

Understanding the ESSA Law & How to Support Educational Sovereignty:

# A Toolkit for Tribal Consultation



**THIS GUIDE IS DESIGNED FOR:**

Local Education Agencies

Tribal Nations and Tribes

2023 | VERSION 2.0



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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 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 a 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, Ann Whalen

Senior Advisor to the Secretary Delegated the Duties  
of Assistant Secretary for Elementary and Secondary Education

<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 1, 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 consultation on the changes to the ESEA generally, which included the SEA and LEA consultation requirement, with four meetings which took place April 24, April 28, May 12, and June 27, 2016.

[www.ed.gov](http://www.ed.gov)

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



# Oregon

Tina Kotek, Governor



**OREGON**  
**DEPARTMENT OF**  
**EDUCATION**

*Oregon achieves . . . together!*

**NOVEMBER 1, 2023**

Dear Tribal Council Members and School Districts,

Our state has the unique opportunity to leverage the Every Student Succeeds Act (ESSA) to better support equitable outcomes for every Oregon student, particularly the success and well-being of our American Indian students.

More than ever before, this new law creates an opportunity for tribal leaders to exercise their sovereign authority and inform the creation of school district federal and state plans to foster and strengthen implementation and the overall supports provided to American Indian and Alaska Native students.

The Oregon Department of Education is respectfully requesting Tribal Governments meet with affected school districts (districts that receive greater than \$40K in Title VI funding or have 50% or more American Indian/Alaska Native students) to:

- Understand the background of ESSA
- Identify equity levers and opportunities under ESSA to better serve American Indian children
- Consult with school districts to develop plans
- Discuss next steps and engage in future conversations.
- Consultation with Oregon's 9 federally recognized tribes is an essential component of ESSA.

As the Indian Education Coordinator for ODE, Stacy Parrish, has been designated as an official representative from our agency to provide technical assistance with tribal consultation with Oregon tribes and affected school districts regarding ESSA.

If appropriate, Stacy Parrish can work directly with tribal Education Directors, or school district leaders to identify a day and time to schedule the initial tribal consultation. Please contact [Stacy.Parrish@ode.oregon.gov](mailto:Stacy.Parrish@ode.oregon.gov) or 971-208-0270.

Thank you for your dedication and continued collaboration to ensure American Indian students have the opportunity to thrive and reach their full potential.

Respectfully,

**Dr. Charlene Williams**

Director of the Oregon Department of Education

**Oregon Department of Education**

255 Capitol St NE, Salem, OR 97310 | Voice: 503-947-5600 | Fax: 503-378-5156 | [www.oregon.gov/ode](http://www.oregon.gov/ode)

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The contents of this toolkit were developed under a grant from the U.S. Department of Education. However, the contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal government. This work has been created in partnership with the Region 16 Comprehensive Center.



# Our Gratitude

Thank you, dear reader and Tribal consultation participant. The Office of Indian Education is grateful that you are dedicating time to learn about the ESSA law and how to plan for and carry out a successful Tribal consultation.

The revision of this toolkit represents deep partnership with many people across our state and the nation. **The Office of Indian Education at the Oregon Department of Education** published version 1.0 of the toolkit in 2020. **April Campbell**, Assistant Superintendent of OIE at ODE and Tribal Consultation Toolkit Project Lead and **Brent Spencer**, Indian Education Coordinator of OIE at ODE and Tribal Consultation Toolkit Project Team Lead provided leadership, content and guidance throughout the revision of version 1.0. Their revisions remained focused on creating a guidance document for Tribal consultation that is respectful to the nine sovereign Tribes in Oregon.

We express our deep gratitude to each of the **nine federally recognized Tribes in Oregon** for their contributions to this toolkit. We thank the Burns Paiute Tribe, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz Indians, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of Warm Springs, Cow Creek Band of Umpqua Tribe of Indians, Coquille Indian Tribe, and Klamath Tribes. Tribes contributed stories, personal communications, information, and images that the authors and editors used as the foundational pieces for this toolkit. **Kelly Coates, Natural Resources Director, Cow Creek Band of Umpqua Tribe of Indians** shared the story of successful consultation with the restoration of the Huckleberry Special Interest Area in an interview about the heart and spirit of Tribal consultation.

Another contributor from Oregon was **Leilani Sabzalian, Ph.D.** The conclusion of Section 1D History of Tribal Consultation was inspired, edited and co-authored by Dr. Sabzalian, who is a professor at the University of Oregon.

Regional support came from two sources: **TIDES Education Associates** and **Region 16 Comprehensive Center**. The introduction was written with the support of **Nancy Douglas** and **Shgen George**, educational consultants who own and operate TIDES Education Associates (Teaching with Indigenous Design for Every Student). Region 16 Communications Specialist **Kaitlyn Hall** and Oregon State Director **Suzanne McFarland Price** collaborated with staff at OIE and others to review and revise version 1.0 of the Tribal Consultation Toolkit in preparation for the publication of 2.0.

We are grateful for the excellent open source resources that can be shared with you here from the **US Department of Education** and the **Office of Indian Education** as well as from **The Native Education Collaborative** and the **National Comprehensive Center**. We have included several excerpts from the Native Education Collaborative's brief published on the National Comprehensive Center's website.







S E C T I O N 1

# Tribal Consultation Overview

# The Nine Federally Recognized Tribes in Oregon

## Burns Paiute Tribe

**Website:** [burnspaiute-nsn.gov](http://burnspaiute-nsn.gov)  
**Headquarters:** 100 Pasigo St  
Burns, OR 97720



## Confederated Tribes of Warm Springs

**Website:** [warmsprings-nsn.gov](http://warmsprings-nsn.gov)  
**Headquarters:** 1233 Veterans Street PO Box C  
Warm Springs, OR 97761



## Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

**Website:** [ctclusi.org](http://ctclusi.org)  
**Headquarters:** 1245 Fulton Avenue Coos Bay, OR 97420



## Cow Creek Band of Umpqua Tribe of Indians

**Website:** [cowcreek-nsn.gov](http://cowcreek-nsn.gov)  
**Headquarters:** 2371 NE Stephens St #100,  
Roseburg, OR 97470



## Confederated Tribes of Grand Ronde

**Website:** [grandronde.org](http://grandronde.org)  
**Headquarters:** 9615 Grand Ronde Road  
Grand Ronde, OR 97347



## Coquille Indian Tribe

**Website:** [coquilletribe.org](http://coquilletribe.org)  
**Headquarters:** 3050 Tremont St.  
North Bend, OR 974



## Confederated Tribes of Siletz Indians

**Website:** [ctsi.nsn.us](http://ctsi.nsn.us)  
**Location:** 201 SE Swan Avenue, Siletz, OR 97380



## Klamath Tribes

**Website:** [klamathtribes.org](http://klamathtribes.org)  
**Headquarters:** 501 Chiloquin Blvd.  
Chiloquin, OR 97624



## Confederated Tribes of the Umatilla Indian Reservation

**Website:** [ctuir.org](http://ctuir.org)  
**Headquarters:** 46411 Timíne Way  
Pendleton, Oregon 97801



*These Nations have been in the area we now call Oregon since time immemorial. Citizens of the nine federally recognized Tribes have unique histories and perspectives on consultation, communication, and sovereignty. We hope you visit the website of each Tribe and access the [Tribal History Shared History modules](#) as this is where they tell their own stories.*

## Locations of the Nine Federally Recognized Tribes in Oregon



*These points only represent the Tribal Headquarters location and not all of the Tribes' aboriginal/ceded lands.*

# Tribal Consultation: Introduction & Overview



*Photo courtesy of the Confederated Tribes of Siletz Indians*

***Tribal consultation is a process of weaving: in government-to-government consultation, representatives from two nations come together to weave strong programs, plans, and initiatives that support their peoples and their collective interests.***

Basket weaving was, and still is, a sacred tradition in Native American communities in Oregon. These tools are also works of art where form supports function and the function supports survival. Baskets are tools that have been used to carry water, roots and berries, and for many other purposes, in the daily lives of the Tribes in Oregon since time immemorial. In Oregon basket making, commonly used native plants include wetland species such as tule, cattail, sedge, and reed or cane. Bark and root materials often come from western red cedar, cherry, maple, and spruce. Hazel, cottonwood, and willow provide rigid sticks, while dogbane, stinging nettle, and milkweed provide more flexible fibers. Bear grass, sea grass, rush, maidenhair fern, and Woodwardia fern also appear in the region's traditional basketry (University of Oregon, 2023).

To Native Americans and Alaska Native peoples, a basket is a literal, symbolic and artistic container for holding the hopes, dreams and desires for their children, their most precious resource. This publication can help guide the hands of representatives from Tribes and LEAs who bring the raw materials to consultation: their ideas, historical perspectives, data, questions, curriculum, hopes, and dreams. Together, you will weave ESSA plans that hold up and support the success of Native youth, communities, and Nations in Oregon.

This guide is also an overview of Tribal consultation requirements under the Every Student Succeeds Act (ESSA), the latest reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. ESSA replaces the requirements of the No Child Left Behind (NCLB) Act, the previous reauthorization of our national education law. Tribal consultation takes place on a government-to-government basis and involves elected representatives of Tribal nations.

All districts should engage in regular communication



*Alethea Barlowe, Klamath Tribes*

with the Tribes whose students they serve. Districts that receive Title VI grant awards of more than \$40,000 or whose student body is at least 50% AI/AN must also engage in Tribal consultation. Consultation is a process to allow collaboration between the Tribe and the district to enhance the educational opportunities of AI/AN students.

Consultation is required for any kind of program covered by ESSA, not solely Title VI. It is the responsibility of the school district to initiate Tribal consultation. The district should consult with representatives of the Tribe or a Tribal organization approved by the Tribe prior to submitting a plan or application for a covered program. There is no one approach to Tribal consultation: it must adapt to the needs of each Nation and take into account capacity and the need for ongoing inclusion of Tribal perspectives.

# A Story of a Successful Consultation: Key Elements for Success

What does meaningful, successful consultation look like in practice? Kelly Coates, the Natural Resources Director of the Cow Creek Band of Umpqua Tribe of Indians, shared a story with us in an interview for the Heart and Spirit of Tribal consultation Project. Consultation often begins with a single conversation — the Rogue River Siskiyou National Forest and the Umpqua National Forest reached out to the Cow Creek Band of Umpqua Tribe of Indians to discuss how the National Forests and the Tribe could partner to replant an area devastated by fire. Look for the following elements of successful consultation in her story:

- **Invitation:** Extended an authentic invitation to team up to improve outcomes
- **Collaboration and Consensus:** Gathered together as a group. Agreed on priorities and a plan
- **Early Involvement:** Consulted early in the process, before the project began
- **Ongoing Involvement:** Convened often
- **Partnership:** Fostered true partnership and shared the work
- **Tribal Involvement:** Involved managers from the Tribe as equal partners in the work
- **Ongoing Conversations and Analysis of Data:** Created a system for annual monitoring of the project
- **Sustained partnership and shared stewardship:** Built a lasting relationship based on mutual interests

## A Story of a Successful Tribal Consultation

This story was shared by Kelly Coates, Natural Resources Director, Cow Creek Band of Umpqua Tribe of Indians, November 14, 2022 in a live interview for a video project conceived by the Office of Indian Education at ODE called The Heart and Spirit of Tribal Consultation.

