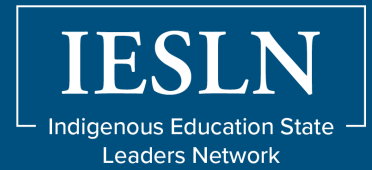


A Scan of State Education Agency Tribal Consultation Supports



August 2025 | Marissa Spang, Nara Nayar, and Kianna Pete

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State education agency (SEA) practices and supports for Tribal consultation vary widely. While the requirements of the 2015 Every Student Succeeds Act (ESSA) require “timely and meaningful” consultation with Tribes, states have interpreted that broadly, with some engaging in formal government-to-government consultation and providing extensive supports to affected districts while others take a less proactive approach.

This document reviews SEA policies and practices related to Tribal consultation required by ESSA. Extant data identified affected districts, Indigenous education advisory committees, and additional state consultation requirements in each of the 36 states coinciding with federally recognized Tribes.¹ The scan also includes information gathered through surveys, interviews, and ongoing discussions with 23 states that are members of the Indigenous Education State Leaders Network (IESLN).

What Is Tribal Consultation?

Tribal consultation is a formal, two-way dialogue between Tribes and government-funded entities to discuss policies and programs that directly affect Tribes. When done well, it is an open exchange of information and dialogue that emphasizes trust, respect, shared responsibility, and mutual understanding.²

Consultation should occur at least annually and involve timely information and ongoing collaborative decision making, as opposed to a single informational meeting.

This scan will address direct Tribal consultation mandated by ESSA, including state and district Tribal consultation.

BIG “C” OR SMALL “C”

Consultation is often differentiated by a “big C” or a “small c.” “Big C” Consultation is a formal two-way, government-to-government dialogue between official representatives of federally recognized Tribes and U.S. government officials to discuss policies and programs that directly affect Tribes. Consultation is a key aspect of the U.S. federal trust responsibility, a legal and fiduciary responsibility to support Tribal self-governance that is grounded in treaty provisions and the U.S. Constitution and affirmed in various court decisions and legislative acts.*

Consultation with a “small c” is not government-to-government between federal and Tribal representatives but rather consultation that may include authorized employees or elected officials of state, Tribal, or local agencies as well as Tribal community members. Discussions between Tribal and district or state representatives and other interactions that involve communication and feedback between Tribal communities and other public entities generally fall under this category. State and district consultation under ESSA falls under this definition, but it is still federally mandated.

* Indigenous Education State Leaders Network & American Institutes for Research. (2023). [Indigenous students count: A landscape analysis of American Indian and Alaska Native student data in U.S. K–12 public schools](#).

Who Must Consult With Tribes?

ESSA requires states and affected local education agencies (districts) to engage in “timely and meaningful” consultation with Tribes. Each district is responsible for contacting Tribal leaders before decisions are made that affect K–12 Indigenous students/families or covered programs (see figure 1).

- [Section 1111\(a\) of ESSA](#) requires SEAs to submit a state education plan that is developed with timely and meaningful consultation with representatives of Tribes located in the state.³
- [Section 8538 of ESSA](#) requires affected districts to consult with Tribes, or Tribal organizations approved by the Tribes in the area served by the district, prior to submitting a plan or application for covered programs.^{4,5,6}

Other sections of ESSA also mandate consultation; see the decision chart “Is Your District Required to Engage in Tribal Consultation Under ESSA?” at the end of this scan. The focus of this scan is on SEA consultation practices and supports for affected districts.

Figure 1. Covered Programs for Section 8538 Consultation

Section 8538 requires SEAs and districts to consult with Tribes on plans or applications for programs under the following:

- Title I, Part A (Improving Basic Programs Operated by State and Local Educational Agencies)
- Title I, Part C (Education of Migratory Children)
- Title I, Part D (Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk)
- Title II, Part A (Supporting Effective Instruction)
- Title III, Part A (English Language Acquisition, Language Enhancement, and Academic Achievement Act)
- 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)

Of these covered programs, Title VI (Indian Education Formula Grants to districts) is the only Title that enforces a Tribal consultation requirement.

