

## GUIDANCE FOR SOUTH DAKOTA ESSA TRIBAL CONSULTATION

### Background

The Every Student Succeeds Act (ESSA) is the latest reauthorization of the Elementary and Secondary Education Act of 1965. Previously known as the No Child Left Behind Act (NCLB), this reauthorization gives more freedom to states to implement standards and accountability.

The ESSA allows educational stakeholders to enter a new era of education, one that requires timely and meaningful consultation. Meaningful tribal consultation, both in process and product, is the foundation that will best support Native Students. It will be helpful when local educational agencies (LEAs) approach consultation in the context of developing a mutually respectful relationship with tribes. A key component in working with tribal representatives and supporting Native youth is trust.

### Introduction

Section 8538 of the Every Student Succeeds Act (ESSA), Public Law 114-95, requires affected local educational agencies (LEAs) 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. This requirement is designed to ensure timely and meaningful consultation occur on issues affecting American Indian (AI)/Alaskan Native (AN) students. This guidance is intended to serve as an overview of ESSA tribal consultation requirements and as guidance for South Dakota LEAs.

### Tribal Consultation

ESSA provides unique opportunities for states, districts, and tribes to work together to strengthen education for Native students throughout the country. This guide is designed to create a framework for consultancy between tribes and school districts as mandated by law. The South Dakota Department of Education is available to support districts as they navigate the process to increase opportunities for successful consultation and engagement with stakeholders. This resource is meant to provide tribes and districts the high-level strategies necessary to build trusting, reciprocal, and long-lasting relationships with the Native communities in their respective regions.

### ESSA Tribal Consultation Requirements

ESSA requires states and some districts to consult with tribal nations and communities in the development of their education plans. The act requires tribal consultation to be *timely*, and *meaningful*, but it does not define those terms.

### Timely

The law states consultation “shall not interfere with the timely submission of the plan.” This means the consultation process should begin as early as possible before the submission deadline to ensure consultation is timely and meaningful. LEAs should conduct their consultation in advance of making significant decisions regarding plans or applications for covered programs.

To support timely and meaningful consultation now and in the future, regularly scheduled meetings ensure initial feedback is incorporated and tribal leaders continue to have a voice in the ongoing implementation and review process of the plan. Collaboration vs. consultation is of more value when putting emphasis on the inclusion of tribal input and feedback. Given that tribes may receive multiple requests for consultation, LEAs should consider arranging for informational meetings prior to consultation.

### Meaningful

Consultation is meaningful when it occurs at the earliest possible date, prior to the development of a program, initiative, or policy to ensure that tribal views are respected and included in such plans. Tribal consultation is most effective when it is seen and understood as a process for continuous input and discussion.

Meaningful consultation is based on open communication and coordination that acknowledges and considers the views of all participants, and then seeks agreement on how to provide continuing assistance. The process of tribal consultation is equally important as the product. If tribal input is not reflected in how educational programs and services are administered to students, then we have missed a fantastic opportunity to support our AI/AN students.

Districts should work collaboratively with tribes to develop a common understanding of “meaningful” consultation, which is a requirement by ESSA, but not defined.

- An LEA 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.
- An LEA should consider providing written responses to tribal input received during consultation to explain how input was considered.

### Affected LEAs

An affected LEA under section 8538 is one that *either*:

- 1) Has 50 percent or more of its student enrollment made up of American Indian (AI)/Alaskan Native (AN) students; **or**
- 2) Received an Indian Education Formula grant, from the US Department of Education, under Title VII in the previous fiscal year that exceeded \$40,000; **and**
- 3) Include a tribe located in the area served by the LEA.

The location of the tribe and the area that the LEA serves will determine who the LEA must consult with, not the representation of the students.

- If there is an Indian reservation located in the jurisdiction or bordering the jurisdiction of the affected LEA, the LEA must consult with that tribe, or with a tribal organization approved by the 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 “Additional Resources” : <https://easie.grads360.org/#communities/pdc/documents/9980>. To find tribal addresses, see the list at the National Congress of American Indians (NCAI) website: <http://www.ncai.org/tribal-directory> or see Appendix 1.

### Covered Programs

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

- Title I, Part A (Improving Basic Programs Operated by State and Local 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 (21<sup>st</sup> Century Community Learning Centers)
- Title V, Part B, Subpart 2 (Rural and Low-Income School Programs)
- Title VI, Part A, Subpart 1 (Federal Indian Education Formula Grants to Local Education Agencies)

### 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.

There are many stakeholders that should be included in the tribal consultation process. Affected LEAs and their chosen representatives should begin the conversation with a tribal nation near your district. This may be the tribal education directors or tribally elected officials, but should be up to the tribes to choose who represents their voices in the process of consultation. Tribal parents and local parent advisory committees should also be represented in the collaboration and consultation processes.