*So I would say a success story for when Tribal consultation played a role in my field is a project that we have with the Umpqua National Forest and the Rogue River - Siskiyou National Forest, as well as the Rogue Native Plant Partnership. On the Umpqua-Rogue divide, there is an area known as the Huckleberry Special Interest Area, and it is a culturally significant area for our Tribe. The fires of 2017 and 2018 burned through that special interest*

*area and affected some of the areas where Tribal members go and gather. Through a partnership with the Rogue River Siskiyou National Forest and the Umpqua National Forest, they came to us and said, "Hey, right before the fires broke out, we went out and we collected seeds from huckleberry plants from that area. We'd really like to partner with you, go up and replant that burned area. We know it's significant for you all. We were hoping you'd like to join us on this."*

*Because they had the conversation with us early and before the project started, we were able to be a project partner on that. We were able to be a part of the grant that they applied to get the funding to do it. We were able to bring in not only match dollars for the project, but also staff capacity and time to work on it. And as a result, we were able to replant over 11,000 huckleberry plants on the Rogue-Umpqua divide. And the project is especially meaningful for me as a Tribal member. This is an area that is incredibly significant for me and for my family. It's somewhere we go at least once a year. I take my kids there. I was able to take my daughter, who is also a Tribal member, up to help do the replanting and explain to her what happened. That the fires came through, but this is our chance to give back to the lands. This is our chance to help these lands recover, and this is what we do as stewards of the land. And when we went out and did the planting, we were able to have Tribal youth. We had our Tribal elders up there as well as members of the Forest Service and volunteers from the Rogue Native Plant Partnership.*

*Because we all came together as a group, because we talked about the project early, because we had managers from Tribal, the Tribal side of things, from our Tribal Natural Resources Department, from our cultural program, and also from the Forest Service, we were able to really come together and make the project incredibly robust and something that has been extremely successful. We also monitor the project every year to see how the huckleberry plants are doing, and we hope to be able to expand on this project in the future (Coates, 2022).*



Photo courtesy of Cow Creek Band of Umpqua Tribe of Indians

# The History of Tribal Consultation

At times, we must look back in the past in order to understand the current context and importance of policies, laws and practices. For educators, especially non-Native educators, this guide provides a very brief socio-historical context in order to ground those who hold the responsibility in ensuring that treaty rights are honored and that Native American and Alaska Native students have access to and receive a relevant and meaningful education that honors the language, culture, and heritage of their Tribe. This can be done, in part, by entering into meaningful Tribal consultation with a deep understanding of how and why this practice has come into existence. Your learning and understanding may have begun before reading this guide, and it will continue beyond these pages. There are resources to continue to learn about the history of Native education and its impact on schools today available on the federal [Office of Indian Education webpage](#). This guide will first examine federal events that impacted Native education and then move to an examination of Native education in Oregon’s public schools.



*Photo courtesy of [Tribal Attendance Promising Practices](#), Siletz student*



# Timeline of Major Events Regarding Indian Education

## 1800s

Indian boarding schools were established and forced Indian children into cultural assimilation.

## 1934

Johnson-O'Malley (JOM) Act of 1934 allowed Native students to enroll in public and private schools.

## 1972

The Indian Education Act of 1972 gives direct financial support to improve academic achievement for Indian students who attend public, Tribal and Bureau of Indian Affairs schools. It also created the Office of Indian Education and the National Advisory Council on Indian education.

## 1988

The Tribally Controlled Schools Act of 1988 allowed federally recognized Tribes to apply for federal grants so they can operate their own schools, operate other Tribally controlled schools, and choose to operate BIE-funded schools.

## 1928

The Meriam Report exposed the abuse of Indian children at boarding schools resulting in the improvements for Indian students' education and the establishment of public schools on reservations.

## 1965

Elementary and Secondary Education Act (ESEA) of 1965 allowed Tribal education departments (TEDs) to govern their education systems and receive federal financial support. This act also created funding for State Tribal Education Partnerships (STEP) grants.

## 1975

The Indian Self-Determination and Education Assistance Act (ISDEA) of 1975 allowed federally recognized American Indian Tribes to enter contracts with the federal government but they had to follow federal guidelines.

## 2015

Under Section 1111 of the ESSA, Tribes and Tribal organizations were able to receive funding to increase academic achievement and Tribal relationships between local and state governments.

*Timeline adapted from Reinhardt et al. (2020).*

# History of Native Education in Oregon

The state we now call Oregon has been the homeland of diverse Native peoples since time immemorial. Their descendants, and Native people from throughout the United States, continue to live and thrive here (Oregon Department of Education, 2023). Although Native Elders and other adults have educated their children long before the first Indian boarding school or public school was built in Oregon, this section will focus on the trajectory of Native education after the state became involved in the education of Native children.

The Oregon Department of Education’s [American Indian/Alaska Native Student Success Plan 2020-2025](#) recognizes “the historical legacy of education and its efforts for the sovereign Tribal Nations in the state of Oregon.” The authors, members of the State Advisory Committee on Indian Education, state that this legacy “spans across hundreds of years and, for the most part, has been an adversarial topic until recently” and share the following:

The United States has a unique federal trust responsibility noted by the Supreme Court in the *United States v. Mitchell*, 1983, which stems from the treaties signed between sovereign Tribes and the U.S Government in the 1800s. The treaties signed between the U.S Government and Tribes provided provisions outlined by the government that promised Tribes access to education largely in exchange for land and rights.

Starting in 1860 in Oregon, military-based facilities were converted into boarding schools for Native American children. In addition to these government-run boarding schools, church-based mission schools became the standard for government-provided education

for Tribes. Government policy allowed children to be forcibly removed from their homes and communities. These children were sent to boarding schools often located thousands of miles away from their communities. These schools were grossly underfunded, overcrowded and poorly maintained. These conditions were documented in the Meriam Report in 1928 and in 1969, and the Kennedy Report, *Indian Education: A National Tragedy - A National Challenge*. Sadly, 88 years later, President Obama released the 2014 Native Youth Report and the conditions have not changed for our AI/AN youth who experience institutional challenges and barriers to accessing educational opportunities.

It is well documented that the forcible removal of Native American children from their families and their communities was a deliberate process of assimilation. On arrival at school, children’s hair was cut, their traditional clothing removed, and their Native languages forbidden. Children as young as four years of age endured rampant emotional, physical, sexual and mental abuse, and many children died while in the care of boarding schools (Pember, 2019).

Currently, policymakers and leaders recognize the trauma that children and communities have faced resulting from these assimilation policies and are moving towards strengthening better educational policies and practices through Government-to-Government relationships at the federal, state and Tribal levels. (The Office of Indian Education at the Oregon Department of Education, 2019, p. 3)

The responsibility for Native education in the United States and in Oregon is now shared between three sovereign government systems—Tribal, federal, and state. You, the reader of this guide, are representing either the Tribal or state governments. As representatives of state governments, it is essential to note the strength, resilience and uplifting of Native communities that now live in Oregon in the wake of a long history of unjust educational practices and trauma. According to Leilani Sabzalian, Indigenous scholar and researcher who currently teaches at the University of Oregon, we must not only focus on what has been done to American Indian and Alaska Native peoples but also what *Native peoples have done* to resist and overcome historical injustices and ensure

their peoples survive and even thrive. At the end of her keynote address, in which she shared numerous examples of the enduring legacy of Native resistance she believes educators should address in curriculum, Sabzalian invited the audience to reflect on the impact this type of curriculum could have on Native youth: “Who wouldn’t be proud to be Indigenous? Look at our people, look at our creativity, look at our brilliance, look at our resourcefulness” (Sabzalian, 2023). As educators, it is essential to hold in our minds and hearts as we enter into Tribal consultation both realities: the historical educational legacy of Native students in Oregon and the strength and sovereignty of our Native students and Tribal Nations in Oregon throughout time and today.



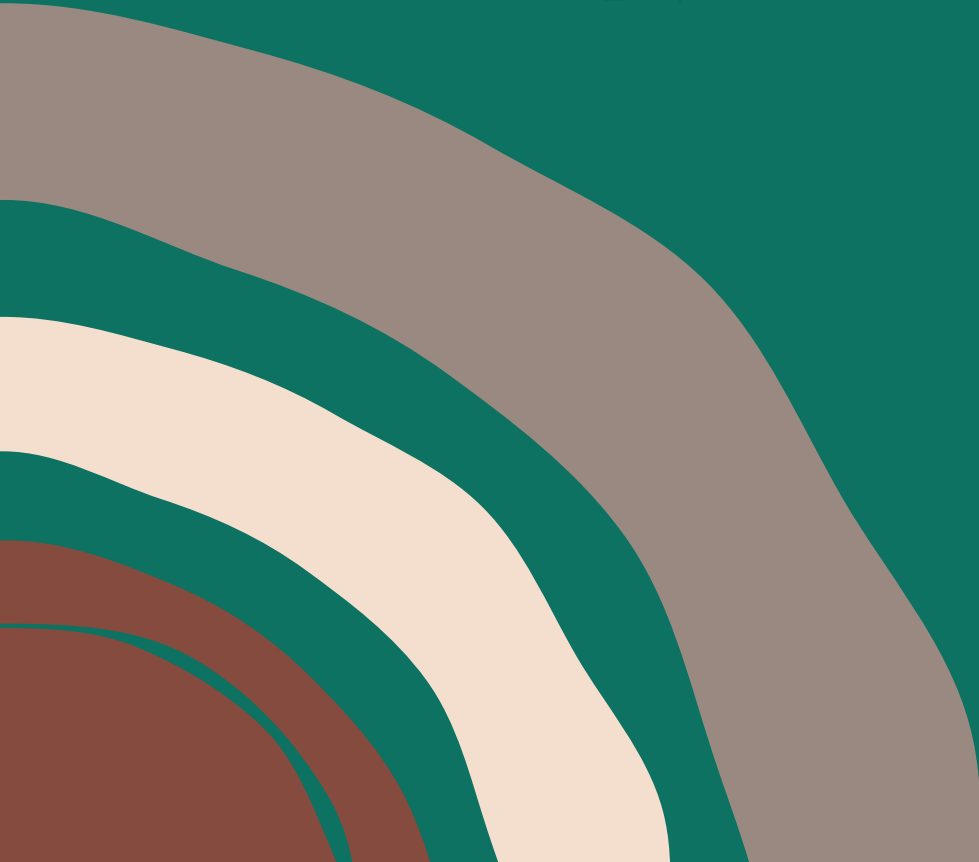
Photo courtesy of The Confederated Tribes of the Umatilla Indian Reservation: Demetri Brockie





S E C T I O N 2

# Federal & State Laws Relating to Tribal Consultation



# Tribal Sovereignty & Every Student Succeeds Act

The Native Education Collaborative, in partnership with the National Comprehensive Center, describes Tribal and educational sovereignty, the ESSA law and the responsibility of the state for Tribal consultation in its [Tribal Sovereignty and Consultation Brief](#). (Reinhardt et al., 2020) Sections of this brief have been reproduced here in their entirety, in Section 2A, of the toolkit:

## Tri-Lateral Responsibility

The responsibility for Native education in the United States is now shared between three sovereign government systems—Tribal, federal, and state. As such, Native education is known as a tri-lateral responsibility (Reinhardt and Maday, 2006). According to the National Congress of American Indians (2020), roughly 90% of Native students now attend public schools under state jurisdiction. The remainder (about 8%) attend federally funded Bureau of Indian Education (BIE) schools, private schools, or other educational institutions. Notably, the majority of BIE schools are now Tribally operated.

