Tribal Nations Consultation Policy

Introduction
On November 5, 2009, President Barack Obama signed an executive memorandum reaffirming the government-to-government relationship between American Indian tribes and the federal government, directing each executive department and agency to consult with tribal governments prior to taking actions that affect this population. On August 8, 2013, Governor Mark Dayton issued Executive Order 13-10 affirming the government-to-government relationship between the state of Minnesota and the eleven federally recognized Minnesota Tribal nations.

Governor Dayton’s Executive Order asserted that the State of Minnesota shall recognize the unique legal relationship between the State of Minnesota and the Minnesota Tribal nations, respect the fundamental principles that establish and maintain this relationship, and accord Tribal governments the same respect as accorded to other governments.

Policy Statement
As one of the Cabinet-level Executive Branch agencies named in the Executive Order, Minnesota Department of Education (MDE) is required to develop and implement a comprehensive Tribal consultation policy that will provide a framework for how to guide work and interaction with each of the eleven federally recognized Minnesota Tribal nations. Recognizing the unique legal relationship between the State of Minnesota and the Minnesota Tribal nations, MDE requires that the principles outlined in this document are to be considered in all matters that further MDE’s mission of “Leading for educational excellence and equity. Every day for everyone.” This policy applies to all programs and divisions within MDE and shall guide meaningful consultation, coordination, and cooperation between the Minnesota Tribal nations and MDE in all aspects of education policy implementation and development.

Background
The U.S. Constitution, numerous treaties, statutes, federal case law, regulations and executive orders, as well as political, legal, moral, and ethical principles have recognized the right of Tribal nations to self-governance and self-determination. Tribal nations exercise inherent sovereign powers over their members and territory. Exercising the right to self-determination, elected leaders of Minnesota Tribal nations responded to the sunset of the Minnesota state-wide American Indian Education Advisory Committee in 2007 by creating the Tribal Nations Education Committee (TNEC) as a body to guide and inform policy development of MDE. The body, created completely through Tribal initiative, is comprised of appointed representatives from all eleven Minnesota Tribal nations as well as representatives from the Twin Cities metro area, greater Minnesota, and the Minnesota Chippewa Tribe. The TNEC was created through Tribal resolution and is currently supported through resolutions of both the Minnesota Chippewa Tribe-Tribal Executive Committee and the Minnesota Indian Affairs Council. At the request of Minnesota Tribal leaders, MDE has committed to working with the TNEC to reinforce the
government-to-government relationship between Minnesota Tribal nations and MDE and to strengthen, protect and advance the overall educational experience and opportunities for all American Indian students in the State of Minnesota.

Along with guidance from the TNEC, MDE’s commitment and obligation to serving the unique educational and culturally related needs of American Indian students in Minnesota is outlined in the "Indian Education Act of 1988". Minn. Stat. 124D.72 states that “the legislature finds that a more adequate education is needed for American Indian people in the state of Minnesota. The legislature recognizes the unique educational and culturally related academic needs of American Indian people…Therefore, pursuant to the policy of the state to ensure equal educational opportunity to every individual, it is the purpose of sections 124D.71 to 124D.82 to provide for American Indian education programs specially designed to meet these unique educational or culturally related academic needs or both.” The purpose of this policy is to encourage and ensure meaningful involvement of Tribal nations in decision-making through consultation, coordination, and cooperation.

Related Information
Minnesota Department of Education is guided by the following Minnesota Statutes which provide specific language regarding mandated consultation with Minnesota Tribal Nations.

124D.79 Subd. 1. Community involvement. The commissioner must provide for the maximum involvement of the state committees on American Indian education, parents of American Indian children, secondary students eligible to be served, American Indian language and culture education teachers, American Indian teachers, teachers’ aides, representatives of community groups, and persons knowledgeable in the field of American Indian education, in the formulation of policy and procedures relating to the administration of sections 124D.71 to 124D.82. The commissioner must annually hold a field hearing on Indian Education to gather input from American Indian educators, parents and students on the state of American Indian education in Minnesota. Results of the hearing must be made available to all 11 Tribal nations for review and comment.

Subd. 4. Consultation with the Tribal Nations Education Committee.
(a) The commissioner shall seek consultation with the Tribal Nations Education Committee on all issues relating to American Indian education including:
   (1) Administration of the commissioner’s duties under sections 124D.71 to 124D.82 and other programs;
   (2) Administration of other programs for the education of American Indian people, as determined by the commissioner;
   (3) Awarding of scholarships to eligible American Indian students;
   (4) Administration of the commissioner’s duties regarding awarding of American Indian postsecondary preparation grants to school districts; and
   (5) Recommendations of education policy changes for American Indians.
(b) Membership in the Tribal Nations Education Committee is the sole discretion of the committee and nothing in this subdivision gives the commissioner the authority to dictate committee membership.

