



ARIZONA DEPARTMENT OF ECONOMIC SECURITY		POLICY NUMBER DES 1-92-03	
CHAPTER 1 Department of Economic Security		ARTICLE 92 Office of Intergovernmental Operations	
SUBJECT 03 Tribal Government Consultation		EFFECTIVE DATE 4/14/20	REV. NO. 2

**DES 1-92-03
Tribal Government Consultation Policy**

I. POLICY STATEMENT

The purpose of this policy is to identify the responsibilities of the Department of Economic Security (DES) Office of Tribal Relations and to provide a process for responding to tribal nation communications.

DES is committed to working with Indian tribes or nations to improve the quality, availability, and accessibility of human services to children, youth, and adults. This policy ensures that DES engages with Arizona's 22 tribal nations in open, continuous, and meaningful consultation before DES implements a change that will likely have a direct impact on the Indian tribes or nations in Arizona.

The following five principles guide DES's interaction with Indian tribes or nations:

- A. Commitment to a government-to-government relationship;
- B. Responsibility to conduct outreach;
- C. Obligation for timely consultation;
- D. Possible coordination with other state agencies for joint tribal consultation; and
- E. Engagement of Arizona's 22 state-recognized Indian tribes or nations.

II. APPLICABILITY

This policy applies to the Office of Tribal Relations staff, including the DES Tribal Relations Manager and Division Tribal Liaisons, and any DES employee who is contacted by any member of an Indian tribe who requests information regarding DES matters.

III. PROCEDURES

This policy is supported by a single departmental procedure.

DES 1-92-03-01

Tribal Government Consultation
Procedures

IV. AUTHORITY

State of Arizona Executive Order 2006-14	Consultation and Cooperation with Arizona Tribes
Presidential Executive Order 13175	Consultation and Coordination with Indian Tribal Governments (November 6, 2000)
Presidential Memorandum	Government-to-Government Relationship with Tribal Governments (April 29, 1994)
Presidential Memorandum	Government-to-Government Relationship with Tribal Governments (September 23, 2004)
Presidential Memorandum	Tribal Consultation (November 5, 2009)
Social Security Act	Titles XIX, XX, XXI
Public Law 67-85	Snyder Act
Public Law 73-30	Wagner-Peyser Act, as amended by the Workforce Innovation and Opportunity Act of 2014
Public Law 88-452	Equal Opportunity Act of 1964
Public Law 89-73 as amended	Older Americans Act of 1965
Public Law 93-638, as amended	Indian Self-Determination and Education Assistance Act
Public Law 93-644, as amended	Native American Programs Act of 1974
Public Law 93-644, as amended	Headstart, Economic Opportunity, and Community Partnership Act of 1974
Public Law 94-437, as amended	Indian Health Care Improvement Act (25 U.S.C. 1601 <i>et seq.</i>)
Public Law 95-608	Indian Child Welfare Act (ICWA) of 1978
Public Law 104-4	Unfunded Mandates Reform Act of 1995

Public Law 104-193	Personal Responsibility and Work Opportunity Reconciliation Act of 1996
Public Law 110-134, as amended	Improving Head Start for School Readiness Act of 2007 (42 U.S.C. 9801 <i>et seq.</i>)
Public Law 110-351	Fostering Connections to Success and Increasing Adoptions Act of 2008 (42 U.S.C. 1305 <i>et seq.</i>)
Public Law 111-3	Children's Health Insurance Program Reauthorization Act of 2009 (February 4, 2009)
Public Law 111-5	American Recovery and Reinvestment Act of 2009 (February 17, 2009)
Public Law 111-148	Patient Protection and Affordable Care Act of 2010 (42 U.S.C. 18001 <i>et seq.</i>) (March 23, 2010)
Public Law 113-128	Workforce Innovation and Opportunity Act of 2014

V. DEFINITIONS

Business Day: Monday through Friday, excluding state holidays listed in A.R.S. § 1-301.

Communication: The exchange of ideas and information, by any means, regarding existing non-disputed information between DES and the representatives of one or more Indian tribes or nations. Communication is not intended to result in a change to law, regulation, or policy, or in a change in the interpretation of law, regulation, or policy.

Consultation: A process used to facilitate communication between DES and each federally recognized Indian tribe or its designee regarding an issue deemed significant by the Indian tribe or DES. The process should be a meaningful and timely dialogue with appropriate officials and representatives of tribal governments. Consultation emphasizes trust, respect, shared responsibility; open exchange of information; full and candid expressions of views; and a commitment to fully consider other views during decision-making. Consultation seeks mutually acceptable resolutions to the greatest extent possible.

Critical Event: A planned or unplanned event that has or may have a substantial impact on one or more Indian tribes or nations that may come from any level within state or federal government.

DES Tribal Relations Manager: The DES contact person for the Indian tribes or nations under the Office of the Director, who assists in building a positive relationship between the state and Indian tribes or nations.