Brayboy, Faircloth, Lee, Maaka, and Richardson (2015) note the major challenges that present-day Native education efforts are working to address, such that “the education of Indigenous peoples is intricately intertwined with the legal/political relationship between Indigenous peoples and the U.S. government, as well as myriad [of] racist policies and practices that have devastated Indian children and communities” (p. 1). According to Brayboy, et. al (2015), Native education has been:

- “a battle for the hearts and minds of Indigenous nations,
- “a colonial call for assimilation, and
- “a responsibility of the federal government arising from a series of agreements between Indian nations and the United States meant to

open up land bases to a burgeoning immigrant population.” (p. 1)

## Tribal Sovereignty and Government-to-Government Relations

The original sovereignty, or power to govern, over Native education rests with Tribes. Tribes inherit this aspect of their sovereignty from their ancestors (Canby, 2015). Ancient knowledge, as created by the ancestors of Native communities, contains the very essence of Tribal sovereignty (Brayboy et al., 2015, p. 3). Jampolsky (2016) points out that scholars have defined Tribal sovereignty in a number of ways, such as:

- as “a protective shell around Tribal life and culture” (Sarah Krakoff, 2006) and
- as “the right of a people to self-government, self-determination, and self-education. Sovereignty includes the right to linguistic and cultural expression according to local languages and norms” (Lomawaima and McCarty (2002, p. 284).

Lomawaima and McCarty (2002) suggest that “the Native struggle for sovereignty and self-education is a powerful model for all U.S. citizens because public education in the United States was founded on the principle of local control” (p. 280).

## Tribal Consultation in State Planning

According to Hollie J. Mackey (2017), the ESSA “includes provisions for Indian education that far exceed previous federal legislative attempts to support Tribal self-determination in education, yet shifts considerable oversight and decision-making authority to state legislators whose support is yet undetermined (Mackey, 2017, p. 783). The author

Photo courtesy of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians



contends that “federal Indian education law and policy must be interpreted through its effect on Tribal self-determination rather than its policy goals” (Mackey, 2017, p. 784).

*Section 1111 of the ESSA of 2015 has been widely praised in Indian Country for: “opening revenue streams to Tribes and Tribal organizations through grant opportunities; establishing funding for Native language immersion programs; mandating Tribal consultation; incentivizing cooperative agreements between local, state, and Tribal education entities; better identifying low performing schools; and limiting the overidentification of American Indian students in special education.”* (Mackey, 2017, pp. 789–790)

The author further explains, “The central theme throughout ESSA is the increased limits on federal control over education, placing the bulk of power back in the hands of state policymakers” (Mackey, 2017, p. 790). Under Section 1111 of the ESSA, states must meaningfully consult with Tribes within the state prior to receiving a grant, however, the consultation cannot interfere with the timely submission of the required

education plan. Further, capacity-building activities between state and Tribal education leaders provide opportunities for both parties to share insights into the inner workings of their government’s educational responsibilities and organizational structures while they review the state education plan together.

Tribes have the right to determine who will represent them during consultation with states. Tribes may choose to send a Tribal education director, a paid educational consultant, an elected Tribal official, or a designee identified by the Tribe to represent them. The Tribe may choose multiple people to represent them as well. Tribal education leaders may be particularly adept at dealing with specific and general Native educational concerns. Tribes retain rights of sovereignty over the education of their citizens and non-Tribal citizens about their Tribes. As discussed in a previous section, Tribes may also have treaty rights to education that supersede other federal, state, and local laws and policies. Some Tribes also have their own Tribal laws for the education of Tribal youth. Tribal education leaders are also generally more aware of jurisdictional issues regarding Tribal lands and the rights of Tribal citizens.

# Federal Title Programs

Information on this page are excerpts from the letter and FAQs from the US Department of Education that are contained in this toolkit beginning on [page 35](#).

Under Section 8538, an affected Local Education Agency (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 Every Student Succeeds Act 1 (ESSA) in the previous fiscal year that exceeds \$40,000. (United States Department of Education, 2016 p. 1)

Affected LEAs must consult with Indian Tribes before submitting plans or applications for the following programs under ESEA:

- **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)
- **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)(United States Department of Education, 2016 p. 2)

LEAs should conduct their consultation in advance of making significant decisions regarding plans or applications for covered programs, to ensure an “opportunity for . . . Tribal representatives designated to consult on behalf of the Tribe. The purpose of Tribal consultation is to allow Tribes to make meaningful and substantive contributions” to an LEA’s plan (section 8538(a)).

The timeline for each consultation is dictated by requirements of the relevant formula grant program, which have different application deadlines. For example, a state may have a deadline for LEAs to submit a consolidated local plan to the state by a certain date in 2017, so for those programs the consultation must be completed before that date. Given that Tribes may receive multiple requests for consultation, LEAs should consider arranging for informational meetings prior to consultation.” (United States Department of Education, 2016 p. 2)

The camas icon (☪) indicates that affected LEAs must consult with Indian Tribes before submitting plans or applications for Title I, Parts A, C, and D; Title II, Part A; Title III, Part A; Title IV, Parts A and B; Title V, Part B, subpart 2; and Title VI, Part A, subpart 1.

## ☪ Title I-A: Improving Basic Programs Operated by Local Educational Agencies (LEAs)

### Description:

Title I-A is intended to help ensure that all children have the opportunity to obtain a high-quality education and reach proficiency on challenging state academic standards and assessments. Districts allocate funds to eligible schools based on ranking by each school’s percentage of poverty. *One key*



*practice recommended to meet this goal is for LEAs to participate in Tribal consultation.*

**Allowable Expenditures Include What is Supplemental, Necessary and Reasonable:**

- Activities that provide eligible students with evidence based and well-rounded learning opportunities
- Instruction and instructional supports in all academic areas
- Non-instructional supports including behavior and mentoring support and social-emotional learning
- Family engagement and partnership
- Professional development
- Extended learning time
- Activities that promote improving school quality and climate

**Examples of activities include:**

- Supplemental staff
- Engaging families and the community in a meaningful manner that impacts the academic achievement of students
- Implementing systems that support students with social and emotional learning
- Extended learning time opportunities such as preschool, summer or after school learning

**Best Practices:**

- *Tribal consultation* and engagement of families as partners in the education of students is a focus, as well as promoting reform in high-poverty schools and ensuring students' access to evidence-based instructional strategies and challenging academic content
- Schools and districts that use Title I funds to

support climate and culture development of all students.

- Connecting and engaging families and communities in the whole learning experience

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## Title I-A Set-Asides: Homeless Students (McKinney - Vento)

**Description:**

Title I-A districts are required to reserve a portion of their funds to serve the needs of McKinney-Vento eligible homeless students. These funds are for students experiencing homelessness PreK-12. One key practice recommended to meet this goal is for LEAs to participate in *Tribal consultation*.

**Allowable Expenditures:**

- Unaccompanied homeless students and those who are in homeless families are eligible for:
  - Immediate enrollment,
  - Transportation to/from their school of origin
  - Support for afterschool and athletic activities
  - Liaison FTE
  - Transportation
  - Tutoring
  - School and athletics fees
  - Clothing and school supplies

**Examples of successful use of Title I funds include:**

- Transportation to the student's school of origin.
- School supplies including backpacks, PE

clothes, etc.

- Student athletic fees including medical exam coverage

**Best Practices:**

*Tribal consultation* and engagement of families as partners in the education of students is focused upon ensuring identification for students who may experience need, joint support for families and students to ensure access to school and activities and connections to community-based support for students and families.

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## Title I-C: Education of Migratory Children

**Description:**

The Migrant Education Program (MEP) provides services for migratory children to fully benefit from the same free public education provided to other children. The goal of the MEP is to ensure that students who migrate with their families following the agricultural seasons reach challenging academic standards and graduate with a high school diploma (or complete a GED) that prepares them for responsible citizenship, further learning, and productive employment.

Local Educational Agencies receive three allocations:

1. Regular Year,
2. Summer School, and
3. Preschool

**Allowable Expenditures include what is supplemental, necessary and reasonable:**

- Expenditures must be spent on the four goals of the Title I-C Migrant program, which are:
  - Preschool readiness
  - Meeting benchmarks in reading
  - Meeting benchmarks in mathematics
  - Graduation

- Statewide support includes:
  - Stride Academy and Big Universe (two online programs to help with reading and math for students K-8),
  - Leadership opportunities in the summer,
  - Accident insurance,
  - Basic personnel to support the program.

**Examples:**

- There are only 18 Migrant programs in the state. Nine are school districts with large numbers of migrant students and nine are Educational Service Districts (ESDs) that cover a wide area of districts
- AI/AN students within these districts and ESDs should receive the services that all migratory students receive

**Best Practices:**

Of the 18 Title I-C Migrant programs, Ontario SD, Hood River SD, and High Desert ESD are exemplars with a graduation rate above 90% in the school year 2021-22. Ontario had a 100% graduation rate.

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## Title I-D: Neglected and Delinquent or At-Risk Children

**Description:**

Title I-D is to improve educational services for students in local, *Tribal*, and state facilities or institutions for neglected (N), delinquent (D), or at-risk youth. These students have increased rates of absenteeism, dropping out, and not meeting state academic standards. Title I-D provides federal funding to state agencies and districts that provide educational services to these students.

**Allowable Expenditures include:**

- Provide educational services, as well as prevention and rehabilitative services to students who are involved in the justice system or are at risk of dropping out of high school

**Funds can be used to provide:**

- Teachers
- Educational supplies and materials
- Credit recovery options and professional development for staff working with these students

*NOTE: Funds can generally be spent on activities allowed in Title I-A*

**Examples:**

Title I-D is split into parts. Subpart 1 funding goes directly to state run agencies (for example, the Oregon Department of Education receives some money to administer programs for the Oregon Youth Authority). Subpart 2 funding goes to school districts to use for programs for at-risk youth. Students who benefit from these services are defined as “delinquent” or “neglected,” meaning they have involvement with the justice system or have been abandoned by their parents.