### Consultation Process

Consultation occurs when affected school district meets or exchanges written correspondence with a tribal leader (and/or their designee) to solicit a Tribe's official input, comments, and recommendations on programs and resources affecting American Indian/Alaskan Native students. However, consultation may also be initiated by tribal leaders or their designees.

Consultation shall occur on a regular basis and may occur on an "as-needed" basis as well when the Indian tribes and/or LEAs raise issues that need to be addressed regarding the use of federal funds and programs administered by an LEA. When decisions about policy or programming are reached, communication between consultation entities is crucial.

For the consultation process to be successful, all parties should be informed of dates for upcoming meetings, including both tribal consultation meetings and information or input meetings that are open to the public. Consultative parties should be provided with information on proposed programs, formats and submission agreements, and notified of significant changes in plans.

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

- Dates for upcoming meetings, including tribal consultation meetings and information or input meetings that are open to the public.
- Deadlines for plan development and submission.
- Information on proposed programs.
- Formats and submission information for tribal input.
- Notification of significant changes in plans.
- A final copy of plans or applications.
- Contact information for district personnel or members of committees.
- Presentations from state or local representatives about existing programs so that tribes have clarity regarding how the programs operate in the local, district or state context.
- Information on the evidence on which planned activities are based.

### Required Documentation

Each LEA must maintain in their records and, for State-administered ESEA programs, provide to the State Education Agency (SEA), a written affirmation signed by the appropriate officials of the participating tribes (or tribal organizations approved by the tribes) 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 (US Dept. of Education).

LEA *Confirmation of Tribal Consultation* is due as an annual upload to the GMS as part of the Consolidated Application which will be due on July 1<sup>st</sup> of each year beginning in 2018 for the SY 2018-2019.

The South Dakota Department of Education has developed Guidance for ESSA Tribal Consultation and a form for the required *Confirmation of Tribal Consultation*. This form and the guidance document can be found at <http://doe.sd.gov/oess/titlei.aspx> under the Resources Section – School Year 2018-2019. See also Appendix 3 for a copy of the form. This form must be kept at the LEA office, and uploaded to the GMS Consolidated Application Tribal Consultation Tab. If a LEA or Tribe has another type of documentation to show that this consultation has occurred, it may be substituted for the supplied form.

### Combined Consultation

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 the requirements of each program. The LEA should involve the local tribe or tribes 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.

### USED Resources

The US Department of Education has published a Dear Colleague letter and a frequently asked questions document on ESSA tribal consultation which you can find on the SD Title website at: <http://doe.sd.gov/oess/titlei.aspx> under the Resources Section – School Year 2017-2018. The US Department of Education may offer assistance or provide other information upon request. Please contact the Office of Indian Education at [IndianEducation@ed.gov](mailto:IndianEducation@ed.gov).

## Appendix 1

### National Congress of American Indians 2018 Tribal Directory for South Dakota

#### Cheyenne River Sioux Tribe [Great Plains]

**Harold C. Frazier (Chairman)**

Tel: (605) 964-4155

Fax: (605) 964-4151

Recognition Status: Federal

PO Box 590

Eagle Butte, SD57625-0590

Website: <http://www.sioux.org>

#### Crow Creek Sioux Tribe [Great Plains]

**Brandon Sazue (Chairman)**

Tel: (605) 245-2221

Fax: (605) 245-2789

Recognition Status: Federal

PO Box 50

Fort Thompson, SD57339-0050

Website: <http://sdtribalrelations.com>

#### Flandreau Santee Sioux Tribe [Great Plains]

**Anthony Reider (President)**

Tel: (605) 997-3891

Fax: (605) 997-3878

Recognition Status: Federal

PO Box 283

Flandreau, SD57028-0283

Website: <http://www.santeesioux.com>

#### Lower Brule Sioux Tribe [Great Plains]

**Boyd Gourneau (Chairman)**

Tel: (605) 473-5561

Fax: (605) 473-5606

Recognition Status: Federal

187 Oyate Circle

Lower Brule, SD57548-0187

Website:

#### Oglala Sioux Tribe [Great Plains]

**Troy Scott Weston (President)**

Tel: (605) 867-5821

Fax: (605) 867-6076

Recognition Status: Federal

PO Box 2070

Pine Ridge, SD57770-2070

Website: <http://oglalalakotanation.info/index.html>

Rosebud Sioux Tribe [Great Plains]

**William Kindle (President)**

Tel: (605) 747-2381

Fax: (605) 747-2243

Recognition Status: Federal

PO Box 430

Rosebud, SD57570-0430

Website: <http://www.rosebudsiouxtribe-nsn.gov>

Sisseton-Wahpeton Oyate of the Lake Traverse Reservation [Great Plains]

**Dave Flute (Chairman)**

Tel: (605) 698-3911

Fax: (605) 698-7907

Recognition Status: Federal

PO Box 509

Agency Village, SD57262-0509

Website: <http://www.swo-nsn.gov>

Standing Rock Sioux Tribe [Great Plains]

