

December 9, 2021

REGENT POLICY DOCUMENT ON TRIBAL CONSULTATION

REQUESTED ACTION

Adoption of Resolution II.8., approving the new Regent Policy Document on Tribal consultation.

Resolution II.8. That, upon the recommendation of the President of the University of Wisconsin System, the Board of Regents approves a new Regent Policy Document entitled "Tribal Consultation."

SUMMARY

On July 9, 2021, the Board of Regents met with several Tribal Leaders regarding a proposed Regent Policy Document that addresses the University of Wisconsin System's values and desires to establish strong and collaborative relationships with the sovereign American Indian Tribes in Wisconsin. Following subsequent meetings with Tribal Leaders, the proposed policy has been modified to include additional language regarding:

- Definitions for "Tribe," "Tribal liaison", "University of Wisconsin System", and "universities";
- The UW System's commitment to the recruitment, retention, and graduation of Native American students;
- The establishment of initiatives to focus on the recruitment, retention, and success of Native American students, faculty and staff;
- Programs intended to recruit, enroll, and retain students or employees who are members of or affiliated with a sovereign American Indian Tribe in Wisconsin as an example of an activity which should compel UW System universities to consult with American Indian Tribes in Wisconsin;
- Provisions for an annual consultation session;
- Provisions for committees and workgroups of the universities and the UW System to consult with Tribal governments and Tribal college presidents to solicit input when dealing with policies or programs affecting Tribal governments;
- Creation of an annual workplan and related documents; and
- Designation of the university chancellor as the person responsible for determining violations of university rules or policies and implementing corrective actions in consultation with affected Tribes.

The proposed policy reflects the UW System's commitment to these important government-to-government relationships by recognizing and affirming fundamental principles as they pertain to consultation and respect. The proposed policy, if approved, would further delegate authority to the UW System President to develop and engage in relationships with the sovereign American Indian Tribes in Wisconsin. A draft of this proposed policy is included as Attachment A.

Presenter

- Sasanehsaeh Jennings, Ph.D., Native American Student Success Coordinator, UWSA

BACKGROUND

To strengthen relationships with the sovereign American Indian Tribes in Wisconsin, President Thompson has committed to the creation and implementation of a Tribal consultation policy that, in practice, would govern how the UW System and the sovereign American Indian Tribes in Wisconsin engage and partner with one another as well as delineate specific areas where collaborative decision-making between the two parties must occur. The UW System has an obligation to build and strengthen these partnerships due in large part to the dual citizenship Native students hold as Wisconsinites and as members of sovereign American Indian Tribes in Wisconsin.

Since the Spring of 2019, engagement with the Tribal leadership of the American Indian Tribes in Wisconsin has occurred to gather core areas of agreement and to formulate the underpinnings of the draft policy.

ATTACHMENTS

- A) Draft Regent Policy Document, "Tribal Consultation"

Regent Policy Document, "Tribal Consultation" – Proposed Policy**Scope**

This policy applies to all University of Wisconsin System institutions who develop and engage in relationships with sovereign American Indian Tribes in Wisconsin.

Purpose

The purpose of this policy is to develop strong, collaborative relationships with the sovereign American Indian Tribes in Wisconsin. This policy reflects UW System's commitment to these important government-to-government relationships by recognizing and affirming fundamental principles as they pertain to consultation and respect.

Definitions

"Tribe" refers to American Indian Tribal governments in Wisconsin.

"Tribal Liaison" is a staff member that each university has identified to serve as a liaison between the university and Tribes, as prescribed in the section "Oversight, Roles and Responsibilities."

"University of Wisconsin System" ("UW System") is the state system of higher educational institutions of learning as defined in Wis. Stat. [§36.01](#)

"Universities" refers to the thirteen universities and thirteen branch campuses of the University of Wisconsin System.

Policy Statement**1. Guiding Principles**

The Board of Regents of the University of Wisconsin System values and desires to establish strong, collaborative relationships with the sovereign American Indian Tribes in Wisconsin. This policy reflects the UW System's commitment to these important government-to-government relationships by recognizing and affirming fundamental principles as they pertain to consultation and respect.

- a. UW System recognizes and respects the authority of sovereign American Indian Tribes in Wisconsin and is committed to government-to-government relationships with individual sovereign Tribes.
- b. UW System respects and acknowledges the culture, traditions, beliefs, governance processes, Tribal laws, codes, regulations, and protocols of

sovereign American Indian Tribes in Wisconsin. As such, UW System is committed to complying with all applicable Tribal laws, codes, and regulations.