**Best Practices:**

Title I-D funds are best used when ensuring the education provided in secure care facilities are at the same level of rigor that students in school districts receive. Students involved with the justice system are often behind academically and have other learning challenges. Time away from traditional school settings can widen this gap. Providing strong social emotional learning programs in schools is another best practice that helps students stay in school and avoid involvement in the justice system.

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## Title II-A: Supporting Effective Instruction

**Description:**

Title II-A is to improve teacher and school leader quality and focuses on:

- Preparing, training, and recruiting high-quality teachers and principals, and
- Providing minority students and students from

low-income families with equitable access to effective educators

**Allowable Expenditures include:**

- Activities to support the quality and effectiveness of teachers, principals and other school staff
- Address the learning needs of all students
- Professional development across all content areas and including social-emotional and trauma informed care
- Ensuring equitable access to effective educators including increasing teacher effectiveness for students with disabilities and English language learners

**Examples:**

- Induction and mentoring of teachers and principals
- Instructional coaching
- Professional collaboration
- Developing educator content knowledge and culturally responsive practices across all academic areas
- Social-emotional learning, trauma informed care and other mental health supports
- Coursework and endorsements in areas of identified need within the district
- Incentives for teaching or leading in high needs schools
- Incentives to recruit and retain a diverse workforce

**Best Practices:**

Focusing deeply on a few needs and engaging in multiple strategies to address those needs is considered best practice. As an example, Hillsboro School District has identified improving outcomes and supports for its Latinx population and so focuses the use of its Title II-A funds on increasing the number of teachers with ESOL endorsements and funding a Dual Language TOSA position.

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## Title III-A: English Language Acquisition and Language Enhancement

### Description:

Title III is a part of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA). The purpose of Title III is to help ensure that English learners (ELs) attain English language proficiency and meet state academic standards.

Federal funding is provided through various grant programs to assist state education agencies and local education agencies in accomplishing this. The state education agency receives funds for both Title III state formula grants and grants for immigrant children and youth based on the number of English learners and immigrant children and youth in the state.

### Allowable Expenditures include:

- Developing lessons that integrate ELD standards through various disciplines
- Developing formative assessment that measure English language proficiency
- Ensuring that all teachers across all grades are highly supported to own and transform their instructional practice
- Providing coaching and support on co-teaching
- Extended day
- Supporting educators to develop a granular understanding of ELD components
- Lesson progression, data informed instructional practice changes
- Parent activities that support school success

### Examples:

- Increase the English language proficiency of English learners by providing effective language instruction programs
- Provide effective professional development to classroom teachers, principals, and or other school leaders, and administrators
- Provide and implement other effective activities and strategies that enhance or supplement language instruction

- Provide educational programs for English learners which shall include parent, family, and community engagement activities, and may include strategies that serve to coordinate and align related programs

### Best Practices:

In identifying and targeting what best practice may work best for a particular situation, the school/district may wish to do a needs assessment that is informed by both qualitative and quantitative data. Below are some possible options.

- Develop clear language targets that support grade level content targets, proficiency level, and academic need for ELs including specific targets for dually identified students as per their Individualized Education Plan (IEP)
- Apply effective English Language Development (ELD) assessment practices to monitor ongoing language processes through differentiated avenues that are aligned to English Language Proficiency Assessment (ELPA) standards and as a way to identify instructional practice changes
- Have administrator support to ensure that the instructional experience of each EL is adjusted throughout the year
- Provide professional development around the ELPA standards, and support teachers with the assessment and analysis to monitor language process of ELs
- EL coaches support summer school ELD teachers with language specific instructional strategies in math and ELA
- Coordinate district wide EL parent engagement initiatives

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## Foster Care

### Description:

ESSA specifically addresses the needs of children in *Child Welfare/Tribal foster care*. The purpose of including foster care provisions is to ensure educational stability for all students.

**Allowable Expenditures:**

The primary allowable expense is transportation. DHS and ODE currently have a transportation agreement that reimburses districts and Tribes for 100% of their transportation costs.

**Examples:**

Students in the foster care system move frequently and research indicates that for each new education setting, a child can lose between 4-6 months of education. Ensuring educational stability is critical and allowing students to remain in their school recognizes the connections they have made to teachers, peers, activities, etc.

**Best Practices:**

Oregon state law also allows for foster care students, many who are credit deficient, to receive a state diploma that requires 24 credits. Foster care students do not have to meet the school district credit requirements or the specific courses required to earn a school district diploma.

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**Transportation:**

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*FYI: The State School Fund reimburses LEAs transportation costs at a 70% rate, whereas the Foster Care Transportation program reimburses LEAs the additional 30%. This is to ensure LEAs transporting foster students to their school of origin are reimbursed 100% of the cost of transportation.*

## 🌿 Title IV-A: Student Support and Academic Enrichment (SSAE)

**Description:**

The SSAE program is intended to improve students' academic achievement by increasing the capacity of state educational agencies (SEAs), local educational agencies (LEAs), and local communities to provide all students with access to a well-rounded education, improving school conditions for learning, and the use of technology to improve academic achievement and digital literacy of all students.

*Tribal consultation and engagement of families as partners in the education of students is a focus.*

**Allowable Expenditures:**

Districts that receive \$30,000 or more must spend at least 20% of the allocation to support well-rounded education, at least 20% to support safe and healthy students, and at least "some funds" to support the effective use of technology. The minimum allocation is \$10,000 and districts that receive less than \$30,000 must meet at least one of the above requirements.

**Examples include:**

- Providing students with a well-rounded education (e.g., college and career counseling, STEM, music and arts, civics, IB/AP, computer science)
- Supporting safe and healthy students (e.g., comprehensive school mental health, drug and violence prevention, training on trauma-informed practices, health and physical education)
- Supporting the effective use of technology (e.g., professional development, blended and personalized learning, and devices)

**Best Practices:**

*Tribal consultation and engagement of families as partners in the education of students is a focus, as well as promoting reform in schools ensuring students' access to evidence-based instructional strategies and challenging academic content.*

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## 🌿 Title IV-B: 21st Century Community Learning Centers (21st CCLC)

**Description:**

The purpose of the 21st Century Community Learning Centers (21st CCLC) program is to establish community learning centers during out-of-school time hours. These competitive grants require a significant partnership between a local education agency and at least one community-based organization. Services provided focus on:

- Providing academic enrichment in core academic subjects such as reading, writing and mathematics
- Offering students a broad array of additional services, programs and activities that foster youth development
- Offering families of students served opportunities for active and meaningful engagement in their children’s education, including opportunities for literacy and related educational development

**Allowable Expenditures include:**

- Transportation to and from program
- Academic activities aligned to school and district continuous improvement plans and state standards
- Youth development opportunities based on interest of students and supports the purpose of the grant
- Activities that provide families with active and meaningful engagement and educational opportunities
- Funds must supplement and not supplant other federal and state funds
- Activities to support the evaluation of performance measures aimed at ensuring availability of high-quality academic enrichment opportunities.

**Examples include closing opportunity gaps by providing:**

- Academic enrichment programs that are aligned to the school’s curriculum
- Mentoring programs
- Parental involvement and family literacy
- English learner programs
- Services for students with disabilities
- Programs that partner with in-demand fields of the local workforce or build career competencies and career readiness
- Career and Technical Education programs (CTE)
- Science, Technology, Engineering and Mathematics (STEM) programs

- Mental health, drug and violence prevention, and trauma informed practices
- Cultural programs
- Health and physical education
- Arts and music activities

**Best Practices:**

- Partnerships: Programs should strive for engagement with and outreach to schools, families, and communities and promote complementary alignment of school day. The program braids funds with other federal, state and other community-based organizations to provide a robust program
- Diversity, Inclusion, Access, and Equity: Programs should ensure that they are available and accessible for all youth; programs should develop and implement policies, and practices focused on respecting and supporting diverse youth participants and families, keeping context at the forefront; program should support staff in building cultural competence among staff and with youth through culturally responsive practices, activities, and opportunities
- Safety, Health, and Nutrition: Programs should ensure the emotional and physical safety of youth and staff; provide a healthy, welcoming, and accommodating environment; and provide nourishment based on health and wellness standards for children and youth
- Youth-Centered: Programs should focus on youth development, interests, and influences; provide experiential and age-appropriate activities; ensure relevant, authentic, and developmentally appropriate opportunities for youth voice and choice and ensure those opportunities are reflected in planning, programming, and opportunities for youth leadership; and intentionally support academic, social, and emotional competence building
- Social and Emotional Learning and Active Engagement: Programs should be intentional in designing activities that promote youth resiliency and encourage reflection and higher order thinking; programming and activities should intentionally support high levels of youth engagement and expectation; the program

environment and activities should cultivate a sense of belonging

- **Evaluation and Continuous Improvement:** programs should engage in regular and ongoing action planning for continuous improvement

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## Title V–B: Rural Education Achievement Program

**Description:**

Rural schools have access to the following programs: the Rural and Low-Income Schools (RLIS) program and the Small, Rural School Achievement (SRSA) program. These programs are designed to assist rural school districts in using federal resources more effectively to improve the quality of instruction and student academic achievement. SRSA is administered by the U.S. Department of Education and RLIS is administered by the ODE.

These programs provide eligible districts with greater flexibility in using formula grant funds that they receive under certain state-administered federal programs.

**Allowable Expenditures (SRSA):**

- Activities authorized under Titles I-A, II-A, III, IV-A, and IV-B

**Allowable Expenditures (RLIS):**

- Activities authorized under Titles I-A, II-A, III, IV-A, as well as family involvement activities

**Example activities include:**

- Supplemental staff
- Engaging families and the community in a meaningful manner that impacts the academic achievement of students
- Implementing systems that support students with social and emotional learning
- Activities to support the quality and effectiveness of teachers, principals, and other school staff

**Best Practices:**

Tribal consultation and engagement of families as

partners in the education of students is a focus, as well as promoting reform in high poverty schools and ensuring students’ access to evidence-based instructional strategies and challenging academic content.

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## Title VI-A: Indian Education Formula Grant Program

**Description:**

The Title VI Program is designed to address the unique cultural, language, and educationally related academic needs of AI/AN students, including preschool children and ensure that all students meet the challenging state academic standards. The program is the U.S. Department of Education’s principal vehicle for addressing the particular needs of Indian children.