Key Findings

States have varying levels of involvement with district Tribal consultation. Of the 23 states surveyed for this report,

- **17 states (74%)** provide technical assistance for districts that are required by Section 8538 to engage in Tribal consultation; **19 states (83%)** provide official guidance;
- **15 states (65%)** notify affected districts of their Tribal consultation obligation annually;
- **4 states (17%)** have access to state-sanctioned repercussions for affected districts that do not conduct timely and meaningful consultation; and
- **5 states (22%)** review Title VI applications before submittal as permitted by Section 6119 of ESSA.

States have differing levels of ongoing consultation with Tribes.

- **18 of the 36 states required to consult (50%)** maintain advisory committees that provide regular input to the SEA on Indigenous education or regularly engage in open communication with educational leadership from Tribes in the state. Advisory committees are a consistent mechanism for SEAs to support sustained Tribal engagement on education issues at the state level.

Responses to survey questions by state are available in Table 1 at the end of this scan.

Accountability for Required Consultation

Policy without meaningful accountability leads to unreliable and inconsistent implementation. SEA accountability for the state consultation required under ESSA is limited to a single checkbox in the ESSA Revised Assurance Template for state consolidated plans.

Listed under “Other Assurances,” it reads in part, “The SEA assures that each such program will be administered in accordance with all applicable consultation requirements, including . . . the State plan consultation requirements in ESEA sections 1111(a)(1)(A) for Title I, Part A.”⁷

ESSA also lacks meaningful accountability measures to enforce Tribal consultation at the district level. While Section 8538(b) contains a requirement for Tribal sign-off on consultation, it is immediately undermined by a clause allowing districts to skip the process (emphasis added):

(b) DOCUMENTATION.—Each affected local educational agency shall maintain in the agency’s records and provide to the State educational agency a written affirmation signed by the appropriate officials of the participating tribes or tribal organizations approved by the tribes that the consultation required by this section has occurred.

*If such officials do not provide such affirmation within a reasonable period of time, the affected local educational agency shall forward documentation that such consultation has taken place to the State educational agency.*⁸

This effectively leaves accountability for district compliance to SEA discretion, resulting in the current diversity of implementation.

In the 2024–25 school year, 665 districts across 34 states nationwide were considered “affected” and required to consult, but there are no data on how many actually did so. Although some districts consult annually even though they are required to do it only when the district plan is revised or updated, others may engage less often than required or on fewer covered programs. And although most states did not monitor or enforce consultation requirements, others encouraged districts to engage in program-specific consultation, including those receiving *any* level of Title VI funding.

Minnesota reports that three districts not deemed “affected districts” have begun consulting with Tribes because they find the process helpful. The Minnesota Tribal Nations Education Committee (the advisory body for the state) also supports consultation for affected districts that are not within 50 miles of a Tribe by holding biannual consultation events in the spring and fall. Affected districts within 50 miles of a Tribe consult with Tribes at least annually.

Consultation can be a particularly heavy burden for Tribal governments, which in some cases are being asked to consult with dozens of districts. **New Mexico** recognizes this and offers districts advice on how to reduce consultation burden on Tribes:⁹ Review, provide consistency, and strengthen MOUs with the purpose of streamlining the consultation and collaboration components.

- Review annual Tribal consultation and collaboration trainings provided by the [state department of education] to districts, schools, and charters to ensure new district staff are informed.
- Create “unique-to-Tribes” onboarding manuals for consistency in Tribal consultation and collaboration.
- Districts/charter schools can prepare a document with a high-level overview of current initiatives, services, and budgets that impact Tribes, students, and families.
- Districts/charter schools can request pertinent information from Tribal archives.

How Are Individual SEAs Holding Districts Accountable for Consultation?

Not every state holds districts accountable for Tribal consultation. Because Title VI funding does not flow through the state, unless the state uses a consolidated Title application for districts that includes an “Affirmation of Consultation” form or reviews all district Title VI applications before they are submitted, the SEA may not know which affected districts are complying and which are not. However, a few states have taken the additional initiative to ensure that district consultation requirements are monitored and upheld at the state agency level.

