



## **Arizona Early Childhood Development and Health Board**

### **Arizona Tribal Government Consultation Policy**

#### **AGENCY OVERVIEW**

The First Things First mission is to serve as one of the critical partners in creating a family-centered, comprehensive, collaborative and high-quality early childhood system that supports the development, health and early education of all Arizona's children birth through age five. The vision of First Things First is that all Arizona's children are ready to succeed in school and in life.

#### **PHILOSOPHY**

First Things First acknowledges the rich cultural diversity of Arizona's twenty-two federally recognized Tribes and recognizes that Indian tribes must have a strong voice in shaping the policies and programming that affect their communities. First Things First believes that improving communication and partnerships with Indian tribes of Arizona is essential to providing all of Arizona's children a solid start so they can grow up ready to succeed in school and life. To this end, First Things First is committed to operating within a government-to-government relationship with federally recognized Indian Tribes of Arizona. In order to achieve this goal, it is essential that First Things First and Arizona Tribes engage in open, continuous, and meaningful consultation on a government-to-government basis. To guide this work the First Things First Tribal Government Consultation Policy has been established.

#### **PURPOSE**

This policy establishes the basic concepts and principles that govern First Things First, and its interactions with Tribal governments within the State of Arizona. The purpose of this policy is to describe the consultative approach to be taken to promote and protect the government-to-government relationship between First Things First and Arizona Tribes. The foundation for this policy is State of Arizona Executive Order 2006-14 Consultation and Cooperation with Arizona Tribes and the Arizona Early Childhood Development and Health Initiative, Title 8, Arizona Revised Statutes.

#### **BACKGROUND**

First Things First honors the government-to-government relationship that exists between Indian Tribes, the Federal government and State governments. First Things First acknowledges that the United States government has a unique relationship with American Indian Tribes as set forth in the Constitution of the United States, treaties, statutes, court decisions, executive orders and memoranda. Dealings between First Things First and the Indian tribes of Arizona shall be consistent with the principles of tribal sovereignty and self-governance as described by federal law.

#### **AUTHORITY**

##### *State*

- ❖ State of Arizona Executive Order 2006-14-Consultation and Cooperation with Arizona Tribes
- ❖ Arizona Early Childhood Development and Health Initiative, Title 8, Arizona Revised Statutes

### *Federal Government*

The special relationship between the Federal Government and American Indian Tribes is affirmed in statutes, legislation and various Presidential Executive Orders including, but not limited to:

- ❖ The Snyder Act, P.L. 67-85
- ❖ Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended
- ❖ Native American Programs Act, P.L. 93-644, as amended
- ❖ Indian Health Care Improvement Act, P.L. 94-437, as amended
- ❖ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193
- ❖ Native American Languages Act of 1990, P.L. 104-477
- ❖ Presidential Executive Memorandum to the Heads of Executive Departments, April 29, 1994
- ❖ Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000
- ❖ Presidential Executive Order on American Indian and Alaska Native Education, April 30, 2004
- ❖ Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004
- ❖ Presidential Executive Order 13592, Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities, December 2, 2011

### **FIRST THINGS FIRST REGIONAL BOUNDARY DECISIONS, DATA COLLECTION, RESEARCH AND ANALYSIS**

There are many functions of First Things First that may impact tribal governments. However First Things First recognizes decisions related to regional boundaries and data collection and reporting requires consistent and timely consultation with Arizona Tribes. The First Things First statute empowers Arizona's Federally Recognized Tribes to decide how they would like to participate in the regional structure of First Things First. Tribes can choose to have their lands designated as a separate region with a separate Regional Partnership Council, or they can choose to stay within a designated region First Things First acknowledges self-governance as expressed by the right of Arizona Tribes to make their own determination whether or not to become their own Region.

Further, evaluation and research have been a critical component of FTF since its inception. FTF is transparent and holds itself and its collaborations with partners accountable for achieving intended outcomes for children. Additionally, we know that high-quality information for decision-making increases the effectiveness of planning and improves the implementation and impact of programs. First Things First recognizes Arizona Tribes as sovereign nations which have the right to regulate research and data on their tribal lands. First Things First honors tribal ownership of data and recognizes communication is necessary with Arizona Tribes to determine what process/protocol is needed to obtain data. First Things First also recognizes the need for communication on the reporting of data. It is our intent to protect the confidentiality of individuals and all data gathered will be reported in the aggregate and held in strictest confidence. Steps will be taken to ensure that primary data collected from the Tribes is not transferred to any other party without formal agreement between the Tribe and First Things First. Moreover, First Things First will provide copies of draft reports, publications and final reports prior to publication and dissemination for review by Tribes. First Things First recognizes that following tribal protocols ensures participation and involvement among the tribal leadership and communities in the work being completed by the Regional Partnership Councils and First Things First. First Things Firsts recognizes Arizona Tribes as owners of their indigenous knowledge, cultural resources and intellectual property.