**Allowable Expenditures:**

Each local educational agency that receives a grant under this subpart shall use the grant funds, in a manner consistent with the purpose for services and activities that:

- Are designed to carry out the comprehensive program of the local educational agency for Indian students, and described in the application of the local educational agency submitted to the secretary under section 7114(a)
- Are designed with special regard for the language and cultural needs of the Indian students
- Supplement and enrich the regular school program of such agency

**The services and activities may include:**

- Culturally related activities that support the program described in the application submitted by the local education agency
- Early childhood and family programs that emphasize school readiness
- Enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging

state academic content and student academic achievement standards

- Integrated educational services in combination with other programs that meet the needs of Indian children and their families
- Career preparation activities to enable Indian students to participate in programs such as the programs supported by the Carl D. Perkins Vocational and Technical Education Act of 1998, including programs for tech-prep education, mentoring, and apprenticeship
- Activities to educate individuals concerning substance abuse and to prevent substance abuse
- The acquisition of equipment, but only if the acquisition of the equipment is essential to achieve the purpose described in plan
- Activities that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency
- Activities that incorporate AI/AN specific curriculum content, consistent with state standards, into the curriculum used by the local educational agency
- Family literacy services
- Activities that recognize and support the unique cultural and educational needs of Indian children, and incorporate appropriately qualified Tribal elders and seniors
- School-wide programs
- *Notwithstanding any other provision of law, a local educational agency may use funds made available to such agency under this subpart to support a school wide program if:*
  - The committee established pursuant to section 7114(c)(4) approves the use of the funds for the school wide program; and
  - The school wide program is consistent with the purpose described in section 7111
- Limitation on Administrative Costs
- No more than five percent of the funds provided to a grantee under this subpart for any fiscal year may be used for administrative purposes

**Examples:**

Grant funds are best used to:

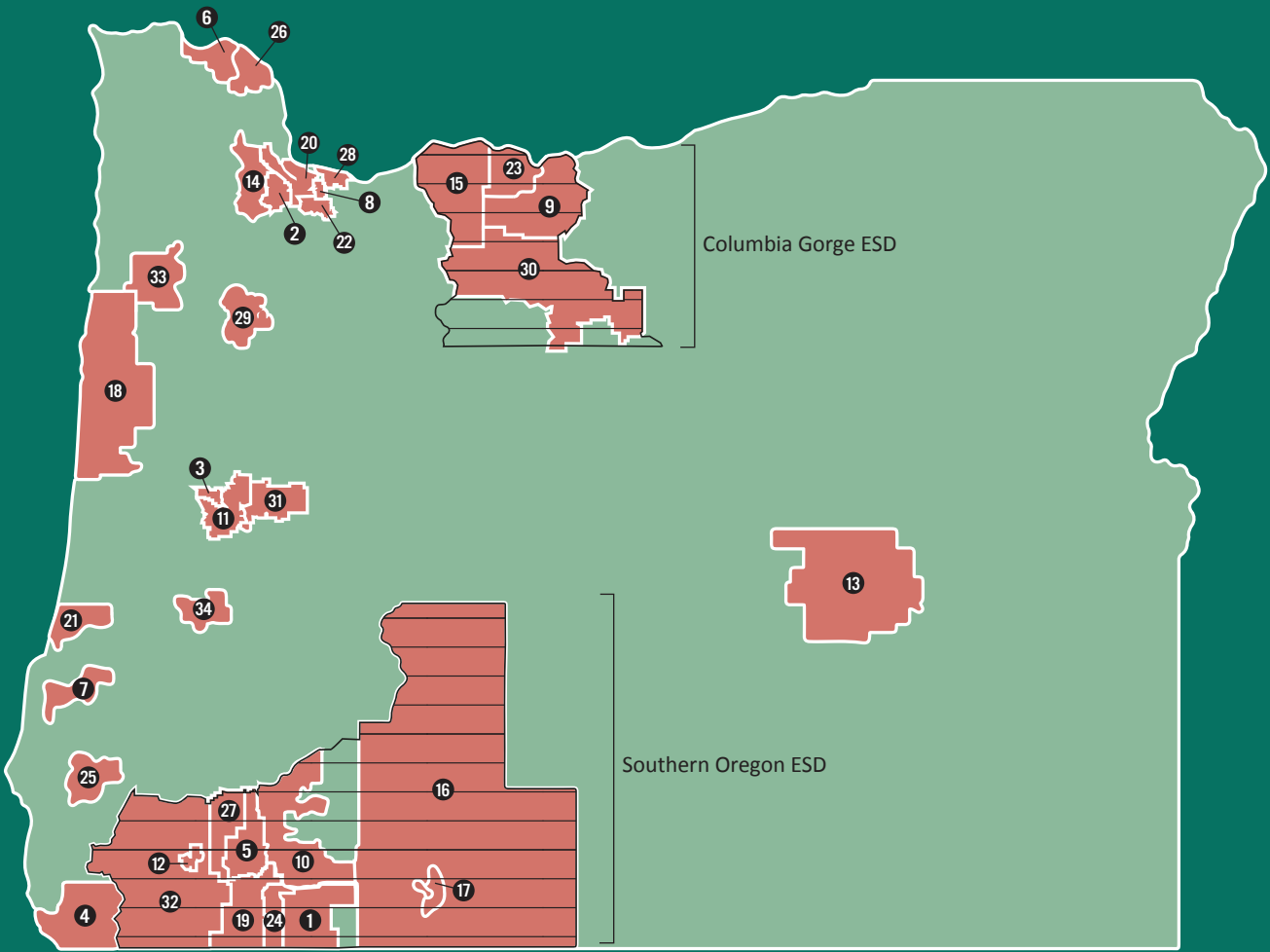
- Supplement the regular school program by meeting the culturally related academic needs of Indian children
- Projects that help Indian children sharpen their academic skills, assist students in becoming proficient in the core content areas, and provide students an opportunity to participate in enrichment programs that would otherwise be unavailable
- Support such activities as culturally responsive after-school programs, Native language classes, early childhood education, tutoring, and dropout prevention

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# ODE Title VI Programs in Oregon's School Districts



- |                           |                               |                               |                                       |
|---------------------------|-------------------------------|-------------------------------|---------------------------------------|
| 1 Ashland SD 9 ♦          | 10 Eagle Point SD 9 ♦         | 19 Medford SD 549C ♦          | 28 Reynolds SD                        |
| 2 Beaverton SD 48J        | 11 Eugene SD 4J               | 20 Multnomah SD 1             | 29 Salem Keizer SD 24J                |
| 3 Bethel SD 52            | 12 Grants Pass SD 7 ♦         | 21 North Bend SD 13           | 30 South Wasco County SD 1 ●          |
| 4 Brookings-Harbor SD 17C | 13 Harney County SD 3         | 22 North Clackamas SD 12      | 31 Springfield SD                     |
| 5 Central Point SD 6 ♦    | 14 Hillsboro SD IJ            | 23 North Wasco County SD 21 ● | 32 Three Rivers/Josephine County SD ♦ |
| 6 Clatskanie SD 6J        | 15 Hood River County SD ●     | 24 Phoenix-Talent SD 4 ♦      | 33 Willamina SD 30J                   |
| 7 Coquille SD 8           | 16 Klamath County SD          | 25 Powers SD 31               | 34 Yoncalla SD 32                     |
| 8 David Douglas SD 40     | 17 Klamath Falls City Schools | 26 Rainier SD 13              |                                       |
| 9 Dufur SD 29 ●           | 18 Lincoln County SD          | 27 Rogue River SD 35 ♦        |                                       |

- ♦ Southern Oregon ESD Consortium  
● Columbia Gorge ESD Consortium

# Tribal Consultation vs. Communication

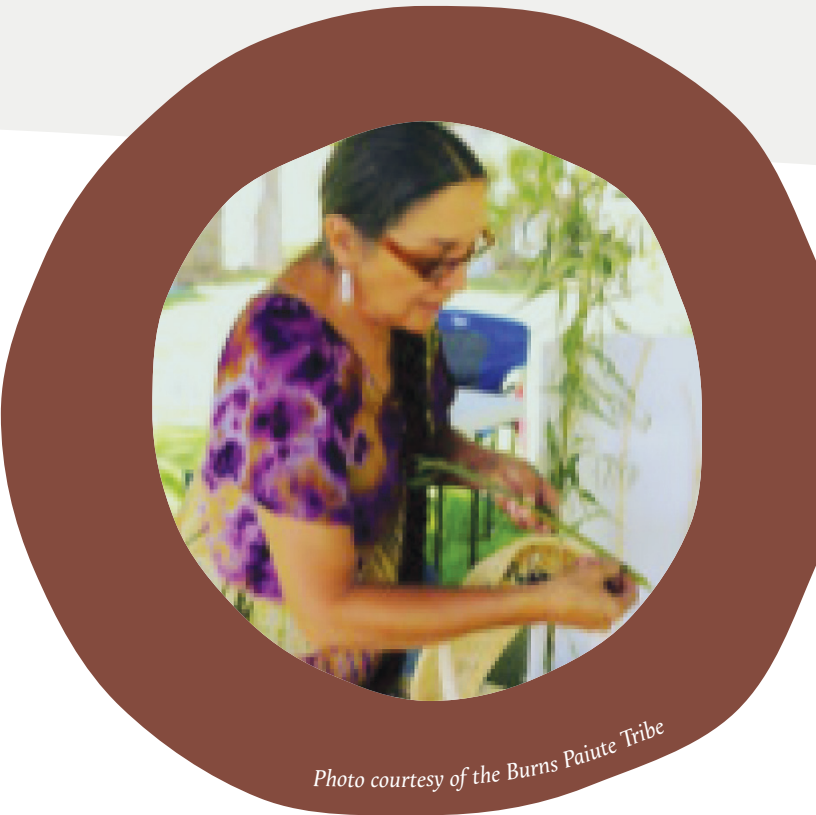
Although you may not be required to consult with a Tribe or Tribes due to the requirements of ESSA law, you should enter into a collaborative partnership with those whose children you serve. Some of those parents, guardians, and caretakers will be from Oregon’s Native communities. Applying the concept of Universal Design for Learning and creating a plan that is informed by all parents, guardians, or caretakers, especially those of the students who have been historically marginalized and underserved, is best practice. Reach out to the Tribes whose lands are geographically located within your district and engage in meaningful conversations on a regular basis even if you are not required by ESSA law to engage in Tribal consultation.

## 50% or Greater AI/AN Enrollment:

Official Tribal consultation is required. To ensure timely and meaningful consultation on issues affecting AI/AN 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.

## Receive \$40K or Greater in Title VI Funds:

Official Tribal consultation is required. To ensure timely and meaningful consultation on issues affecting AI/AN students, an affected local educational agency shall



*Photo courtesy of the Burns Paiute Tribe*

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.

## Neither of the Above Criteria Apply:

Although there may not be a requirement to officially consult with a federally recognized Tribe(s), there are also important requirements for honoring the sovereignty of Native American and Tribal students, families, communities, and Nations in Oregon and all Native American and/or Tribal students must be engaged within district focal student groups. It is encouraged to revisit the [Aligning for Student Success: Integrated Guidance for Six ODE Initiatives 2022](#) to see how it specifically relates to communicating with Tribes and Tribal communities.







