technology supports? Is there opportunity to provide instruction on the history, government, and culture of the tribal nation(s) to all students?
- *Statewide programs.* Is there potential for a statewide initiative on American Indian education focused on academic achievement of tribal students?
- *Online access.* What opportunities exist, or could be developed, to establish or expand educational Internet access for tribal youth?
- *Community learning center approaches.* What community learning centers exist that currently serve tribal youth, and how do the centers address the culturally related academic needs of American Indian students?
- *Tribal community outreach.* What comprehensive community programs are currently in existence? How do those programs incorporate tribes?
- *Support for nonacademic needs.* How can these programs be leveraged to address the nonacademic needs of students; e.g., through content (such as nutrition, physical education) or counseling?
- *School reform models.* What school reform models will be used with American Indian students under programs funded through Title IV? Do schools have the resources, staff, and infrastructure they need to meet the needs of American Indian students and families?
- *Transportation.* Will there be opportunities or options for transportation to and from community learning centers for students and/or their families?

## Title V—Flexibility and Accountability

### Part B, Subpart 2—Rural and Low-Income School Program

Part B, subpart 2 of Title V specifies the criteria for district eligibility for rural and low-income subgrants from the state and the method by which those grant awards should be calculated.

## Potential Considerations for Tribal Consultation for Title V

- *Supporting innovation and flexibility.* What models and strategies have non-native partners used (or propose to use) to support innovation, flexibility, and collaboration with tribal governments for supporting rural native students and their education?
- *Activities eligible for funding.* What activities that are culturally appropriate for rural American Indian students would be eligible for funding?

# Title VI—American Indian, Native Hawaiian, and Alaska Native Education

## Part A, Subpart 1—(American Indian Education Formula Grants to Local Educational Agencies)

Districts, tribes, and local consortia are eligible to apply for grants under Part A, subpart 1 if their student enrollment: (a) includes 10 or more American Indian students; or (b) is comprised of 25 percent or more American Indian students.<sup>2</sup>

Plans are provided first to the state, which may choose to review and comment, and then to the U.S. Department of Education. If a state chooses to comment on one district's application, it must comment on all district applications.

Title VI grants can be used to carry out a number of activities in support of the American Indian students in the district, tribe, or consortium. Such grants can be used to:

- Meet culturally-related academic needs of American Indian students, including:
  - Native language revitalization programs
  - Culturally related activities in support of Title VI grant programs
  - Childhood and family programs that support school readiness
  - Enrichment programs focused on problem solving and cognitive skill development
  - Integration of educational services, including programs that promote parental involvement
  - Career preparation activities
  - Violence, suicide, and substance-abuse prevention
  - Supports for culturally responsive teaching and learning
  - Family literacy services
  - Dropout prevention
  - Meeting the needs of incarcerated youth, including transition supports
- Provide professional development to ensure that new teachers and staff are prepared to work with American Indian students and that teachers involved with the programs covered by the grant have been properly trained. Grantees must evaluate how all American Indian students are doing (including those who do not participate in the program) and provide that information to the community and to tribes.

Activities under these grants may incorporate appropriately qualified tribal elders, including as native language instructors.

## Consultation

District applications for subgrant funding must include a description of “the process the [district] used to meaningfully collaborate with [American] Indian tribes located in the community in a timely, active, and ongoing manner.”

The district also must report to the U.S. Department of Education on how the funds were used, how they addressed the “unique cultural, language, and educational needs” of the American Indian students, information on how those needs were determined and how the program was staffed to meet them, and how the district “developed [its program plan] in open consultation with [American Indian stakeholders] including through public hearings ... to provide ... a full opportunity to understand the program and to offer recommendations regarding the program.”

---

<sup>2</sup> Does not apply to tribes in Alaska, California, or Oklahoma or to districts located on or near reservation lands. Tribes or consortia of tribes are eligible to apply to develop elementary and secondary school programs for Indian students if youth from their tribe(s) represent more than 50 percent of the Indian children in an eligible district and the district has not formed a Title VI committee as required in Section 6114(c)(4). Tribes may also apply on behalf of eligible districts or consortia of districts.

## The Title VI Committee

Specifically, districts are required to develop their Title VI Part A programs with the participation of a committee (the Title VI committee) that is selected by, and primarily comprised of, the parents and families of American Indian children. Other committee participants should include tribal representatives of tribal nations with lands located within 50 miles of any school that the agency will serve if such tribes have any children in such schools, teachers, and Indian secondary school students.

Districts must have the Title VI committee's written approval of the plan and be able to describe the process by which the Title VI committee reviewed the program and determined that it would support American Indian students and not diminish culturally related program opportunities.

## Use of Title VI Funds for Schoolwide Programs

Title VI funding is intended specifically to support American Indian students, and cannot be used for general schoolwide programs unless the Title VI committee approves and the district is able to describe how a schoolwide program "will produce benefits to [American] Indian students that would not be achieved if the funds were not used in a schoolwide program."

## Technical Assistance

Specific technical assistance is available on request from the U.S. Department of Education to:

- Conduct local stakeholder outreach
- Develop Title VI program plans
- Improve and evaluate Title VI program plans
- Integrate Title VI programs with other local programs
- Assist rural LEAs in applying for any competitive grants under the Act

Title VI also contains a section (6116) allowing districts, tribes, or consortia to apply to consolidate their federal funding and/or programs that serve American Indian students.