## **DEFINITIONS**

*Consultation* – Consultation is the meaningful and timely dialogue with appropriate officials and representatives of tribal governments. Consultation emphasizes trust and respect, and requires the 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 extent possible. Consultation occurs when the Chairperson, Vice-Chairperson or member of the First Things First Board, Chief Executive Officer, or his/her designee and a recognized Tribal President, Tribal Governor, Tribal Chairperson, Elected Tribal Leader or their designee formally meet or exchange written correspondence to discuss issues concerning either Government. Consultation shall occur on a regular basis, and may occur on an “as needed” basis as well when the Tribes and First Thing First raise issues that need to be addressed. Either party may initiate consultation when issues are identified.

*Federally Recognized Tribe* - An American Indian Tribe, Alaska Native Tribe, Band, Nation, Pueblo, Village or Community with whom the Federal Government maintains an official government-to-government relationship, established by a federal treaty, statute, executive order, court order or a federal administrative action is considered a federally recognized Tribe. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of Federally Recognized Tribes.

*Government-to-Government Relationship* - The term was first used by Tribes and the Federal Government and is grounded in federal treaties, statutes and executive orders. It is also used to describe the relationship between Tribes and State Governments.

*Joint Tribal/State/Federal Workgroup and/or Task Forces* - A group composed of elected Tribal officials and First Things First officials who will work on a particular policy, practice, issue and/or concern.

*Tribal Officials* - Tribal Officials are considered elected or duly appointed Officials of Federally recognized American Indian Tribes.

*Critical Issues* – Planned or unplanned events/issues that have or may have a substantial impact on Indian Tribe(s), e.g., issues, police, or budgets which may come from any level within First Things First.

*Indian Organizations*- Any regional or national organizations whose board is comprised of Federally recognized Tribes and elected/appointed Tribal leaders.

*Indian Tribe* – an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.”

*Sovereignty* – The ultimate source of political power from which all specific political powers are derived.

*Tribal Government* – A governing body of a American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village or Community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a.

*Tribal Self-Governance* – The governmental actions of Tribes exercising self-government and self-determination.

## **CONSULTATION PROCEDURES AND RESPONSIBILITIES**

The responsibility for the administration of the First Things First Tribal Government Consultation Policy lies with the Executive Office with the coordination of such activities carried out by the Senior Director for Tribal Affairs.

- A. Consultation Parties and Mechanisms- Consultation Occurs when the First Things First Board of Directors, Chief Executive Officer, First Things First Division Heads or their designees, meets and/or exchanges written correspondence with a Tribal President/Chair/Governor/and/or elected/appointed Indian Tribal Leader, or their designee to discuss issues concerning either party.
- B. Consultation Procedures
  1. Specific consultation mechanisms that will be used to consult with an Indian Tribe(s) include but are not limited to mailings, in person meetings, teleconference, electronic/computer based meetings, electronic communication such as email and roundtable discussion.
  2. An Indian Tribe(s) has the ability to initiate consultation, i.e. meet one-on-one with First Things First to consult on issues specific to that Indian Tribe.
  3. First Things First will initiate consultation to solicit official Indian Tribe(s) comments and recommendations on policy affecting Indian Tribe(s). These sessions at roundtables, forums and meetings will provide the opportunity for meaningful dialogue and effective participation by Indian Tribe(s).
  4. Regional/State-wide Inter-Tribal Forums: Other types of meetings and/or conferences occur which may not be considered consultation sessions, but these meetings may provide opportunities to share information, conduct workshops, and provide technical assistance with Indian Tribes.

## **CONSULTATION PARTICIPANTS AND ROLES**

1. Indian Tribes: The government-to-government relationship between the U.S. and Federally recognized Indian Tribes dictates that the principal focus for First Things First consultation is Indian Tribes, individually or collectively.
2. Indian Organizations: At times it is useful that First Things First communicate with Tribal organizations to solicit Indian Tribe(s) advice and recommendations. First Things First does not participate in government-to-government consultations with these entities; rather these organizations represent the interests of Indian Tribes when authorized by those Tribes. These organizations by the nature of their business serve and advocate Indian Tribes issues and concerns that might be adversely affected if these organizations were excluded from the process. First Things First may provide written notice and a solicitation for feedback to Tribal organizations such as the Advisory Council on Indian Health Care, the Inter-Tribal Council of Arizona, Indian Health Services, Native Connections and Urban Indian Health Care Programs/Indian Centers and other state agencies such as the Arizona Departments of Education, Economic Security, Health Services, Arizona Health Care Cost Containment System or the Commission on Indian Affairs. Such communication does not substitute for direct communication with Arizona Tribes nor is a substitute for each Arizona Tribe making its own determination of what is best for the Tribe and its people.
3. Tribal Affairs: is responsible for agency-wide implementation and monitoring of the First Things First Tribal consultation policy. Tribal Affairs serves as the Agency's point of contact in accessing First Things First-wide information. The single point of contact within First Things First for Indian Tribes and other Tribal/Indian organizations, at a level with access to all First Things First Divisions, is the Senior Director for Tribal Affairs.
4. First Things First Divisions: FTF has numerous Operating Divisions under its purview. Each of the these Divisions share in the Agency-wide responsibility to coordinate, communicate and consult with Indian Tribes

on issues that affect these governments. All Operating Divisions shall comply with the First Things First Tribal Consultation Policy. All Divisions are responsible for working with the Senior Director for Tribal Affairs to determine the best course of Tribal consultation to the extent practicable and permitted by law on policies that have Tribal implications.

