

US DEPARTMENT OF EDUCATION -- ESEA Tribal Consultation Requirements for LEAs and SEAs

These two charts show the consultation requirements in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), that apply to local educational agencies (LEAs) and State educational agencies (SEAs), and that specifically involve Indian tribes. Note that the tribal consultation guidelines that apply to the Federal government (e.g., the Department’s Tribal Consultation Policy) do not apply to LEAs and SEAs, although LEAs and SEAs may choose to follow those guidelines if they wish.

I. LEA Requirements			
	<u>Indian Education</u> : Title VI (6114(b)(7), (c)(3)(C))	<u>Impact Aid</u> : Title VII (7004; 34 C.F.R. 222.91-.95)	<u>Title VIII (8538)</u> ¹
<u>Relevant statutory or regulatory language</u>	“Each application... shall include a description of a comprehensive program for meeting the needs of Indian children . . . including the language and cultural needs of the children, that... describes the process the local educational agency used to meaningfully collaborate with Indian tribes located in the community in a timely, active, and ongoing manner in the development of the comprehensive program and the actions taken as a result of such collaboration.”(ESEA 6114(b)(7)). Each application must include an assurance that the program “was developed...in open consultation with . . . representatives of Indian tribes on Indian lands located within	LEAs “must consult with and involve local tribal officials and parents of Indian children in the planning and development of: 1) Its Indian policies and procedures (IPPs), and 2) The LEA’s general educational program and activities.” (222.94(a)).	“... an affected local educational agency shall consult with appropriate officials from Indian tribes or tribal organizations approved by the tribes located in the area served by the local educational agency prior to the affected local educational agency’s submission of a required plan or application for a covered program under this Act or for a program under title VI of this Act.”

¹ For more information about this requirement, see 9/26/16 Dear Colleague Letter containing Frequently Asked Questions, available at <https://www2.ed.gov/about/offices/list/oese/oie/essadearcolleague033017.pdf>.

	50 miles of any school that the agency will serve if such tribes have any children in such school....” (ESEA 6114(c)(3)(C)).		
<u>Who must consult</u>	LEAs applying for Indian Education formula grant (Title VI) funds	LEAs applying for Impact Aid (Title VII) funds	Affected LEAs (50% or more AI/AN students or >\$40k Title VI grant in previous FY
<u>Who must be consulted/collaborated with?</u>	Indian tribes located in the Community.	Local tribal officials and parents of Indian children.	Indian tribes or tribal organizations approved by the tribes located in the area served by the LEA.
<u>What to consult on?</u>	Development of Title VI comprehensive program, including program objectives and budget.	The IPPs ² and the LEA's general educational program and activities	LEA applications developed for Title I, Part A ³ ; Title I, Part C; Title I, Part D; Title II, Part A; Title III, Part A; Title IV, Part A; Title IV, Part B; Title V, Part B, subpart 2; Title VI, Part A, subpart 1.
<u>Process/timing</u>	Meaningful collaboration in a timely, active, and ongoing manner. Must be completed prior to close of EASIE Part II (for FY 17, the tentative date is June 15, 2017).	Must be completed prior to annual application deadline of January 31.	Consultation must be done “in a manner and in such time that provides the opportunity for such appropriate officials from Indian tribes or tribal organizations to meaningfully and substantively contribute to such plan.” Deadline is the State’s submission deadline for applicable local plans.
<u>Documentation</u>	An LEA must include in its Indian Education (EASIE) application a description of the process it used to	An LEA must include in its Impact Aid application : 1) an assurance that the LEA established its IPPs in consultation	Affected LEAs “shall maintain in the agency’s records and provide to the State

² For further information on what must be included in an LEA’s IPPs, see 34 C.F.R. 222.94(b).

³ Relevant Title I local plans include the consolidated local plan under section 8305 or local individual program plans, and an improvement plan if needed under section 1111(d)(1)(B)..

	collaborate and the actions taken as a result of such collaboration.	with and based on information from tribal officials and parents of those children residing on Indian lands who are Indian children, unless a waiver is provided; (2) An assurance that the LEA has provided a written response to the comments, concerns and recommendations received through the IPP consultation process, unless a tribal waiver is obtained; and (3) Either a copy of the policies and procedures, or documentation that the LEA has received a waiver in accordance with the regulations. (222.91(a)(3))	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.”
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II. SEA Requirement under ESEA Title I	
	Title I (1111(a)(1)(A))
Relevant statutory or regulatory language	“For any State desiring to receive a grant under this part, the State educational agency shall file with the Secretary a plan that is... developed by the State educational agency with timely and meaningful consultation with... representatives of Indian tribes located in the State...”
Who must consult	SEAs applying for TI funds
Who must be consulted/collaborated with?	List of stakeholders including “representatives of Indian tribes located in the State”
What to consult/collaborate on?	Title I State plan
Process/timing	Consultation must be timely and meaningful. Must be completed prior to submission of State plan to ED. SEAs shall make the State plan publicly available for a period of not less than 30 days
Documentation	No documentation required
Web Link	https://www2.ed.gov/about/offices/list/oese/oie/essadearcolleague033017.pdf