Washington places a hold on a district’s whole consolidated grant application if consultation has not taken place and the district is unable to demonstrate a good faith effort. There are 39 districts in the state that are required to conduct Tribal consultation under ESSA. Each must submit an Affirmation of Tribal Consultation form that is signed by both the district superintendent and a Tribal designee as part of the consolidated grant application for federal funds. Washington also requires all school board members of affected districts to complete a 3-hour Strengthening Tribal Consultation (STC) training. Documentation of STC certificates of completion is another assurance that needs to be submitted. The Office of the Superintendent for Public Instruction will not release federal ESEA Title funds until these requirements have been met.¹⁰

Arizona will not accept district affirmations without Tribal signatures unless the district can document *three* good faith attempts to set up meetings with applicable Tribes without any response. The state has indicated willingness to withhold ESEA Title funds for districts not in compliance and provides a “Foundations of ESSA Tribal Consultation” online course for district and Tribal representatives to support quality consultation.¹

Colorado and **Oklahoma** have also indicated that they would withhold ESEA Title funding if an affirmation of Tribal consultation form or its equivalent is not completed in a timely manner.

Although affirmation of consultation forms can be useful for enforcement, they are not always used that way. **New Mexico** will not withhold funds if Tribal consultation does not take place, but a missing affirmation of consultation form would be reported in the New Mexico Public Education Department’s annual *Tribal Education Status Report* and *State-Tribal Collaboration Act Annual Report* and could act as a “flag” to help the Department identify needed supports for district–Tribal relationships.

Conclusion

This scan highlights the limitations of existing protocols under ESSA. By mandating state and district Tribal consultation, ESSA “outsources” some of the key accountability of the federal trust responsibility to state and local governments. This is both a positive (states and districts have more capacity to directly address specific Tribes’ local educational concerns) and a negative (states and districts do not, themselves, have a direct trust responsibility to Tribes). Inequitable implementation of consultation mandates across localities may mean inequitable services for Indigenous students across state and district lines.

- **States have varying levels of accountability for district consultation.** Across the 23 surveyed states, 17% reported having state-sanctioned repercussions for affected districts that do not conduct timely and meaningful consultation. States without staff dedicated to Indigenous education may not monitor Tribal consultation at all.¹² **Information about Tribal consultation requirements is not evenly distributed.** Only 15 of the 23 surveyed

states notify affected districts of their Tribal consultation obligation annually; two more states notify districts once. Six states do not currently notify affected districts. In addition, 26% of SEAs surveyed do not provide technical assistance for district-level Tribal consultation.

- **States have differing levels of ongoing consultation with Tribes.** Although all states with federally recognized Tribes presumably engaged in ESSA-required consultation when creating their Title I plans, only 18 states maintain standing Indian Education Advisory Committees that meet regularly to provide input to the SEA on programs and policies.

As emphasis on educational control shifts from the federal toward the state, the mandate for consultation must be actively supported and sustained. Tribal voice in education is a key aspect of effective state and local control policies, as well as an important exercise of Tribal education sovereignty. Regardless of the mechanisms of funding, Tribal consultation must remain a key element of federal education policy.

The following pages include a complete table of survey responses as well as a decision chart designed to help districts understand whether and how they should consult with local Tribes.

Endnotes

¹ Bureau of Indian Affairs, U.S. Department of the Interior. (December 11, 2024). “Notice Indian entities recognized by and eligible to receive services from the United States Bureau of Indian Affairs.” *Federal Register*, 89(944), 944–48.

² Oregon Department of Education. (2024). [A toolkit for Tribal consultation](#). Version 2.0.

³ Every Student Succeeds Act, Pub. L. No. 114-95. (2015). U.S.C. 20 §1111(a), *State Plans*.

⁴ ESSA’s definition of an “affected” district under Section 8538 is one “with an enrollment of American Indian or Alaska Native students that is not less than 50 percent of the total enrollment of the local educational agency” or a district that “received [an Indian education grant] in the previous year . . . that exceeded \$40,000.” Numbers in this scan refer to National Center for Education Statistics (NCES) data from SY 2023–24 and Title VI funding numbers from SY 2022–23.

⁵ U.S. Department of Education, Office of Indian Education. (2016). [Dear colleague letter](#).

⁶ NCES demographic data relies on the “official count” of AI/AN alone K–12 students, which may exclude up to 70% of K–12 Indigenous students. For more information on this and other student counting methods, [read the project’s Indigenous Students Count report and view the interactive map of undercounts](#).

⁷ U.S. Department of Education. (2017). [Revised assurances template: The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act](#).

⁸ ESSA, Pub. L. No. 114-95. (2015). U.S.C. 20 §8538, *Consultation with Indian Tribes and Tribal organizations*.

⁹ New Mexico Public Education Department, Indian Education Division. (2022). [Tribal consultation guide](#).