SECTION 3

# Responsibilities of Local Education Agencies

# Phase I: Planning & Pre-Consultation Tasks & Forms

## Why Does Tribal Consultation Matter?

*With Tribal consultation, school districts are in a unique position to place emphasis on understanding the beliefs, attitudes and educational priorities Tribal Governments have for their youth. Partnering and soliciting feedback from those committed to lifelong support of their citizens can allow schools to be strategic in meeting the needs of AI/AN youth. However, care needs to be taken in recognizing the importance of seeking feedback and understanding from those who are given authority to consult and those who have been designated by the Tribe for consultation. One should also always keep in mind that consensus is the goal of consultation.*



*Photos courtesy of the Confederated Tribes of Warm Springs*

Bark pulling, photo courtesy of Coquille Indian Tribe



## Step 1: Invite

A representative from the school district should contact the Tribal offices to extend an invitation to the Tribal consultation. Tribal consultation should be done for the reasons outlined in this document. Please review and become familiar with the reasons and the objectives of Tribal consultation before reaching out to the Tribes. The invitation should be sent well in advance to give school personnel and Tribal representative(s) time to prepare for the consultation. Refer to [page 1](#) of this guide for web pages with contact information for staff at Tribes. Tribes may choose to send a Tribal education director, a paid educational consultant, an elected Tribal Official, or a designee identified from the Tribe to represent them. The Tribes may choose to have multiple people represent them as well. Tribal education leaders may be particularly adept at dealing with specific and general Native education concerns (Reinhardt et al., 2020).

## Step 2: Prepare

School district personnel should complete the Tribal Consultation worksheet and representatives from the Tribe are invited to complete the Tribal Consultation Worksheet before the Tribal consultation occurs.



**Jump to Tribal Consultation Worksheet** *(Page 41)*

## Step 3: Exchange Tribal Consultation Worksheets

Complete and then exchange Tribal consultation worksheets with one another.

# Phase II: Come Together for Consultation

## Step 1: Gather and Share Data

**Tribal participants and district representatives should do this together, in collaboration at the consultation, to identify points of agreement, overlap, and areas needing further discussion. This rubric will be used to create a draft of the plan.**

The following guidance on data is from the Native Education Collaborative’s brief published on the National Comprehensive Center’s website.

While the ESSA is vague about the definition of “meaningful consultation,” all of the constituents involved should consider data-driven decision making for the consultation process. Data-driven decision making is based on recommendations from a Mathematica Policy Research report submitted to the Bill & Melinda Gates Foundation in 2014. Gill, Borden, & Hallgren (2014), authors of the report, provide the following insights on meaningful data:

- “Meaningful use of data begins with who will access, analyze, or review the data and for what purpose... It is important to recognize that data often flow across levels and that decisions based on data can affect multiple levels” (p. 4)
- “Reliable data are measures that do not have large random variation when they are measured repeatedly” (p. 7)
- “Unreliable data lack stability: they involve so much random variation (or statistical ‘noise’) that they are essentially uninterpretable” (p. 7)
- “Data that are improperly analyzed or interpreted can lead to invalid inferences that are biased, that is, that cause decision makers to draw exactly the wrong conclusions” (p.8) (Reinhardt et al., 2020)

Although Native Americans have been gathering and using data to make sense of the world around them since time immemorial, participants in Tribal consultation should focus on surfacing strengths in the data school district leaders gather, share, and review. In her book *Red Pedagogy*, Sandy Grande writes that it is important to critique, challenge, and even reject dominant models of thought that have been applied

to Indigenous populations (Crum, 2016, p. 809). In addition to using a critical eye to examine data, Tribal participants may choose other ways to measure the success of their students and academic and extracurricular programs.

Tribal representatives ask questions of the school district personnel and gather data about students, programs, curriculum, and staff. Possible questions to consider are listed below based on the [priorities of the ODE AI/AN Advisory Committee](#):

### Student Data

- How many students in your district identify as AI/AN? How many are from our Tribe?
- What percentage of those students are on track as 9th graders to graduate in 4 years?
- How are our students being measured in terms of academic achievement and what are their scores? (Math, Reading, Native Language Proficiency perhaps)
- How many of our students have been identified as Talented & Gifted?
- How many of our students have an Individualized Education Plan (IEP)?
- What are the attendance rates like for our students? What percentage are regular attenders? What percentage experience chronic absenteeism? Does your school district utilize specific attendance codes that honor AI/AN culture?
- How many of our students have had disciplinary referrals? Are you tracking rates of discipline among AI/AN students and determining how to best address disproportionate disciplinary rates by finding solutions to decrease expulsion, suspension, and pushout rates?
- How many of our students have been expelled or pushed out of your schools?
- How do the rates or percentages of AI/AN students compare to the entire school or district population?

### Programs and Curriculum

- Are you teaching Tribal History / Shared History



curriculum in your schools? At what grade levels?

- How does the curriculum other than Tribal History/Shared History, highlight and celebrate our Tribal communities, our past and our present-day communities? Where in your curriculum is Tribal sovereignty explained and celebrated?
- Is the language of our Tribe present in any way or elevated or taught in your schools?
- What programs are available for AI/AN youth? Clubs, cultural events, etc
- Please describe the Career & Technical Education (CTE) opportunities for AI/AN students
- Which honors or college courses are offered in your school district (Advanced Placement,

International Baccalaureate, dual enrollment, etc) and what is the representation of AI/AN students in those courses? How do you ensure equitable access to those programs?

- How many of our students attend after school programs?
  - How many of our students are in alternative education programs?
  - How many of our students participate in extracurricular activities (e.g., band, sports, debate)
- Staff**
- How many AI/AN educators are there in the school district? What roles do they hold (e.g., teacher, administrator, paraprofessional)?



## Jump to Alignment Rubric *(Page 42)*

### Step 2: Reach Consensus and Draft a Plan

Consensus is a general agreement about something: an idea or opinion that is shared by all the people in a group.

Once the parties have reached consensus, the partners will work together and identify areas needing further discussion. School district personnel will use what was agreed upon in consultation and draft their ESSA plan and other educational plans that support AI/AN students in their district.

### Step 3: Approve Plan and Agree on How to Monitor the Plan

First, the Tribal representative or designee must approve the draft of the plan(s) created by the district. Plans refer to ESSA plan or any other educational plans that support AI/AN students in the district. Next, the parties work together to develop a plan for ongoing monitoring of data, goals and measurable outcomes. In addition, district representative(s) and Tribal representative(s) or designee(s) will agree on a year-long meeting schedule to monitor and shape progress.

LEAs must consult with the Tribal Nation(s) on the following programs. Complete descriptions of Title Programs, including allowable expenditures and examples are found on [pages 15-23](#) of this toolkit.

**TITLE I - Part A:** Improving Basic Programs Operated by State and Local Educational Agencies.

*Part C:* Education of Migratory Children.

*Part D:* Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk.

**TITLE II - Part A:** Supporting Effective Instruction.

**TITLE III - Part A:** English Language Acquisition,

Language Enhancement, and Academic Achievement Act.

**TITLE IV - Part A:** Student Support and Academic Enrichment Grants.

*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 Education Agencies.

# Phase III: Incorporate, Sign & Submit Required Forms to ODE

**Step 1:** The LEA incorporates what was agreed upon by the district representative and the representative or a designee from the Tribe into the final education plans (plans refers to ESSA plan or any other educational plans that support AI/AN students) and submits the plan(s) to the Tribal Nation(s) for final review.

**Step 2:** Both partners print, complete and sign the Tribal Consultation Worksheet (on [page 41](#)) and Affirmations of Tribal Consultation (on [page 40](#)). NOTE: The Tribal representative or designee is not required to fill out the Tribal Consultation Worksheet but instead, is invited to complete this form if they find it helpful to the process.

**Step 3:** Both partners submit the Tribal Consultation Worksheet and the Affirmation of Tribal Consultation to the Oregon Department of Education along with final drafts of the Tribal Consultation Worksheet.

*NOTE: School district personnel must also keep copies of all paperwork for their records.*

Submit all documents via email to [ODE.TribalConsultation@ode.oregon.gov](mailto:ODE.TribalConsultation@ode.oregon.gov) and to Stacy Parrish, Education Program Specialist II of the Office of Indian Education at [stacy.parrish@ode.oregon.gov](mailto:stacy.parrish@ode.oregon.gov)

[Jump to Tribal Consultation Worksheet \(page 41\)](#) | [Jump to Affirmation of Tribal Consultation \(page 40\)](#)

## Checklist for Compliance

Please be sure to submit the following documents:

- Tribal Consultation Worksheet from the LEA or district
- Tribal Consultation Worksheet from Tribe, if the Tribe chose to complete the worksheet
- Affirmation of Tribal Consultation signed by both parties
- Name PDF: Name of district\_ Date of Tribal Consultation. Note use of underscores and hyphens please. (Example: *Eagle\_Point\_SD9\_08-10-2023.pdf*)\*
- Submit all documents via PDF in an email to [ODE.TribalConsultation@ode.oregon.gov](mailto:ODE.TribalConsultation@ode.oregon.gov) and to Stacy Parrish, Education Program Specialist II of the Office of Indian Education at [stacy.parrish@ode.oregon.gov](mailto:stacy.parrish@ode.oregon.gov)

*\* If you are unsure which Tribes you must consult with, please reach out to the Office of Indian Education at [ODE.TribalConsultation@ode.oregon.gov](mailto:ODE.TribalConsultation@ode.oregon.gov).*

# Phase IV: Monitor & Review Progress



Consultation is an ongoing process. After the initial consultation agreement plan, the partners should continually monitor and review their plans and their students' outcomes.

LEAs and Tribal Nations should schedule follow-up consultations to discuss opportunities and challenges, and they should be ready to adjust consultation plans as necessary.

If the LEAs and Tribal nations feel the need to revise their consultation plan, they can do so by updating the *Tribal Consultation Worksheets* and submit any revisions to the Office of Indian Education at the Oregon Department of Education.

*Kiona Campbell, Confederated Tribes of the Grand Ronde.  
Photo courtesy of [Tribal Attendance Promising Practices](#)*





SECTION 4

# Supporting Documents

# Frequently Asked Questions

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

Prepared by the United States Department of Education and revised by ODE 02/2023

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

In general, section 8538 requires affected local education 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 program covered by section 8538). This requirement is designed “to ensure timely and meaningful consultation on issues affecting AI/AN” students.” The consultation must be done “in a manner and in such a 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) 2023 formula grant funding, or for the 2023-2024 school year. Affected LEAs (see Question 3) that educate 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, 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 2022-2023 school year to determine whether it is an affected LEA in FY 2023.