Division: A functional section of DES that reports to an Assistant Director or, in the absence of an Assistant Director, directly to the Director or a Deputy Director. These functional sections include the Division of Aging and Adult Services, the Division of Benefits and Medical Eligibility, the Division of Child Support Services, the Division of Developmental Disabilities, and the Division of Employment and Rehabilitation Services.

Division Tribal Liaison: An individual in each Division who addresses day-to-day issues and contract-related issues or successes with each of the 22 Arizona Indian tribes or nations as appropriate. The DES Tribal Relations Manager is the direct supervisor of a Division Tribal Liaison.

Government-to-Government Relationship: A unique legal and political relationship grounded in the United States (U.S.) Constitution between federally recognized Indian tribes or nations and the federal government. This relationship recognizes the sovereignty of Indian tribes or nations as individual nations within the U.S. and the U.S. government's obligation to protect tribal self-governance, assets, resources, lands, and treaty rights. While federally recognized Indian tribes generally are not subordinate to states, they can have a government-to-government relationship. Indian tribes or nations and the states recognize the benefits of understanding intergovernmental processes and potential avenues for collaboration.

Indian Tribes or Nations: An American Indian or Alaska Native group located in Arizona that is recognized by the federal government or state government and upon which programmatic actions have tribal implications. Indian tribes or nations include:

- A. Federally recognized Indian tribes or nations that have an official government-to-government relationship with the federal government. This relationship was usually established by a federal treaty, statute, court order, federal administrative action, congressional legislation, or executive order. The Bureau of Indian Affairs maintains and regularly publishes a list of federally recognized Indian tribes or nations.
- B. State-recognized Indian tribes or nations that have a special relationship with the state government and whose lands and rights are usually recognized by the state. State-recognized Indian tribes or nations may be federally recognized.

Joint Tribal, State, and Federal Workgroup or Task Force: A group of elected tribal officials or their designees, appointed by federally recognized Indian tribes or nations or by federal or state agencies, to represent their interests while working on a particular policy, practice, issue, or concern.

Native American: People considered indigenous to North America.

Office of Tribal Relations: The official contact point within the Office of the Director for communications with tribal administration, tribal councils, tribal local government, and their staff. Under the direction of the Office of the Director, the Office of Tribal Relations is the official DES liaison to the Governor's Office of Tribal Relations and coordinates the release of DES information to the Governor's Office of Tribal Relations and to Indian tribes or nations.

Sovereignty: The inherent authority of indigenous Indian tribes or nations to govern themselves within U.S. borders. Though sovereign, the federal government recognizes tribal nations as “domestic dependent nations” and grants local sovereignty to tribal nations but does not grant full sovereignty equivalent to that of foreign lands.

Treaty: A legally binding written agreement that affirms the government-to-government relationship between two or more Indian tribes or nations.

Tribal Official: An elected or duly appointed officials of Indian tribes or nations, or their designees.

Tribal Relations Manager: The DES contact person for the Indian tribes or nations under the Office of the Director, who assists in building a positive relationship between the state and Indian tribes or nations.

Tribal Relations Staff: The DES Tribal Relations Manager or a Division Tribal Liaison.

VI. STANDARDS

A. Unique Governmental Relationship

A unique government-to-government relationship grounded in laws, treaties, regulations, and executive orders exists between Indian tribes or nations and federal and state governments. Because DES administers federal programs, this policy must comply with federal regulations.

B. Policy, Agreements, and Rights

This policy does not:

1. Supersede any contract or Intergovernmental Agreement (IGA) between DES and an Indian tribe that provides rights or time frames conflicting with those contained in this policy; or

2. Waive or diminish any tribal government rights, including treaty rights, sovereign immunities, or jurisdiction.

C. Consultation Characteristics

1. The DES Office of Tribal Relations shall ensure that the consultation process is completed for the purpose of resulting in a meaningful outcome for both DES and Indian tribes or nations.
2. Consultation is an effort among the Indian tribes or nations, the Director, the Deputy Directors, the Assistant Directors, the DES Tribal Relations Manager, and the Division Tribal Liaisons to promote the objectives of this policy. Together, these entities shall promote consistent implementation of the policy and work to ensure that the policy plays a meaningful role in addressing issues affecting Indian tribes or nations.
3. Consultation occurs whenever the Director, Deputy Directors, Assistant Directors, and a tribal official, or their designees, engage in oral or written correspondence to discuss an issue. Consultation with a single Indian tribe or nation shall not substitute for consultation with other Indian tribes or nations on issues that may affect more than one Indian tribe or nation.

D. Point of Contact for Tribal Issues

The DES Tribal Relations Manager is responsible for implementing this policy with assistance from Division Tribal Liaisons and is the principal point of contact for tribal issues.

If an Indian tribe identifies a DES issue that significantly impacts Indian tribes or nations, the Indian tribe or nation may notify the DES Tribal Relations Manager.