¹⁰ Washington Office of the Superintendent of Public Instruction. (2025). [Tribal consultation](#).

¹¹ Arizona Department of Education. (2025). [ESSA Tribal consultation](#).

¹² Spang, M., Smoker-Broaddus, M., Nayar, N., & Agopian, E. (2025). [A scan of state education agency staffing in Indigenous education](#). Of the 34 states with affected districts (two states with federally recognized Tribes do not have any districts meeting the consultation criteria of ESSA 8538), only 62% have any staff dedicated to supporting Indigenous education.

State Survey Responses

Participant responses were collected in 2023 through a survey sent to all SEAs of the 36 states with federally recognized Tribes within their borders. Respondents were SEA staff with knowledge of the state’s Indian education policies and procedures.

Twenty-three SEAs responded to the survey. Data from states with multiple responses were reconciled through follow-up. Survey responses were further refined through interviews with all respondents, which were conducted by ISI Project staff, as well as ongoing fact-checking. Data are accurate as of August 2025. Table 1 contains state responses to Tribal consultation questions.

Table 1. SEA Tribal Consultation Policy and Practice

| State | Provides ESSA consultation guidance | Provides technical assistance for affected districts | Notifies affected districts of Tribal consultation obligation | # of federally recognized Tribes ^a | # of affected districts (SY 2022–23) | Maintains State Indian Education Advisory Committee ^b |
|-------|-------------------------------------|--|---|---|--------------------------------------|--|
| AK | No | No | No | 229 | 43 | No |
| AZ | Yes | Yes | Annually | 22 | 55 | Yes |
| CA | Yes | No | Annually | 109 | 42 | Yes |
| CO | Yes | Yes | Annually | 2 | 4 | No |
| CT | No | No | No | 2 | 0 | No |
| ID | No | No | No | 5 | 3 | Yes |
| KS | Yes | Yes | Annually | 4 | 8 | Yes |
| MA | No | No | No | 2 | 1 | Yes |
| MI | Yes | Yes | Annually | 12 | 16 | No ^e |
| MN | Yes | Yes | Annually | 12 | 42 | Yes |
| MT | Yes | Yes | --- | 8 | 23 | Yes |
| NC | Yes | Yes | Annually | 1 | 8 | Yes |
| NV | Yes | Yes | Annually | 28 | 4 | Yes |
| NM | Yes | Yes | Annually | 23 | 39 | Yes |
| NY | Yes | Yes | Annually | 9 | 13 | Yes |
| ND | Yes | Yes | Annually | 5 | 23 | Yes |
| OK | Yes | Yes | Annually | 38 | 205 | Yes |
| OR | Yes | Yes | Annually | 9 | 13 | Yes |

| State | Provides ESSA consultation guidance | Provides technical assistance for affected districts | Notifies affected districts of Tribal consultation obligation | # of federally recognized Tribes ^a | # of affected districts (SY 2022–23) | Maintains State Indian Education Advisory Committee ^b |
|-------|-------------------------------------|--|---|---|--------------------------------------|--|
| SD | Yes | Yes | No ^c | 9 | 20 | Yes |
| UT | Yes | Yes | Annually | 8 | 12 | No |
| WA | Yes | Yes | Annually | 29 ^d | 40 | Yes |
| WI | Yes | Yes | Once | 11 | 15 | No |
| WY | Yes | No | Once | 2 | 5 | Yes ^f |

^a Some Tribes, such as the Navajo Nation, cross multiple state borders. Navajo Nation’s Department of Diné Education consults with the Arizona Department of Education, the New Mexico Public Education Department, and the Utah State Board of Education. There is, to the authors’ knowledge, no comprehensive accounting of the number of Tribes with trust lands within the boundary of each state; the geographic assignments in Table 1 were based on the government mailing address of each Tribal nation and adjusted based on state feedback.

^b Synergy Enterprises, Inc. (2023). *NALRC white paper, subtask 6.5.1*.

^c While the state does not notify affected districts, if an affected district does not submit an affirmation of consultation, they will contact them to request it.

^d Washington is also contiguous with four federally recognized Tribes with current physical and/or usual and accustomed treaty lands that pre-date state borders.