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 2022 is in an affected LEA for consultation purposes in FY 2023. Please contact Crystal C. Moore, Ed.D. (Choctaw of Oklahoma Tribal Citizen) Supervisory Program Officer Group Leader- Formula (Title VI, A) Team Designated Federal Official (DFO) – National Advisory Council on Indian Education (NACIE), Office of Indian Education United States Department of Education, 400 Maryland Ave SW Washington, DC 20202. 202-453-5593 or 202-215-3964 for assistance in determining whether an LEA is an affected LEA under section 8538 of the ESEA.

### 4. Who is responsible for Tribal Consultation if an LEA is a member of a consortium (LEA-C) who is the recipient of an Indian Education formula grant under Title VI?

The LEA-Consortium (LEA-C) Lead Applicant is ultimately responsible for the Tribal Consultation. However, the LEA-C should work with all of their Participating LEAs included on the LEA-C Lead’s application to ensure a timely and accurate Tribal Consultation.

#### AND

Each participating LEA (including LEA-C Lead) should conduct Tribal Consultations with each Tribe that has a Tribal Reservation boundary within 50 miles of each participating/lead LEA in a Consortium.

The Office of Indian Education at ODE has made note that other DOE resources for the formula grant use the language of “Indian Lands” as well in other guidance documents. In an attempt to be the most inclusive and respectful of the complex and complicated topics of “Tribal Reservations”, “Tribal Reservation Boundaries”, and “Indian Lands”, ODE’s OIE has interpreted this guidance to mean unceded and/or pre-contact and/or aboriginal lands. We encourage you to contact the ODE Office of Indian Education if you have any uncertainty or questions.

### 5. How can an LEA find information about Tribes?

[Page 1](#) of this toolkit contains links to information about each of the nine federally recognized Tribes in Oregon. The Bureau

<sup>1</sup> Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by ESSA.

of Indian Affairs (BIA) publishes an official list of federally recognized Tribes each year. This list is available at the [Title VI community practice website](#) under “Additional Resources”.

To find Tribal addresses, see the list on the [National Congress of American Indians \(NCAI\) website](#). If you need information about the local Tribe or Tribal organization in your service area, please refer to the pages at the front of this toolkit.

## 6. On which programs must an affected LEA consult with Indian Tribes?

Beginning with FY 2017, affected LEAs must consult with Indian Tribes before submitting plans or applications for the following programs under ESEA:

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

## 7. When should affected LEAs conduct consultation required under section 8538 of the ESEA?

LEAs should conduct their consultation in advance of making significant decisions regarding plans or applications for covered programs, to ensure an “opportunity for ... appropriate officials from Indian Tribes or Tribal organizations to meaningfully and substantively contribute” to an LEA’s plan (section 8538(a)). The timeline for each consultation is dictated by requirements of the relevant formula grant program, which have different application deadlines. For example, a State may have a deadline for LEAs to submit a consolidated local plan to the State by a certain date in 2023, so for those programs the consultation must be completed before that date.

Given that Tribes may receive multiple requests for consultation, LEAs should conduct their consultation in advance of making significant decisions regarding plans or applications for covered programs, to ensure an “opportunity for ... appropriate officials from Indian Tribes

or Tribal organizations to meaningfully and substantively contribute” to an LEA’s plan (section 8538(a)).

**In Oregon, the general LEA plan is primarily developed and communicated to ODE through the submission of the applications under Integrated Guidance.** The timeline for each consultation is dictated by requirements of the relevant formula grant program, which have different application deadlines (this should include what is referred to in Oregon as “CIP Budget Narratives” which cover each title program). For example, a State may have a deadline for LEAs to submit a consolidated local plan to the State by a certain date in 2023, so for those programs the consultation must be completed before that date. Given that Tribes may receive multiple requests for consultation, LEAs should consider arranging for informational meetings prior to consultation.

## 8. What should an LEA do to ensure “meaningful consultation”?

In order to ensure that consultation is meaningful, LEAs should provide Indian Tribes, or those Tribal organizations approved by the Tribes located in the area served by the LEA, an opportunity to provide input and feedback to the LEA on plans for any covered program. An LEA should consider providing a list of issues or questions on which the LEA seeks input, or provide draft plans for this purpose, in advance of the consultation. An LEA should consult before it makes a final decision on significant and substantive issues related to the content of the plans. In addition, an LEA should consider providing written responses to Tribal input received during consultation to explain how input was considered.

## 9. What documentation is required for consideration with Indian Tribes under section 8538 of the ESEA?

Each LEA must maintain a written affirmation in its records and provide a copy to the state for for state-administered ESEA programs (see [page 37](#) in this toolkit) signed by the appropriate officials of the participating Tribes (or Tribal organizations approved by the Tribes) to indicate that the required consultation occurred. If Tribal officials do not provide such affirmation within a reasonable period of time, the LEA must forward to the SEA documentation that consultation has taken place.

## 10. May an LEA combine this consultation with other requirements regarding Tribal or parent involvement?

Yes, an LEA may coordinate or consolidate the required ESEA consultation with the parent activities required under the Indian Education formula grant program, the Impact Aid program, and the Johnson O’Malley program. An LEA

may only do so, however, if the activity in question – i.e., the consultation – meets all of the requirements of each program. For example, an LEA may plan a public hearing or meeting with its local Tribe or Tribal organization regarding its education program generally in order to meet the Impact Aid requirements for Indian Policies and Procedures; that hearing with the Tribe could incorporate the elements of the LEA’s proposed plans under the covered programs, rather than hold a separate consultation event.

The LEA should involve the local Tribe or Tribal organization in planning the best approach that satisfies the needs of the Tribe(s) and the LEA in a time-effective manner, and that meets the requirements of the various programs.

**11. If an LEA has multiple Tribes in the geographic area it serves, or if there is one Tribe and multiple LEAs, must there be separate consultations with each Tribe or LEA?**

Where there are multiple Tribes and a single LEA, the LEA may hold a consultation that includes all affected local Tribes or Tribal organizations. Similarly, where there are multiple LEAs and one Tribe, there is no federal prohibition against a joint consultation held by several LEAs. In both cases the LEA must ensure that the Tribe or Tribes have a meaningful and timely opportunity to give input into an LEA’s plans or applications.

**12. Can the department provide additional information?**

Yes, the Department may offer assistance or provide other information upon request. Please contact the Office of Indian Education (OIE) at [IndianEducation@ed.gov](mailto:IndianEducation@ed.gov).



# Affirmation of Tribal Consultation

We agree that timely and meaningful consultation occurred before the LEA submitted plans or applications for the following Title programs under ESSA.

We agree that we have participated in meaningful and timely discussion on each Title under ESSA and have chosen to participate in the programs marked below.

- Title I, Part A (Improving Basic Programs Operated by State and Local Educational Agencies)<sup>1</sup>
- Title I, Part C (Education of Migratory Children)
- Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk)
- Title II, Part A (Supporting Effective Instruction)
- Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act)
- Title IV, Part A (Student Support and Academic Enrichment Grants)
- Title IV, Part B (21st Century Community Learning Centers)
- Title V, Part B, Subpart 2 (Rural and Low-income School Program)
- Title VI, Part A, Subpart I (Indian Education Formula Grants to Local Educational Agencies)
- Other \_\_\_\_\_

We agree that timely and meaningful consultation shall be ongoing. An agenda will be agreed upon at least two weeks prior to the follow-up consultation. We shall meet to assess programs and track accountability on the following dates:

|   | Printed Name | Signature | Email | Date |
|---|--------------|-----------|-------|------|
| <b>Superintendent or Designee</b>       |              |           |       |      |
| <b>Designated Tribal Representative</b> |              |           |       |      |

1. The General LEA Plan required by ESSA under Title I, Part A is developed and submitted to ODE through the plan and application developed and communicated to ODE under the Integrated Guidance.

# Tribal Consultation Worksheet

This worksheet is designed to be completed separately before consultation occurs. An official from the LEA who will attend the Tribal consultation should fill out this worksheet. A Tribal representative or designee who will attend the Tribal consultation on behalf of the Tribe is invited to fill out this worksheet.

## Name/contact information of each participant:

|                         |                                  |  |
|-------------------------|----------------------------------|--|
| Local Education Agency: | School Representative to Attend: | Tribal Representative(s) or designee(s) to Attend: |
|-------------------------|----------------------------------|--|

## Share your understanding of the requirement & importance of Tribal consultation at the federal and state level:

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## How does the [ESSA plan](#) impact AI/AN students?

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- i Review current Memoranda of Understandings or Agreements currently in place between LEA and Tribe
- i Review any current state education acts/bills/policies related to Indian education applicable to this consultation

## What are the outcomes and objectives of the consultation?

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## Articulate clarity on consultation goals:

What does a successful consultation look like?

---

What is your district's commitment to this consultation process?

---

What is your Tribe's commitment to this consultation process?

---

What concerns do you have about this process?

---

## What data is pertinent to review for this consultation? What data is missing or incomplete for this consultation?

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## Follow-up/Support Needed:

Do we need a meeting facilitator? Do you have someone in mind?

---

What logistics do you need support with?

---

Who is representing the Tribe at the consultation?

---

Who is representing the district at the consultation?

# Alignment Rubric

This alignment rubric was adapted from one that appears in Northwest Comprehensive Center at Education Northwest's [Every Student Succeeds Act Tribal Consultation Pre-Planning Tool](#) for Tribes on [pages 4-7](#). You are welcome to use the expanded version of the Alignment Rubric from this resource if you would like.

| Title Program Description   | Data We Have and/or Need | Tribal Context:<br>Past Participation, Ongoing Efforts and Current Needs Such as Linguistic and Cultural Supports | Questions for SEA and/or LEA | Agreements and Next Steps |
|---|--------------------------|---|------------------------------|---------------------------|
| <b>Title I, Part A</b><br>(Improving Basic Programs Operated by State and Local Educational Agencies) |                          |   |                              |                           |
| <b>Title I, Part C</b><br>(Education of Migratory Children)   |                          |   |                              |                           |

| <b>Title Program Description</b>  | <b>Data We Have and/or Need</b> | <b>Tribal Context:<br/>Past Participation, Ongoing Efforts and Current Needs Such as Linguistic and Cultural Supports</b> | <b>Questions for SEA and/or LEA</b> | <b>Agreements and Next Steps</b> |
|---|---------------------------------|---|-------------------------------------|----------------------------------|
| <b>Title I, Part D</b><br>(Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk) |                                 |   |                                     |                                  |
| <b>Title II, Part A</b><br>(Supporting Effective Instruction)   |                                 |   |                                     |                                  |
| <b>Title III, Part A</b><br>(English Language Acquisition, Language Enhancement, and Academic Achievement Act)                    |                                 |   |                                     |                                  |

| <p><b>Title Program Description</b></p>   | <p><b>Data We Have and/or Need</b></p> | <p><b>Tribal Context:<br/>Past Participation, Ongoing Efforts and Current Needs Such as Linguistic and Cultural Supports</b></p> | <p><b>Questions for SEA and/or LEA</b></p> | <p><b>Agreements and Next Steps</b></p> |
|---|--|--|--|---|
| <p><b>Title IV, Part A</b><br/>(Student Support and Academic Enrichment Grants)</p> |  |  |  |   |
| <p><b>Title V, Part B Subpart 2</b><br/>(Rural and Low-Income School Program)</p>   |  |  |  |   |