- c. UW System commits to the recruitment, retention, and graduation of Native American students with a focus on the individual students that are enrolled members or descendants of sovereign American Indian Tribes in Wisconsin.
- d. UW System affirms its ongoing commitment to comply with all applicable Federal and State laws, codes, and regulations related to sovereign American Indian Tribes in Wisconsin, including but not limited to, the Native American Graves Protection and Repatriation Act, Section 106 of the National Historic Preservation Act (NHPA), Chapter 44, Wis. Stats., and Chapter 157, Wis. Stats.
- e. UW System commits to meeting expectations for good faith consultation between UW System universities and Tribal leaders and their designated representatives.
- f. The expectations described in this policy are in support of, and not intended to limit the many successful on-going relationships and collaborations between UW System, the universities, and the American Indian Tribes in Wisconsin.
- g. UW System encourages on-going communication with Tribal leadership regarding this consultation policy as well as other issues of mutual interest.

2. Consultation

- a. UW System and its universities should communicate early, regularly, and in good faith with individual Tribal governments regarding proposed research, initiatives, agreements, and policies that may have foreseeable implications for American Indian Tribes in Wisconsin and individuals as members of a Tribe.
- b. UW System acknowledges that laws that protect individual participants in research may not be sufficient to protect the interests of a sovereign Tribe that could be affected by the research.
- c. UW System institutions and Tribes will collaborate in the design of research in which they jointly choose to participate. Each party to the joint research will consult with all other parties regarding confidentiality; ownership of data and results; use of land or other resources; ownership and disposition of any biological materials collected in the course of research; proposed changes in the research; and proposed publications or presentations relating to the research. Each party will strive to communicate in a manner that is reasonably understandable by all parties.
- d. The following are examples of possible activities by universities under the governance of UW System with the potential for direct Tribal implications that should involve consultation under this policy:

1. Any initiative, including programs intended to recruit, enroll, and retain students or employees who are members of or affiliated with an American Indian Tribe in Wisconsin;
2. Any activity, including research, on land under the control or jurisdiction of a sovereign American Indian Tribe in Wisconsin;
3. Any initiative, including educational programs, intended for students or employees who are members of or affiliated with an American Indian Tribe in Wisconsin;
4. Any UW System or university policy or initiative that may foreseeably affect a sovereign American Indian Tribe in Wisconsin in a manner different than the general public;
5. Any research supported or authorized by a university under the governance of the University of Wisconsin System that involves participation by members of a sovereign American Indian Tribe in Wisconsin and that may foreseeably result in research results with implications specific to a Tribe or to individuals as members of a Tribe, and the proposed publication or dissemination of that research;
6. Any research involving human subjects, including genetic testing or testing of blood, tissue or other biological materials in which the individual's membership in or affiliation with an American Indian Tribe is identified, and that is intended to or that may foreseeably result in conclusions or generalizations about a Tribe or individuals as members of a Tribe; and
7. Any research or other activity involving human remains, funerary objects, sacred objects, or objects of cultural patrimony that are subject to the Native American Graves Protection and Repatriation Act.

3. Consultation Process

- a. If the Board, UW System or its universities plan to develop a policy or propose an initiative or practice that affects any American Indian Tribe in Wisconsin, the Board of Regents, UW System, and its universities' Tribal liaison(s) should use their best efforts to share information and solicit input in advance about the proposed policy or initiative with the affected Tribe(s).
- b. The universities may from time to time develop new programs and services or discontinue existing programs or services for Native American students and should involve the institutional designated Tribal liaisons to assist in soliciting input from American Indian Tribes of Wisconsin and then communicating the reasons for those decisions to Tribes.
- c. When consulting with or seeking consent from a sovereign Tribe for purposes of research, land use or other agreements, university institutional review boards and contracting departments must document proof of Tribal

consultation and approval in accordance with the applicable protocol or process of the Tribe(s) involved. The university's Tribal liaison should be advised of the project and will assist in identifying the appropriate leaders and approval protocols of the Tribe(s). The status of these should be summarized at the annual meeting with the consent of the affected Tribe(s).

- d. Consultation with pan-Tribal or non-governmental organizations (e.g., Great Lakes Inter-Tribal Council, Wisconsin Indian Education Association, Great Lakes Indian Fish & Wildlife Commission, College of the Menominee Nation, Lac Courte Oreilles Ojibwe College, etc.) and committees where appropriate/applicable will be in coordination with, and not to the exclusion of, consultation with individual sovereign American Indian Tribes in Wisconsin.