## Potential Considerations for Tribal Consultation for Title VI

- *Existing Title VI, Part A programs.* Does the district currently operate a Title VI, Part A program?
  - If not, is there a plan to apply for one?
  - If so, are there any tribal representatives on the Title VI committee?
  - Is the district's use of Title VI funding communicated adequately to the tribe?
  - Does the tribe and/or the Title VI committee have access to outcome data or reports on the program?
  - Does the tribe have access to contact information for all members of the Title VI committee?
- *Tribal education needs.* Are the needs of the tribe aligned with the programs offered by the district? If not, are there types of programs covered under this Title that tribes would like to see districts offer?
- *Tribal partnerships.* How can the tribe collaborate with the district to offer programs that better serve its needs?
  - The tribe and district can form a consortium for the purpose of developing Title VI programs.
  - Tribal elders can support the district in providing culturally informed and appropriate services to tribal youth.
  - The tribe and district can form partnerships to increase the capacity of the tribal education agency and coordinate programming.
- *Program effectiveness.* Has the district applied (or does it have plans to apply) for grants for national research activities?
- *Evidence base.* What is the indigenous research base and/or culturally responsive models, programming, curriculum, assessment, or professional development the district is using in programs intended to support American Indian students and their education?

## Consultation Language in Other Titles

Although affected districts under ESSA are not required to consult on Titles VII or VIII of the legislation, brief summaries of key points are included here. Title VII requires consultation from “federally impacted” districts (different from, but in many cases overlapping with, “affected districts” under ESSA), while Title VIII contains the specific language of the affected district consultation mandate.

## Title VII—Impact Aid

Impact Aid affects districts whose boundaries include federal land or land removed from the tax code, including reservation land. Impact Aid funds supplement these districts to compensate for their reduced tax base. ESSA includes new language that should allow for more timely payments of Impact Aid funds, a provision designed to help districts avoid sudden funding shortfalls, changes to the funding formula to increase equity, and increased appropriations authorizations.<sup>3</sup>

Some of the funding for Impact Aid is directly tied to the number of children residing on federal or nontaxed land, making accurate counts of those populations (which may be done by parent-pupil survey or by a tribal official) essential.

## Consultation Requirements

Consultation is required under Title VII for federally impacted districts serving children from Indian lands. These may or may not also be districts that are required to consult with tribes as “affected districts” under section 8538 of ESSA.

Section 7004 of Title VII requires that parents of children on Indian lands must be consulted on school programs and involved in school plans; and plans, evaluations, and applications for these programs must be provided to parents and tribal leaders. Districts are required to develop “Indian policies and procedures” (IPPs) to outline how and when the district will take these actions, and IPPs are evaluated yearly. If a tribe does not feel that a district is following the federal requirements, it may lodge a formal complaint with the U.S. Department of Education. Tribes may also waive their right to Section 7004 activities and policies by sending a letter to the district expressing satisfaction with the educational services provided by the school to students living on Indian lands.

Districts apply annually for funding directly to the U.S. Department of Education, usually in January. Impact Aid does not pass through the state; funding comes directly to districts.<sup>4</sup>

---

<sup>3</sup> National Indian Education Association. (n.d.). *Every Student Succeeds Act primer: Impact Aid*. Washington, DC: Author. Retrieved from <http://www.niea.org.php56-15.dfw3-2.websitetestlink.com/wp-content/uploads/2016/02/Impact-Aid-FINAL-2.pdf>

<sup>4</sup> National Association of Federally Impacted Schools. (2016). *The basics of Impact Aid*. Retrieved from [http://media.wix.com/ugd/423d5a\\_58add7d7c31d445ea2ec2ecdb55b7701.pdf](http://media.wix.com/ugd/423d5a_58add7d7c31d445ea2ec2ecdb55b7701.pdf)

## Title VIII—General Provisions

The provisions of ESSA that relate specifically to schools funded through the Bureau of Indian Education are not included in this title summary, but Title VIII does contain some language specifying circumstances in which those schools must be given the same consideration as LEAs.

### SEC. 8103. 20 U.S.C. 7803: APPLICABILITY TO BUREAU OF INDIAN EDUCATION OPERATED SCHOOLS.

For the purpose of any competitive program under this Act—

- (1) a consortium of schools operated by the Bureau of Indian Education;
- (2) a school operated under a contract or grant with the Bureau of Indian Education in consortium with another contract or grant school or a tribal or community organization; or
- (3) a Bureau of Indian Education school in consortium with an institution of higher education, a contract or grant school, or a tribal or community organization, shall be given the same consideration as a local educational agency.

Title VIII contains specific language requiring “affected districts” to consult with tribes and tribal organizations.

### SEC. 8538. 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.<sup>5</sup> 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 meaningfully and substantively contribute to such plan.”

“(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 of time, the affected local educational agency shall forward documentation that such consultation has taken place to the State educational agency.”

<sup>5</sup> A brief note on “tribal organizations approved by the tribes located in the area served”: Some affected districts, particularly large or urban districts falling under the Title VI funding provision, may not have specific local tribes with lands or seats of government located in the areas they serve. Guidance from the U.S. Department of Education has not yet been issued regarding how such districts should best proceed with consultation, but the districts are still legally obligated to consult and to either provide written affirmation of consultation from tribal leaders or document their efforts toward consultation. Many urban areas will have Indian cultural centers, but these are not generally authorized to represent any specific tribal nation or nations in consultation.

## About AIR

Established in 1946, with headquarters in Washington, D.C., American Institutes for Research (AIR) is an independent, nonpartisan, not-for-profit organization that conducts behavioral and social science research and delivers technical assistance both domestically and internationally. As one of the largest behavioral and social science research organizations in the world, AIR is committed to empowering communities and institutions with innovative solutions to the most critical challenges in education, health, workforce, and international development.



1000 Thomas Jefferson Street NW  
Washington, DC 20007-3835  
877.322.8700 | 202.223.6690

0838a\_03/17