



U.S. DEPARTMENT OF EDUCATION

EXECUTIVE ORDER 13175 IMPLEMENTATION PLAN

REPORT TO THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

APRIL 26, 2021

U.S DEPARTMENT OF EDUCATION

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I. Introduction

The Department of Education (Department or ED) has a long-standing commitment to working with tribal nations on a government-to-government basis and is committed to enhancing the collaboration process across all programs to address critical issues affecting tribal communities.

This Implementation Plan addresses the requirements of the executive memorandum issued by President Biden on January 26, 2021 that directs all Federal departments and agencies to develop a “detailed plan of actions” to implement the policies and directives of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, issued by President Clinton on November 6, 2000.

Executive Order 13175 of November 6, 2000 (Consultation and Coordination with Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Tribal consultation under this order strengthens the Nation-to-Nation relationship between the United States and Tribal Nations. Three essential goals are set out in the introductory paragraph of EO.13175. They are:

1. To establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.
2. To strengthen the government-to-government relationships with Indian tribes.
3. To reduce the imposition of unfunded mandates on Tribal governments.

On November 4, 2015, the Department of Education released a revised Tribal Consultation Policy. [Tribal Consultation Policy](#). It lays out the Department’s commitment to consult with elected officials of Tribal nations and Tribal officials. It is policy of the Department to consult with Tribes whenever new initiatives or program changes would have a substantial direct effect on Indian education opportunities under those programs. In developing this Implementation Plan, the Department held a Tribal consultation to seek input from Tribal Leaders on how we can improve the Department’s practices to better engage with Indian tribes through meaningful consultation, better implement our Tribal Consultation Policy (TCP), and better fulfill the directives of Executive Order 13175. The Department appreciates the detailed and thoughtful input that it received through both oral and written communications during the consultation on this Plan. These comments have informed this Plan.

It is important to note that, in addition to our commitment to engage in Tribal consultation, the Department also has a strong commitment to ensuring that students who are American Indian or Alaska Native (AI/AN) receive a high-quality education in this country. Approximately 93% of all AI/AN students attend State-funded public schools,

we feel it is crucial that the Department engage with States regarding the education of AI/AN students, and that States engage with Tribes in a collaborative manner on education issues. This action plan is intended to advance the exist of “trilateral partnerships” between the federal, State, and Tribal governments to help improve educational outcomes for AI/AN students.

The Tribal Consultation Official for the Department is Ron Lessard, Acting Executive Director, White House Initiative on American Indian and Alaska Native Education and is responsible for the agency’s implementation of EO 13175.

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II. Summary of Consultation Comments

The Department held a virtual Tribal Consultation on April 19, 2021, and accepted written comments until April 23, 2021. There were 137 participants in attendance. Below are the specific questions we asked, followed by a summary of input we received on each.

Question 1: How do we improve our communication and outreach regarding policy or program changes at the Department of Education that impact Indian Tribes?

Suggestions received:

- Use email to Tribe, followed up by postal mail. Many areas don’t have connectivity.
- Partner with BIE and the BIE-funded schools, hold joint listening sessions with BIE.
- Collaborate with Head Start Region XI as well as BIE.
- Send timely “Dear Tribal Leader” letters and distribute directly to BIE-funded schools. Send quarterly reports by Dear Tribal Leader Letter; consider monthly update calls with Tribal Nations.
- Strengthen relationship and involvement with Tribes before publishing a regulation.
- Use Federal Register notices and ensure widespread electronic communication of them.

- Provide ongoing 2-way communications; ED should share pre-decisional documents and internal reports with Tribes to involve Tribes in decision-making.
- Make sure communications are iterative and culturally appropriate.
- Use a variety of communication vehicles, including social media, Federal Register, Dear Tribal Leader letters. Do not rely on Federal Register for grant application notices, but use a listserv to distribute them.
- Establish a robust and dedicated website for Tribal matters; the Department's current consultation website is not good and is out of date. Establish webpages specific to various grant programs with up-to-date information.
- Hold quarterly info meetings on a regional basis; can be by teleconference.
- Have an established Tribal contact person from each Tribe's TEA or TED, to be the liaison between the Department and Tribe for education matters.
- Communicate with existing consortia of Tribes; these can ensure proper distribution to the correct people.
- Obtain Tribal input in determining new priorities for competitive grants that are intended to help Native students.
- Use surveys to Tribes to get input on Tribal concerns and issues.
- Create a comprehensive long-term Education Plan in collaboration with Tribes, BIE, State Education Agencies, and US Dept. of Agriculture, to help with long-term continuity of policies and practices across administrations.

Question 2: Are there specific Department of Education grant programs or related education issues about which Tribal officials would like more information, or on which they feel they are not getting adequate opportunity to engage in a meaningful way?

Commenters requested additional information and resources regarding the following:

- Waivers of the student assessment requirements
- Eligibility requirements for grant programs, including which grants require Tribes to apply to ED versus those that require Tribes to apply to the State educational agency
- Grants available to BIE-funded schools and Head Start programs
- Resources for accessing school-related grant programs from other agencies
- The rulemaking process and technical assistance in grant writing
- ED's strategic planning processes and how Tribes can provide input.

Question 3: Should the Department of Education have general sessions on an annual basis, or continue to have program specific consultations?

Suggestions received:

- Most commenters wanted general sessions on at least an annual basis, and some requested semi-annual or quarterly general consultations.