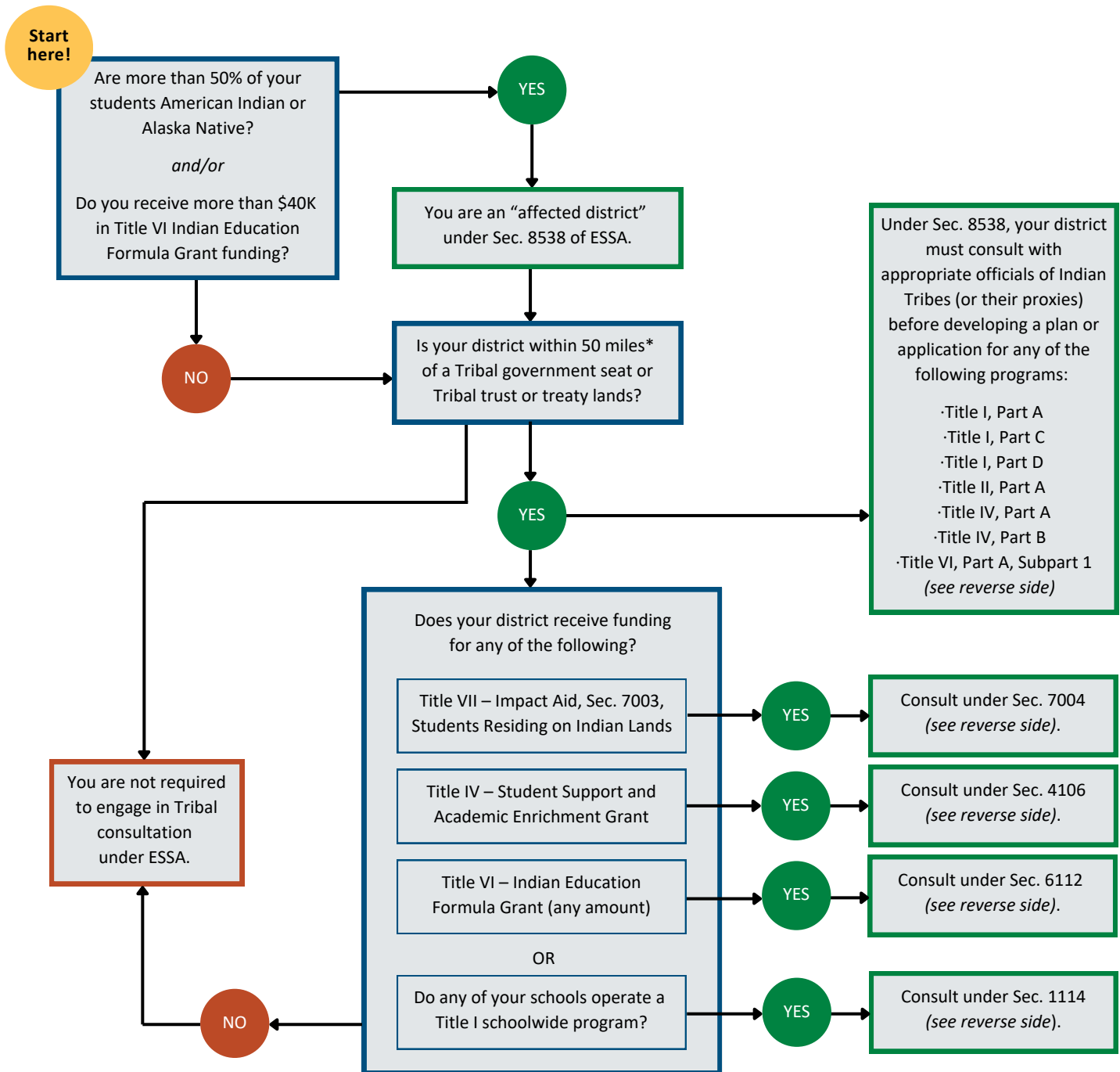
^e The Confederation of Michigan Tribal Education Departments, an independent association representing Tribes in the state, holds quarterly meetings to which they invite SEA representatives; the SEA does not control or convene the process.

^f The Wyoming Superintendent of Public Education established a Native American Education Cabinet in 2024 to advise on Indigenous education issues.

Is Your District Required to Engage in Tribal Consultation Under the Every Student Succeeds Act?

Federal education laws and policies recognize the right of American Indian and Alaska Native Tribes, communities, and family members to have input on public school programs intended to meet Indigenous students' unique educational needs. Many programs require districts to work closely with Indigenous communities.