4. Education

- a. UW System and its universities will establish educational programs for university administrators, faculty, staff, and students regarding the requirements and expectations for Tribal consultation and research. These efforts will be reported on at the annual meeting.
- b. UW System and its universities will establish initiatives focused on the recruitment, retention, and success of Native American students, faculty, and staff. These efforts will be reviewed at the annual meeting.

5. Consultation Meeting

The University of Wisconsin System President shall assume the responsibility for scheduling, in consultation with Tribal leadership, an annual consultation session at which the System President will be present. The agenda, date, and location of the consultation session shall be determined jointly by the System President and Tribal Chairpersons and Presidents, as well as the Vice President of the Ho-Chunk Nation. Invitations will be sent to the following individuals (who may designate another individual, if appropriate, to attend):

- Chairperson or President of each of the American Indian Tribes in Wisconsin, as well as the Vice President of the Ho-Chunk Nation;
- Presidents of Tribal colleges;
- The appropriate UW System administrator and/or staff determined by the System President;
- The University Chancellors (who may designate another individual with the appropriate authority to attend).

- a. Tribes are encouraged to communicate with UW System and universities on a regular basis on areas of concern. They are urged to not wait until the annual meeting to bring up concerns.
- b. Any Tribal Chairperson or Tribal President, as well as the Vice President of the Ho-Chunk Nation, may request additional meetings or other consultation with the System President or university Chancellors.

6. Outreach to Tribal Governments

- a. The focus of this consultation policy is with individual Tribal governments and Tribal colleges. During the normal course of business, it is often necessary for the University of Wisconsin to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the universities or to the system. Such committees, councils, workgroups or similar bodies, when dealing with policies or programs affecting Tribal governments, shall inform Tribal Chairs/Presidents and Tribal College Presidents, in writing, of the proposed policy or program in order to solicit Tribal input.

7. Annual Workplan and Other Documents

- a. The UW System shall annually create the following documents or provide links to documents that contain the needed information. The workplan and other documents shall be attached to this policy as appendices and updated annually. These shall include:
 1. Organization Chart: A chart showing the structure of the university system.
 2. Programs: A list of programs and services available to Tribes, including an overview listed by university, with staff listing, contact information, and summary.
 3. Commissions and Workgroups: A list of the committees, councils, workgroups, or similar bodies established by the UW System or its universities with a short description of each and its membership.
 4. Workplan: Includes issues identified at consultation with a plan to address the problems of each issue, including staff member in charge, others identified as subject matter experts, a progress column, and a proposed steps column.
 5. Previous Work Plans: The three previous years' workplans.

8. Resolution of Issues and Enforcement

- a. Any concerns related to Tribal consultation shall be brought to the attention of the appropriate university Tribal liaison. The Tribal liaison will coordinate with appropriate university personnel and use best efforts to work with the designated representative(s) of the Tribe(s) and other affected individuals to reach a mutually acceptable resolution.
- b. If the Tribal liaisons and designated representatives are not able to collaboratively develop a satisfactory and timely resolution, the university Tribal liaison shall arrange for a meeting between the university Chancellor and the designated leadership of the American Indian Tribe in Wisconsin to continue to address the concerns. The university Chancellor will include the UW System Tribal liaison in any such meeting.
- c. Upon learning of any allegations of violations of research protocols, research policies, land use or access agreements with a sovereign American Indian Tribe in Wisconsin, or laws or policies of a Tribe, the involved university personnel will promptly advise their university Tribal liaison and university Chancellor. The university Chancellor or the chancellor's designee will assist in notifying the affected Tribe.
- d. UW System and universities should address allegations of violations of UW System or university rules by university employees or students through personnel policies, codes of conduct, and policies on research compliance and integrity.
- e. The University Chancellor shall determine whether there has been a violation, and if so, formulate and implement appropriate corrective action(s) in consultation with the affected Tribe(s). The policy should also establish timelines for such determinations and the formulation and implementation of corrective action(s).
- f. Activities contemplated under this policy may also be subject to applicable Tribal law, state, and federal law, including codes, ordinances, research, and other protocols or regulations.

Oversight, Roles, and Responsibilities

Universities shall adopt policies or practices consistent with this Regent Policy Document.

The Native American Student Success Coordinator will serve as the tribal liaison for the President of the University of Wisconsin System.

Each university Chancellor will designate a Tribal liaison for the university.

Related Regent Policies and Applicable Laws

- The Native American Graves Protection and Repatriation Act
- Section 106 of the National Historic Preservation Act (NHPA)
- § Chapter 44, Wis. Stats.
- § Chapter 157, Wis. Stats.