



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

February 3, 2010

Honorable Peter R. Orszag
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Peter:

In response to President Obama's November 5, 2009, memorandum on tribal consultation, I am pleased to transmit the enclosed U.S. Department of Education "Plan of Actions for Implementing Executive Order 13175: Consultation and Coordination with Indian Tribal Governments."

This Plan of Actions details the steps the Department will follow as it determines the most appropriate process for providing meaningful consultation and strengthening the government-to-government relationship with Indian tribes. The overarching goal of the Department in this regard is to implement a consistent and comprehensive Department-wide consultation policy and process that complies with the letter and spirit of Executive Order 13175, and upon which American Indians and Alaska Natives can rely.

If you have any questions or concerns regarding this plan, please contact the Department's General Counsel, Charles P. Rose, at (202) 401-6000 or Charlie.Rose@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Arne Duncan".

Arne Duncan

Enclosure

U.S. Department of Education
Plan of Actions for Implementing Executive Order 13175:
Consultation and Coordination with Indian Tribal Governments

“I know what it means to feel ignored and forgotten, and what it means to struggle. So you will not be forgotten as long as I’m in this White House. Together, working together, we’re going to make sure that the First Americans, along with all Americans, get the opportunities they deserve.”

-President Barack Obama, addressing the Tribal Nations Conference and Interactive Discussion with Tribal Leaders, White House Meeting, November 5, 2009, Washington, D.C.

I. Background.

On November 5, 2009, President Obama issued a Memorandum on Tribal Consultation (Memorandum) to agency heads regarding consultation with Indian tribes and tribal officials¹ pursuant to Executive Order 13175 (EO 13175). The Memorandum directs agencies to develop a plan of actions (Plan of Actions or Plan) for providing regular and meaningful consultation and strengthening the government-to-government relationship with Indian tribes. The Memorandum requires that each agency submit to the Director of the Office of Management and Budget (OMB) by February 3, 2010, a detailed Plan of Actions the agency will take to implement the policies and directives of EO 13175. It further specifies that this Plan of Actions be developed after consultation by the agency with Indian tribes and tribal officials.

Additionally, the Memorandum directs each agency to 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 its Plan of Actions together with any proposed updates to its Plan.

II. Guiding Principles.

The development of the U.S. Department of Education’s (ED’s) Plan of Actions was guided by the following four principles:

- The U.S. recognizes the right of federally recognized Indian tribes to self-government, and supports tribal sovereignty and self-determination;
- In general, this right forms the basis of every Federal policy or program that has tribal implications;
- Regular and meaningful dialogue is the appropriate vehicle for ensuring that this right is reflected in Federal policies and programs; and
- ED’s role is to ensure that the unique educational and culturally related academic needs of American Indians and Alaska Natives² are met.

¹ Hereinafter, the terms “Indian tribes” and “Tribal officials” are used as they are defined in EO 13175.

² Hereinafter, the term “Native American students” refers to American Indian and Alaska Native students.

III. Narrative.

A. Summary of Required Consultations with Indian Tribes and Tribal Officials Regarding the Plan of Actions.

The President's Memorandum and EO 13175 require ED to develop a Plan of Actions after consultation by the agency with Indian tribes and tribal officials. Pursuant to those requirements, ED participated in the following meetings with tribal officials and tribal consultation sessions sponsored by other Federal agencies since November 5, 2009:

1. December 9, 2009 – Jenelle Leonard, Acting Director of the Office of Indian Education (OIE), participated in a tribal officials consultation meeting sponsored by the U.S. Department of Commerce and U. S. Department of Agriculture in Las Vegas, Nevada.
2. December 14, 2009 – ED's Deputy Secretary, Anthony Miller, and other ED representatives participated in a tribal officials consultation meeting sponsored by the U.S. Department of the Interior (DOI) in Washington, D.C.

B. Summary of ED Participation in Meetings with Tribal Officials on General Education Matters.

In addition to the tribal consultation sessions, ED also participated in the following meetings with tribal officials to discuss the upcoming reauthorization of the Elementary and Secondary Education Act (ESEA) since November 5, 2009:

1. December 7, 2009 – Acting Director Leonard participated in the National Indian Impacted Schools Association conference in Las Vegas, Nevada.
2. December 8, 2009 – Kevin Jennings, Assistant Deputy Secretary of the Office of Safe and Drug-Free Schools, provided opening remarks at the Bureau of Indian Education's Safe Schools Summit at the Department of the Interior in Washington, D.C.
3. December 17, 2009 – Director Leonard participated in the South Dakota Indian Education Conference in Rapid City, South Dakota.