E. Tribal Consultation Minimum Annual Requirement

The DES Tribal Relations Manager shall ensure that a tribal consultation is scheduled to occur in June and November of each year, to discuss topics that may be of concern to DES and Indian tribes or nations. Representatives of all 22 Indian tribes or nations are invited to attend the tribal consultation.

F. Identification of an Issue Requiring Consultation

1. DES shall conduct consultation before taking actions that may have a direct effect on Indian tribes or nations. Either DES or an Indian tribe may identify an action that may significantly affect:
 - a. One or more Indian tribes or nations;

- b. The relationship between the State of Arizona government and Indian tribes or nations; or
 - c. The distribution of power and responsibilities between the State of Arizona government and Indian tribes or nations.
2. A legislative proposal, new rule adoption, or a policy change that DES or an Indian tribe or nation determines may significantly affect Indian tribes or nations may initiate a consultation.

G. Timely Notice of Consultation

1. DES staff or DES Division staff with a role in developing or implementing policy substantially affecting Indian tribes or nations shall coordinate with the Division Tribal Liaison and the DES Tribal Relations Manager to ensure the required consultation occurs in a timely and effective manner.
2. The Assistant Director or the Assistant Director's designee and the DES Office of Tribal Relations shall make every effort to:
- a. Solicit feedback and recommendations within reason and whenever possible regarding DES issues related to changes in legislation, contracts, intergovernmental agreements, and policies; and
 - b. Allow at least 90 business days for an Indian tribe to respond to a notification of a DES plan before taking further action. More time may be required if DES has a contract or IGA with an Indian tribe that may stipulate different time requirements.
3. The DES Office of Tribal Relations shall publicize the proposed purpose of a consultation statewide to affected Indian tribes or nations, intertribal organizations, and other entities within the state, so that the listed entities may review and comment on the proposed purpose, as appropriate, practicable, and permitted by law, before DES adopts any final policy decisions that significantly affect Indian tribes or nations.

H. Communication Channels

The DES Tribal Relations Manager and Division Tribal Liaisons shall:

1. Establish effective communication channels with:
- a. Tribal officials and their appointed leadership of the tribal departments, including:
 - i. Social Services;

- ii. Workforce, including the Workforce Innovation and Opportunity Act (WIOA) Title I-B Adult, Youth, or Dislocated Worker programs, or the Jobs Program;
 - iii. Native Employment Works;
 - iv. Health;
 - v. Child Support Services;
 - vi. Aging; and
 - vii. Education; and
 - b. Any other necessary tribal program leaders for each Indian tribe or nation.
2. Seek dialogue with Indian tribes or nations regarding:
- a. Any critical events; and
 - b. Potential policy changes or creation of a new policy that may significantly impact the Indian tribes or nations; and
3. Build meaningful relationships with Indian tribes or nations by engaging in open, continuous, and relevant consultation.

I. Responsibilities of the DES Tribal Relations Manager

The DES Tribal Relations Manager shall:

- 1. Consult with Indian tribes or nations about policy issues that may have a direct impact on the Indian tribes or nations, coordinating with DES staff as necessary;
- 2. Consistently work to provide open training sessions to DES staff to increase staff understanding of tribal beliefs and values, and of the staff communication styles required to effectively provide products and services to Indian tribes or nations;
- 3. Establish and cultivate working relationships with key persons in tribal governments; and
- 4. Acknowledge the unique relationship between the state government and Indian tribes or nations of Arizona to ensure consistency with the principles of tribal sovereignty as described by federal law.

J. Ongoing Consultation

To establish and maintain trust with the Indian tribes or nations, the DES Office of Tribal Relations shall:

1. Provide an opportunity for Indian tribes or nations and intertribal organizations to submit written comments electronically or by mail in the format of their choice, during any period of ongoing consultation;
2. Meet regularly with Indian tribes or nations and follow-up as appropriate to the extent that issues of general application are discussed in such meetings; and
3. Participate in the U.S. Department of Health and Human Services (DHHS) Office of Intergovernmental and External Affairs regional consultations, consultation meetings sponsored by other federal agencies as requested, the Indian Health Service, the Inter Tribal Council of Arizona, higher education organizations, and Indian tribes or nations.

K. Joint Workgroups

1. The DES Tribal Relations Manager may establish or participate in workgroups, task forces, or other groups or committees, with Indian tribes or nations and others to address issues affecting Indian tribes or nations.
2. Interaction with joint tribal, state, or federal workgroups shall not replace tribal consultation. This interaction is intended to enhance the consultation process by encouraging subject matter experts to work collaboratively and offer recommendations to DES.

L. Tribal Consultation Reporting

At the end of each state fiscal year, the DES Tribal Relations Manager shall create a report describing actions undertaken as a result of joint DES-tribal consultation. The report will be approved and made available to interested parties as described in *Tribal Government Consultation Procedures* (DES 1-92-03-01).