# Sample Agenda

(Your Logo)

[Name of Tribe(s) for consultation] with [Name of Educational Agency (District)]

**Date and Time**

**Location**

**Invitees**

## Agenda

10:00 - 10:15 **Introductions/Invocation**

10:15 - 10:20 **Agenda Modifications**

10:20 - 12:00 **Title Programs Discussion**

Use [Alignment Rubric](#) (page 39) to guide discussion and fill out the Alignment rubric together throughout the consultation

- Prior knowledge/related experiences and /or previous Tribal input
- Tribal supports to schools on this topic (past or current)
- Relevant Tribal needs for topic
- Future Tribal support on this topic, including but not limited to) Tribal government resolutions
- Questions for state education agency (SEA)
- Questions for local education agency - district (LEA)
- Language and Culture Supports

12:00 - 12:15 **Agreements and Next Steps**

12:15 - 12:30 **Determine date the draft of the plan will be shared with the Tribe(s)**

*Please note times are only a suggestion and are by no means meant to limit the duration of Tribal consultation meetings.*

# Glossary & ESSA Terms / Definitions

**Academic Standards** – a set of benchmarks for what all students should know and be able to do by the end of each grade level in order to advance to (and be ready for) the next grade level. States are required to have standards in reading/language arts, math, and science. They may also have standards in other subjects including social studies or physical education. *See also: assessment*

**Accountability** – The policies and procedures states use to set goals for how well all students (and groups of students) should be doing academically, measure and identify how well schools do in meeting those goals, and support and improve schools and districts that are failing to meet the state goals.

**Affirmation of Consultation** – Districts will need to have an affirmation signed by each Tribe consulted in order to document that consultation took place. If districts cannot obtain this affirmation, they must document their consultation efforts and activities as part of any plan or application they submit for a program under specified sections of ESSA.

**Appropriate Officials** – The term “appropriate officials” means:

- Tribal officials who are elected; or
- Appointed Tribal leaders or officials designated in writing by an Indian tribe for the specific consultation purpose under Section 8538.

**Assessment** – Another word for “test.” In the federal education policy context, the term “assessment” refers to the one standardized annual test required under federal law 1 every grade between 3-8 and at least once in high school (grades 9-12). These measure student achievement (what a student knows and can do) and not measure intelligence (a student’s underlying ability and potential).

**Chronic Absenteeism** – This is a measure for how many students miss a significant number of school days-such as 10 percent of school days-for any reason, excused or unexcused. This is different from average daily attendance, which is the percent of students in attendance throughout the year.

**Consensus** - A general agreement about something: an idea or opinion that is shared by all the people in a group. In terms of Tribal consultation, this means that the Tribe agrees that the plan for addressing the needs of their Native students is acceptable and the LEA agrees that the plan can be implemented with fidelity.

**Consultation with Indian Tribes and Tribal Organizations** – To ensure timely and meaningful consultation on issues affecting AI/AN students, and affected local educational agencies shall consult with appropriate officials from Indian Tribes or Tribal organization approved by the Tribes located in the area served by the local educational agency prior to the affected local education agency’s submission of a required plan or application for a covered program under the Every Student Succeeds Act.

**Covered Programs** – Under Section 8538, an affected Local Education Agency (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 Every Student Succeeds Act 1 (ESSA) in the previous fiscal year that exceeds \$40,000. (United States Department of Education, 2016 p. 1)

Affected LEAs must consult with Indian Tribes before submitting plans or applications for the following programs under ESEA:

- **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)
- **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) (United States Department of Education, 2016, p. 2)

**Disaggregated Data** – Disaggregated data refers to data that is broken down to see information about different groups of students. Under the Every Student Succeeds Act, data must be disaggregated by race, ethnicity, family income, disability status, English learner status, gender, migrant status, status as a child in foster care, homelessness status, or military connected status.

**Educational Sovereignty** – Educational sovereignty is the inherent right of Indigenous Tribes to define and reach their own educational goals for their students, families, and communities. Quinton Roman Nose, an enrolled member of the Cheyenne and Arapaho tribes and executive director of the Tribal Education Departments National Assembly (TEDNA), “Tribes were not waiting on the shores of the Atlantic for Columbus to bring us education. We have always had our own means to provide instruction and education to our Tribes.” (Zingg, 2019).

**English Language Proficiency** – The ability to speak, listen to, read, and write English accurately and quickly. Students who are learning English as a second language are typically called “English learners” until they master the English language. This is different from proficiency in English/ language arts, which is mastering the state’s academic content standards for reading, writing, speaking, listening, and using language.

**English Learner** – A student between the ages of 3–21 in elementary or secondary school whose native language is a language other than English. Identified English learners are entitled to civil rights protections and accommodations. Title III of ESSA provides funding to support English learners.

**Equity** – “The guarantee of fair treatment, access, opportunity, and advancement for all while striving to identify and eliminate barriers that have prevented the full participation of some groups. The principle of equity acknowledges that there are historically under-served and under-represented populations and that fairness regarding these unbalanced conditions is needed to assist equality in the provision of effective opportunities to all groups.” (Karen Armstrong, NACE)

**Equity in Relation to Tribal Sovereignty** – Tribal Sovereignty is described as an aspect inherited by ancestors and also conferred on Tribes by treaties. It is also defined as “the right of a people to self-government, self-determination, and self-education. Sovereignty includes the right to linguistic and cultural expression according to local languages and norms” (Lomawaima & McCarty, 2002, p. 284). Tribal sovereignty is held as a sacred right and in higher esteem than equity for Native peoples.

**ESEA** – Elementary and Secondary Education Act (ESEA) The federal Elementary and Secondary Education Act (ESEA), enacted in 1965, is the nation’s national education law and shows a longstanding commitment to equal opportunity for all students. ESEA authorizes state-run programs for eligible schools and districts eager to raise the academic achievement of struggling learners and address the complex challenges that arise for students who live with disability, mobility problems, learning difficulties, poverty, or transience, or who need to learn English.

**ESSA** – On December 10, 2015, President Obama reauthorized ESSA as the Every Student Succeeds Act (ESSA). The new law builds on key areas of progress in recent years, made possible by the efforts of educators, communities, parents, and students across the country. ESSA replaces the previous reauthorization of ESEA, known as the No Child Left Behind (NCLB) Act, enacted in 2002. ESSA became fully operational in the 2017-18 school year.

**Indian Community-Based Organization** – means any organizations that:

1. is composed primarily of Indian parents, family members, and community members, Tribal government education officials, and Tribal members, from a specific community;
2. assists in the social, cultural, and educational development of Indians in such community;
3. meets the unique cultural, language, and academic needs of Indian students;

**Indicators** – Indicators are measures of different aspects of the education system that – taken together – create a picture of a school’s effectiveness at educating all students (e.g. Graduation rates, expulsion rates, assessment scores). ESSA requires certain indicators in the state accountability system and allows for others.

**Individualized Educational Program (IEP)** – A plan or

program developed by a team, including teachers, specialists, and families, that is designed to meet the educational needs of a student with a disability who qualifies for specialized instruction. Schools are required under the Individuals with Disabilities Education Act (IDEA) to create IEPs for students with disabilities who qualify for specialized instruction.

**Integrated Guidance Plan** – [Aligning for Student Success: Integrated Guidance for Six ODE Initiatives](#) brings six state and federal programs operationally together to improve outcomes and learning conditions for students, educators, and communities.

**Local Educational Agency (LEA)** – The formal name for governmental bodies that are legally sanctioned by the state to administer elementary or secondary schools (e.g. school district. Charter school that is also a district) in a community. *See also: State Educational Agency (SEA)*

**Meaningful Consultation** – The earlier No Child Left Behind Law (NCLB) did not require SEAs or districts to consult with Tribes. ESSA, however, mandates timely and meaningful consultation. Consequently, many SEAs and districts will be seeking input and assistance from Tribes to develop a shared understanding of meaningful consultation, which is required by ESSA but not defined by it. Tribal nations can draw on their experience of consultation processes that will allow for regular, sustainable Tribal input. Also, while the ESSA is vague about the definition of “meaningful consultation,” all of the constituents involved should consider data-driven decision making for the consultation process. Data-driven decision making is based on recommendations from a Mathematica Policy Research report submitted to the Bill & Melinda Gates Foundation in 2014.

**Needs Assessment** – The analysis of the needs of a school that has been identified for support and improvement. This analysis forms the basis of a school’s support and improvement plan.

**State Educational Agency (SEA)** – The formal name for governmental bodies that are legally sanctioned by the state to provide information, resources, and technical assistance to schools, districts, and people in the community served by schools (e.g. state department of education). *See also: Local Educational Agency (LEA)*

**Title I Plan / consolidated state plan** – A state’s plan for complying with the requirements of ESSA. A state has the option of submitting plans separately for each title (e.g.

Title I plan, Title III plan) or for submitting a plan which describes what the state intends to do to comply with the requirements of the entire law (consolidated plan).

These plans must be developed in consultation with tribes, stakeholders, be available for public comment, and be submitted to and approved by the U.S. Department of Education. ESSA includes various requirements for the information included in a state’s plan such as specifics of the statewide accountability system.

**Tribe** – The Bureau of Indian Affairs (BIA) publishes an [official list of federally recognized Tribes](#) each year. This list is available at the Title VI community of practice website under “Resources.” To find Tribal addresses, see the list at the [National Congress of American Indians \(NCAI\) website](#).

**Stakeholder** – NOTE: Tribes are not stakeholders. Tribes are Sovereign Nations, they are their own government and, as such, need to be consulted with as one would with any other sovereign government. Please do not include them in any public processes for review or consultation. Tribes should be notified early before any items go to stakeholders for input.

**Student Success Act** – The [Student Success Act](#) was passed in 2019 and contains 28 investments across the early learning and PK-12 educational systems. At the heart of the SSA is a commitment to improving access and opportunities for students who have been historically underserved in the education system.

**Tribal Consultation** – *See Meaningful Consultation*

**Tribal Sovereignty** -The original sovereignty, or power to govern, over Native education rests with Tribes. Tribes inherit this aspect of their sovereignty from their ancestors (Canby, 2015). Ancient knowledge, as created by the ancestors of Native communities, contains the very essence of Tribal sovereignty (Brayboy et al., 2015, p. 3). Jampolsky (2016) points out that scholars have defined Tribal sovereignty in a number of ways, such as:

- as “a protective shell around Tribal life and culture” (Sarah Krakoff, 2006) and
- as “the right of a people to self-government, self-determination, and self-education. Sovereignty includes the right to linguistic and cultural expression according to local languages and norms” (Lomawaima & McCarty, 2002, p. 284).

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