- Most commenters also wanted program-specific consultations. In addition to consultation, several commenters requested ongoing communication (i.e., through listening sessions) because the consultations can often result in an overwhelming amount of information to review, consider, and discuss.
- One commenter suggested region-specific consultation, and topic/priority specific consultations as working sessions.
- One commenter suggested that the Department meet with Tribal leaders every four years, at the start of each Presidential term, to discuss existing and future policy development, define priorities and goals, and to share background, data, evidence, and narrative that will help guide decision making.

Question 4: What comments or concerns do you have that will help us improve the Department of Education's process for tribal consultation?

Suggestions received:

- ED should broadly interpret the provisions of the Tribal Consultation policy that give rise to the requirement for consultation so that Tribes are consulted more frequently or on more topics.
- Some commenters suggested including more Tribal officials in the consultations, such as leaders of Tribal education agencies and elected school board members, in addition to actual Tribal leadership. Some commenters suggested that ED consult with, and communicate with, members of BIE-funded school boards and not just Tribal officials, and include public school districts with significant AI/AN populations in consultations/listening sessions.
- Other commenters suggested stricter limits, including limiting consultations to Tribal leaders in accord with the Government-to-government relationship and excluding members of the public from participating on an equal footing with Tribal leaders.
- Update ED's definition of Tribal Consultation to emphasize a multipart dialogue between ED and Tribes on issues, reducing the use of listening sessions instead of consultation, and incorporating the principles of the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior, and informed consent.
- Commenters also suggested that all ED staff be trained on consultation matters; some suggested that ED staff who work on programs that most affect Tribes receive additional training on the important value of Tribal consultation, and that ED leadership must set the tone.
- Commenters also suggested creating strategic plans, including cross-agency strategic plans, that will be sustainable across administrations.
- Commenters suggested that Tribal consultations be structured with the goal of obtaining Tribal consensus and common agreement on issues, that ED use a dispute resolution process when consensus is not reached, and that ED justify in writing any deviation from Tribal consensus with clear reasoning.
- Commenters suggested that ED better communicate how consultation input was or was not incorporated into any decisions and policies, do not just list the comments received. Include next steps in the policy process.

- Improve consultation notices by including additional information, including background, legislative history, and similar information.
- Some commenters suggested holding in-person consultation to the extent possible, but including options for virtual participation; others prefer virtual consultations and request that they continue following the pandemic. Some commenters suggested having deeper discussion of topics by utilizing online breakout rooms; some suggested recording the consultation sessions and posting the recordings online along with meeting materials.
- Commenters suggested holding consultation earlier in the decision-making process and increasing the length of sessions and number of days of sessions.
- Do not send ED junior officials or unqualified persons to consultation; send subject matter experts who can answer questions.
- Establish a procedure through which Tribes can allege violations by ED of its own TCP, and establish a remedy.
- Include in ED budget requests specific funding for consultations. Permit Tribal grantees to use grant funds to attend consultations.

Comments regarding the scope of ED's consultation:

- Revise ED's TCP to include an obligation to consult with Alaska Native Corporations whenever we conduct Tribal consultation.
- Consult with all Alaska Native organizations (as defined in the ESSA amendments to the ESEA) that provide educational services, whenever ED conducts Tribal consultation.
- Include Native Hawaiians in the Tribal consultation process and policy or create a standalone process/policy for Native Hawaiians.

III. Department Action Items

1. Review of Current Tribal Consultation Policy: The Department will establish a Tribal Consultation Working Group (Working Group) to analyze the input received, the response needed, and whether any changes are needed to the Tribal Consultation Policy. The Working Group will consider carefully the many helpful comments regarding the manner in which the Department conducts consultation and in response will incorporate additional action items in our next report. For several of the requests, such as those requesting expansion of the consultation obligation to entities other than Federally-recognized Tribes, the Working Group will collaborate with our Office of General Counsel and other offices in considering any changes. The Working Group will conclude its analysis in time to incorporate suggested actions into the progress report due to OMB within 270 days of the date of the Presidential Memorandum.
2. Interim Plan for Consultation Frequency: Based on the input received on question 3 regarding the type and frequency of consultation, the Department will continue to have program-specific consultations when appropriate. The Working Group will also consider implementing regularly scheduled (i.e., annual or quarterly) consultations/listening sessions that are open in scope.

3. Staff Training and Internal Resources: The Working Group will develop recommendations for the Secretary, based on the input described in this Report, that addresses: training of staff on Tribal consultation matters; the need for dedicated staff in various program offices that will be responsible for outreach to Tribes; the need for any changes to the Department's internal policies on Tribal consultation; the need for additional resources for these purposes, and the impact on the Department's budget. The Working Group will develop the recommendations in time to incorporate suggested actions into the progress report due to OMB within 270 days of the date of the Presidential Memorandum.
4. Trilateral Relationships: The Working Group will develop recommendations for the Secretary on ways for the Department to better engage jointly with States and Tribes on a local, regional, or national basis on ways to improve outcomes for AI/AN students. The Working Group will develop the recommendations in time to incorporate suggested actions into the progress report due to OMB within 270 days of the date of the Presidential Memorandum.
5. Progress Report: In response to the January 26, 2021 Presidential Memorandum on Tribal Consultation, the Secretary of Education will submit to the Director of the OMB, within 270 days after the date of the memorandum, and annually thereafter, a progress report on the status of each action included in this Plan together with any proposed updates to this Plan.