Finally, ED also took the following steps to facilitate further consultation between ED and tribal officials, or otherwise further the development of its Plan of Actions:

1. December 9, 2009 – ED established an internal email address (Tribalconsultation@ed.gov) for tribal officials to submit their input and recommendations on matters relating to Indian education.

2. January 5, 2010 – ED’s General Counsel, Charles P. Rose, along with other ED representatives, participated in a meeting with officials from DOI’s Office of Indian Affairs regarding interagency collaboration, and the development of a tribal officials consultation policy.
3. January 11, 2010 – Secretary Duncan, along with other ED representatives participated in a meeting with Secretary Kenneth Salazar, White House Advisor Kim Teehee, and tribal officials.
4. January 29, 2010 - ED’s General Counsel, Charles P. Rose, along with other ED representatives participated in a meeting with officials from the White House Domestic Policy Council and DOI’s Office of Indian Affairs regarding interagency collaboration.

IV. Plan of Actions for Implementing EO 13175.

Based upon these consultations and meetings, ED has developed the following Plan of Actions to implement the policies and directives of EO 13175.

A. Purpose and Goal of Plan of Actions.

The overarching goal of ED’s Plan of Actions is to institutionalize regular and meaningful consultation with Indian tribes and tribal officials that complies with the letter and spirit of EO 13175, and upon which tribes can rely. It will ensure that tribal officials have a voice in Federal education policy.

The Plan of Actions focuses on the following five areas:

- (1) Development of ED’s consultation policy;
- (2) Scheduling both regular and *ad hoc* consultation meetings with Indian tribes and tribal officials on substantive education issues with tribal implications, and follow-through procedures;
- (3) Intra-agency coordination;
- (4) Inter-agency collaboration; and
- (5) Communication and outreach.

The designated senior official who will implement the Plan of Actions is Charles P. Rose, ED’s General Counsel.

B. Development of Consultation Policy and Follow-Through.

ED is committed to engaging in regular and meaningful consultation and collaboration with Indian tribes and tribal officials regarding the development of ED’s consultation policy (Consultation Policy). To this end, ED will take the following actions:

| ACTION ITEMS | TIMELINE |
|--|-----------------------|
| 1. <u>Review Tribal Comments:</u> Review transcripts from previous tribal official consultation meetings, and incorporate feedback into Consultation Policy. | February – March 2010 |
| 2. <u>Schedule Consultation Meetings:</u> Schedule further consultation meetings with Indian tribes and tribal officials on development of Consultation Policy. | February – April 2010 |
| 3. <u>Review Comments and Revise:</u> Revise the Department’s current Consultation Policy as necessary to incorporate recommendations received from consultations with tribal officials. | May 2010 |
| 4. <u>Identify Best Practices:</u> Work with OMB to review other Federal agency consultation policies, and identify best practices that can be incorporated into Consultation Policy. | February – March 2010 |
| 5. <u>Final Policy:</u> Submit for final ED clearance. Upon approval, publish and disseminate to all tribal officials. | June 2010 |
| 6. <u>Follow Through:</u> Schedule consultation meetings with tribal officials after issuance of the Consultation Policy to review and begin process of addressing education and vocational rehabilitation issues with tribal implications. | August 2010 |

C. Scheduling Consultation Meetings with Indian Tribes and Tribal Officials on Substantive Educational Issues, and Follow-Through.

In addition to conducting national consultation meetings to receive input on the Consultation Policy, ED will conduct two other types of consultation meetings during 2010 that will follow the new consultation policy: (1) National consultation meeting that will address critical education issues including the reauthorization of ESEA; and (2) regional meetings on specific topics.