**Mike Faith (Chairman)**

Tel: (701) 854-8500

Fax: (701) 854-8595

Recognition Status: Federal

PO Box D

Fort Yates, ND58538-0522

Website: <http://www.standingrock.org>

Yankton Sioux Tribe [Great Plains]

**Robert Flying Hawk (Chairman)**

Tel: (605) 384-3641 or (605) 384-3804

Fax: (605) 384-5687

Recognition Status: Federal

PO Box 1153

Wagner, SD57380-1153

Website:

## Appendix 2

### Tribal Education Directors (TEDs)

As of June 2017

**Cindy Young**

Rosebud Sioux Tribe  
PO Box 40  
Rosebud SD 57570  
605-747-2833X877  
[rstedcy@gwtc.net](mailto:rstedcy@gwtc.net)

**Dana Brave Eagle**

Oglala Sioux Tribe  
PO Box 2070 OR: PO 662, Kyle, SD 57752  
Pine Ridge SD 57770-2070  
605-867-5821 OR: 605-455-2666  
[dayna@oglala.org](mailto:dayna@oglala.org)

**Emma Jean Blue Earth**

Standing Rock Sioux Tribe  
PO Box D  
Fort Yates ND 58538-0522  
701-854-8500 OR: 701-854-8809  
[ejblueearth@standingrock.org](mailto:ejblueearth@standingrock.org)

**Dr. Cherie Farlee**

Cheyenne River Sioux Tribe  
PO Box 590  
Eagle Butte SD 57625-0590  
605-964-4155 OR: 605-365-6629  
[cheriefarlee072047@gmail.com](mailto:cheriefarlee072047@gmail.com)

**Dr. Sherry Johnson**

Sisseton-Wahpeton Oyate  
PO Box 509  
12554 BIA Hwy 711  
Agency Village, SD 57262-0509  
605-698-4400X321  
[SherryJ@swo.nsn.gov](mailto:SherryJ@swo.nsn.gov)

**Kellyn James**

Flandreau Santee Sioux Tribe Educ. Dept.  
PO Box 283  
Flandreau, SD 57028  
605-997-2859X1040  
[kellyn.james@fsst.org](mailto:kellyn.james@fsst.org)

**Dan Shroyer**, Tribal Contact

Lower Brule Sioux Tribe &  
Crow Creek Sioux Tribe  
190 Oyate Circle  
Lower Brule, SD 57548  
605-730-3146  
[shroyerdan@hotmail.com](mailto:shroyerdan@hotmail.com)

Yankton Sioux Tribe

## Appendix 3

Please see the next page.

## FY 20\_\_ Confirmation of Tribal Consultation For School Year Ending June 30, 20\_\_

This form affirms that the requirements for tribal consultation, as set forth under section 8538 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act (ESSA), have occurred between the Local Education Agency (LEA) and Tribal Leader/Representative.

*This is an official document that should be used by districts and tribal leaders to document all consultations. A separate signature is required for each official tribal representative present.*

The Tribal Official(s) agree that timely and meaningful consultation occurred and that the LEA provided the opportunity to provide input and to contribute to the LEA Consolidated Application plan.

Name and Title of Tribal Official Contacted: \_\_\_\_\_

\_\_\_\_\_  
Tribal Official Signature

\_\_\_\_\_  
Date

The Tribal Official(s) agree that timely and meaningful consultation occurred and that the LEA provided the opportunity to provide input and to contribute to the LEA Consolidated Application plan.

Name and Title of Tribal Official Contacted: \_\_\_\_\_

\_\_\_\_\_  
Tribal Official Signature

\_\_\_\_\_  
Date

Check if the Tribal Official(s) and/or tribal agency did not respond to the LEA's repeated good-faith attempts for tribal consultation.

List Tribal Official(s) and/or tribal organizations that did not respond to the LEA's repeated attempts for Indian tribal consultation.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

*LEA Affirmation and Signature*

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

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

- 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 (21<sup>st</sup> Century Community Learning Centers)
- Title V, Part B, Subpart 2 (Rural and Low-Income School Programs)
- Title VI, Part A, Subpart 1 (USED Indian Education Formula Grants to Local Education Agencies)

We agree that timely and meaningful consultation shall continue throughout implementation and assessment of services provided under section 8538.

Name of LEA: \_\_\_\_\_

\_\_\_\_\_  
LEA Signature \_\_\_\_\_  
Date

\_\_\_\_\_  
Tribal Official Signature \_\_\_\_\_  
Date

\_\_\_\_\_  
Tribal Official Signature \_\_\_\_\_  
Date

***This form must be kept at the LEA office, and uploaded to the GMS Consolidated Application Tribal Consultation Tab.***

If such Tribal officials do not provide such affirmation within a reasonable period of time, the affected LEA shall forward documentation that such consultation has taken place to the SD DOE as an upload to the GMS Tribal Consultation Tab.