This flow chart focuses specifically on Tribal consultation and collaboration requirements under the Every Student Succeeds Act (ESSA) of 2015 (20 U.S.C. Chapter 70). It is a simplified at-a-glance resource and does not address state programs or programs funded by the Bureau of Indian Education. Please see published guidance or contact program officers for more information.



* 50 miles is a guideline, not a legal absolute; most ESSA consultation provisions use language like "Tribes in the community" or "Tribes in the area served by the LEA" (see reverse). Even if a district is not within 50 miles of a Tribal government seat or Tribal trust or treaty lands, if it serves Native students, it should still engage in proactive outreach to Indigenous families and communities.

ESSA Program Consultation Requirements in Brief

Title I – Schoolwide Program

ESSA Sec. 1114 | [20 U.S.C. § 6314](#)

... an eligible school operating a schoolwide program shall develop [or amend] a comprehensive plan

(2) ... with the involvement of parents and other members of the community to be served ... including ... to the extent feasible, tribes and tribal organizations present in the community. ...

(5) ... in coordination and integration* with other Federal, State, and local services, resources, and programs.

Title IV – Student Support and Academic Enrichment Grants

ESSA Sec. 4106 (c) | [20 U.S.C. § 7101 et seq.](#)

(1) ... develop its application through consultation with ... Indian tribes or tribal organizations that may be located in the region served by the local educational agency (where applicable) ...

(2) ... engage in continued consultation with the entities described in paragraph (1) in order to improve the local activities... and to coordinate such implementation with other related strategies, programs, and activities being conducted in the community.*



* All statutes requiring consultation also include clauses that clearly state that the programs in question should be *planned and implemented in coordination with other related services, resources, and programs*.

Title VI – Indian Education Formula Grant

ESSA Sec. 6112 | [20 U.S.C. § 7424 et seq.](#)

(b) Each application ... shall ... (7) [describe] the process the local educational agency used to meaningfully collaborate with Indian tribes located in the community² in a timely, active, and ongoing manner in the development of the comprehensive program and the actions taken as a result of such collaboration.

(c) ... include assurances that [the program] ...

(3)(C) was developed by such agency in open consultation with parents of Indian children ..., representatives of Indian tribes on Indian lands located within 50 miles ..., Indian organizations, and, if appropriate, Indian students... including through public hearings [that provided them] a full opportunity to understand the program and to offer recommendations ...

(4) the local educational agency developed the program with the participation and written approval of a committee—

(A) that is composed of, and selected by—(i) parents and family members of Indian children in the ... schools; (ii) representatives of Indian tribes on Indian lands located within 50 miles ... (iii) teachers in the schools; and (iv) if appropriate, Indian students ...

(B) a majority of whose members are parents and family members of Indian children; ...

(5) the local educational agency will coordinate activities under this subchapter with other Federal programs supporting educational and related services* administered by such agency; ...

(8) the local educational agency ... will ensure that the program ... will be operated and evaluated in consultation with, and with the involvement of, parents and family members of the children, and representatives of the area, to be served.

Title VII – Impact Aid

ESSA Sec. 7004 | [20 U.S.C. § 7704](#)

A local educational agency that claims children residing on Indian lands ... shall establish policies and procedures to ensure that ...

(2) parents of such children and Indian tribes are afforded an opportunity to present their views on such programs and activities, including an opportunity to make recommendations on the needs of those children and how the local educational agency may help such children realize the benefits of such programs and activities;

(3) parents and Indian tribes are consulted and involved in planning and developing such programs and activities;

(4) relevant applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and

(5) parents and Indian tribes are afforded an opportunity to present their views to such agency regarding such agency's general educational program.

Consultation With Indian Tribes and Tribal Organizations

ESSA Sec. 8538 | [20 U.S.C. § 7918](#)

(a) To ensure timely and meaningful consultation on issues affecting American Indian and Alaska Native students, an affected local educational agency shall consult with appropriate officials from Indian tribes or tribal organizations ... prior to the ... submission of a required plan or application for a covered program under this Act or for a program under title VI of this Act. Such consultation shall ... [provide] the opportunity for ... appropriate officials ... to meaningfully and substantively contribute to such plan.

(b) Each affected local educational agency shall maintain ... and provide to the State educational agency a written affirmation signed by the appropriate officials ... that the consultation ... has occurred.