| ACTION ITEMS | TIMELINE |
|---|-----------------|
| 1. <u>Consultation Meetings Sponsored by ED:</u> Develop and post on ED's Web site annual tribal officials consultation schedule regarding reauthorization of ESEA, and other education matters. | Throughout 2010 |
| 2. <u>Regional Tribal Officials Consultation Meetings:</u> Participate in regional consultation meetings with tribal officials in regions throughout the country as appropriate. Sixty days before these meetings, tribal officials will be informed of broad topic areas or specific issues on the agenda so that they would have time to discuss issues with tribal members, prepare recommendations, and present during regional consultation meetings. | Throughout 2010 |
| 3. <u>Follow-Through:</u> Review recommendations received from consultation meetings. Develop and implement formal process providing public responses to those recommendations. | Throughout 2010 |

D. Intra-agency Coordination.

ED recognizes the need to coordinate the various program offices within the agency that work on matters relating to Indian education. These program offices also require leadership and policy direction. This will be accomplished by completing the following:

| ACTION ITEMS | TIMELINE |
|---|---|
| 1. <u>Intra-agency Working Group:</u> ED's General Counsel will meet quarterly with ED's Indian Education Working Group to review progress on the Plan of Actions, update timelines, discuss critical issues, and determine next steps. | Quarterly meetings – beginning March – April 2010 |
| 2. <u>Fill Leadership Vacancies:</u> By Spring 2010, ED, working in conjunction with the White House plans on having filled the following vacancies: (1) 15 positions on the National Advisory Committee on Indian Education board; (2) the Director for the White House Initiative for Tribal Colleges and Universities; and (3) the Director of OIE. | February – April 2010 |
| 3. <u>Intra-agency Cultural Competency Trainings:</u> Ensure that the various program offices within ED that work on matters relating to Indian Education develop a stronger cultural understanding regarding tribal community. | February – Ongoing |

E. Inter-agency Collaboration.

ED recognizes that coordinated Federal action will allow for greater government-to-government collaboration and support for strategies to improve educational standards and outcomes for Native American students. Accordingly, ED will take the following actions to collaborate with other Federal agencies on matters relating to Indian education:

| ACTION ITEMS | TIMELINE |
|---|-------------------------|
| 1. <u>Inter-agency Initiatives with DOI:</u> Strengthen ED’s existing relationship with DOI (including Bureau of Indian Education (BIE)) officials. Develop specific interagency initiatives that include concrete goals, milestones, and accountability measures. | February – April 2010 |
| 2. <u>Seek Interagency Opportunities:</u> In addition to working with DOI, identify further opportunities for interagency collaboration with other Federal agencies as identified including HHS and the Indian Health Service through appropriations, program legislation, and/or new agency priorities and initiatives. | February – Ongoing |
| 3. <u>Reduce Administrative Burden:</u> Work with other Federal agencies to develop strategies that will reduce administrative burdens on tribal communities. | February 2010 – Ongoing |
| 4. <u>Joint Agency Consultation Meetings:</u> Work with other Federal agencies to find opportunities to coordinate and participate in scheduled joint agency tribal officials consultation meetings, where appropriate. | February 2010 – Ongoing |
| 5. <u>Synchronize Consultation Schedules:</u> Establish regular meetings with other Federal agencies to synchronize consultation schedules. Develop cross-cutting agency consultation schedule, and post to Web sites. | February 2010 – Ongoing |

F. Communication and Outreach.

Finally, ED will facilitate communication with Indian tribes and tribal officials in the following ways:

| ACTION ITEMS | TIMELINE |
|--|--------------------------------|
| <p>1. <u>Comprehensive Program Directory:</u> ED will develop and disseminate comprehensive materials identifying all current ED programs including those VR programs RSA supports serving Native American students, Indian tribes, and Indian tribal organizations, which will include a directory that focuses on available resources and financial assistance and a corresponding list of the authorizing statutes for each program.</p> | <p>February – March 2010</p> |
| <p>2. <u>Contact Information:</u> ED will maintain a current public directory of tribal officials. This contact information will be used by the Secretary to facilitate communication with tribal officials. In addition, RSA will continue to convene monthly teleconferences with its grantees to identify issues/concerns related to service delivery.</p> | <p>February – March 2010</p> |
| <p>3. <u>Use of Technology:</u> Explore use of current, new, and emerging technologies as means of conducting and facilitating timely, meaningful, and productive tribal official pre-meetings and formal consultation sessions.</p> | <p>February 2010 – Ongoing</p> |
| <p>4. <u>Web Site:</u> Develop a tribal consultation webpage on ED’s Web site. Post updates to ED’s Web site on status of Consultation Policy.</p> | <p>February – March 2010</p> |