(HIST: 2013 c 116 art 3 s 26,27)
124D.791 Indian Education Director.  
Subd. 4. Duties; powers.  

(1) serve as the liaison for the department with the Tribal Nations Education Committee, the 11 reservations, the Minnesota Chippewa Tribe, the Minnesota Indian Affairs Council, and the Urban Advisory Council.  

(6) Develop a strategic plan and a long-term framework for American Indian education in conjunction with the Minnesota Indian Affairs Council, that is updated every five years and implemented by the commissioner...  

(7) Keep the American Indian community informed about the work of the department by reporting to the Tribal Nations Education Committee at each committee meeting.  

The Director of the Office of Indian Education will serve as the principal point of contact on behalf of Minnesota Department of Education for all Tribal consultation requests made by either an appointed member of the Tribal Nations Education Committee or an elected or appointed Tribal leader.  

Definitions  
Consultation, Coordination, and Cooperation  
For this policy, consultation is defined as an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinions among parties, which should lead to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making with the ultimate goal of reaching consensus on issues. MDE will consult, as defined in this document and as practicable and permitted by law, with the Tribal Nations Education Committee and with Minnesota Tribal nations before taking action that will significantly affect one or more of the eleven federally recognized Tribal nations in Minnesota.  

It will be MDE policy to conduct timely communication and meaningful consultation as outlined within this policy with the Tribal Nations Education Committee and Tribal nations where elected officials and other authorized representatives have an opportunity to provide meaningful and timely input into legislative proposals, fiscal notes, new rule adoption or other policy changes that may significantly affect Tribal nations, or where one or more Tribal nations has communicated to MDE that such an action will significantly affect them.  

An action is considered to significantly affect a Minnesota Tribal nation if there is a reasonable presumption that the action has or may have substantial direct effects on:  

- Indian people or one or more Minnesota Tribal nations,  
- The amount or duration of MDE program funding or delivery or services for one or more Tribal nations,  
- The relationship between MDE and one or more Tribal nations, or  
- The distribution of power and responsibilities between MDE and Tribal nations.  

Implementation  
Minnesota Department of Education will consult with the Tribal Nations Education Committee annually to identify priority issues or focus areas for consultation for the upcoming year. These priority issues are typically identified by the TNEC in the annual “Tribes Position Paper on Indian
Education." These priority issues may change throughout the year. Because of this, the Director of the Office of Indian Education at MDE will meet with the TNEC at least quarterly, will attend all special TNEC meetings called, and will commit to continually providing updates and feedback on identified annual priorities. During the year, the TNEC and/or one or more Tribal nation(s) may request additional consultation by contacting the Director of the Office of Indian Education at MDE which serves as the principal point of contact.

MDE is unique from many other state agencies in that consultation with the TNEC has been identified and selected by Tribal elected leaders as the preferred method for Tribal consultation on all issues related to American Indian education. This does not however, preclude individual Tribal nations from requesting additional consultation on issues unique to their community.

MDE will inform the TNEC of all possible opportunities to serve on committees, task forces, councils, foundations and boards, and will encourage participation from members of TNEC or their designees to ensure policy or program changes include the voice of American Indian community stakeholders and constituents.

Legal Statement
This policy does not waive or diminish any Tribal governmental rights, including treaty rights, sovereign immunities, or jurisdiction. This policy does not waive or diminish any rights or protections afforded to American Indian persons under federal, state, or Tribal law.

This policy does not waive or diminish MDE's responsibility to uphold laws, rules, directives, or other legal requirements or obligations imposed by state or federal law, or set forth in agreements or compacts between one or more of the Minnesota Tribal nations or any other Tribal nation and the State or its agencies.

This policy is not intended to, and does not create any right to administrative or judicial review, or any other right or benefit or responsibility, substantive or procedural, enforceable against MDE, its officers or employees, or its subdivisions or any other persons. Nothing in this policy prohibits or limits MDE from asserting any rights or pursuing any administrative or judicial action under state or federal law to effectuate the interests of the State of Minnesota or MDE.

Effective Date
This policy is effective on the date of signature by the Commissioner of Education and shall apply to all MDE divisions.

Responsible Senior Officer:

Brenda Cassellius
Commissioner of Education

3-4-14 Date