## **OBJECTIVES**

In order to fully effectuate this Policy, First Things First will:

- Establish communication channels with the elected leader of each Indian Tribe and the appointed leadership for early childhood/education services for each Indian Tribe. First Things First recognizes that a standing goal of working with Indian Tribes is to increase their knowledge and understanding of First Things First programs and policies.
- Seek timely consultation and the participation of Arizona Federally Recognized Tribes with existing, potential and new early childhood development and health policies and actions that would have a significant impact on Arizona Tribes.
- Allow for consultation with Indian Tribes in the development of new policy or a change in policy with substantial Tribal implications.
- Coordinate within the Agency to ensure consistent application of the Tribal Consultation among all First Things First Board, staff members and members of FTF Regional Partnership Councils.
- Ensure that information and data regarding Tribal members are reviewed with the Tribe prior to release or use.
- Provide relevant background information on consultation topics so that Indian Tribes may fully consider information when providing recommendations to First Things First.
- Seek formal written recommendations from Indian Tribes which include pertinent impacts of proposed changes.
- Provide opportunity on an ongoing basis for Indian Tribes to request tribal consultation on a specific topic or issue affecting one or more Indian Tribe(s).
- To ensure that information and data regarding Tribal members are reviewed with the Tribe prior to release or use.

## **CONSULTATION PROCESS**

An effective consultation between First Things First and Indian Tribes requires trust between all parties which is an indispensable element in establishing a good consultative relationship. Before any action is taken that will significantly affect Indian Tribes it is First Things First policy that, to the extent practicable and permitted by law, consultation with Indian Tribes will occur. Such actions refer to policies that:

1. Have tribal implications, and
2. Have substantial direct effects on one or more Indian Tribes, and
3. On the relationship between the First Things First and Indian Tribes

The degree and extent of consultation will depend on the identified critical issue. A critical issue may be identified by First Things and/or an Indian Tribe(s). Upon identification of the issue significantly affecting one or more Indian Tribe(s), First Things First will initiate consultation regarding the event. In order to initiate and conduct consultation, the following serves as a guideline to be utilized by First Things First and Indian Tribes:

- Identify the critical issue: Complexity, implications, time constraints, and issue(s) (including policy, funding, programs, services, functions and activities).

- Identify affected/potentially affected Indian Tribe(s)
- Determine Consultation Mechanism – The most useful and appropriate consultation mechanisms can be determined by First Things First and/or Indian Tribe(s) after considering the issue and Indian Tribe(s) affected/potentially affected. Consultation mechanisms include but are not limited to one or more of the following:
  - a) Mailings
  - b) Teleconference
  - c) Arizona Tribes may meet one-on-one with the Chief Executive Officer, Chief Officers or designated representative to consult on First Things First issues specific to the Tribe, but should recognize that decisions for First Things First can only come from the Board and/or Chief Executive Officer. Conversely, First Things First recognizes decisions for an individual Tribe can only come from its elected leader(s) and/or by action of its Tribal Council.
  - d) Face-to-Face Meetings at the local, regional and state-wide levels between First Things First and Indian Tribes.
  - e) Roundtables
  - f) Annual First Things First Policy Consultation Sessions.
  - g) Other regular or special First Things First or program level consultation sessions.

Communication Methods: The determination of the critical issue and the level of consultation mechanism to be used shall be communicated to affected/potentially affected Indian Tribe(s) using all appropriate methods and with as much advance notice as practicable. These methods include but are not limited to the following:

- a) Correspondence: Written communications shall be issued within 30 calendar days of an identified critical issue. The communication should clearly provide affected/potentially affected Indian Tribe(s) with detail of the critical issue the manner and timeframe in which to provide comment. First Things First frequently uses a correspondence format to notify individual Indian Tribes of consultation activities.
- b) Official Notification: Within 30 calendar days, and upon the determination the consultation mechanism, proper notice of the issue and the consultation mechanism utilized shall be communicated to affected/potentially affected Indian Tribe(s) using all appropriate methods including mailing, e-mail, and a public notice.
- c) Receipt of Tribal Comment(s): First Things First shall develop and use all appropriate methods to communicate clear and explicit instructions on the means and time frames for Indian Tribe(s) to submit comments on the issue, whether in person, by teleconference, and/or in writing.
- d) Reporting of Outcome: First Things First shall report on the outcomes of the consultation within 60 calendar days of final consultation. For ongoing issues identified during the consultation, the First Things First shall provide status reports throughout the year to Indian Tribe(s).

### **ONGOING PARTNERSHIPS**

Trust between and among Arizona Tribes and First Things First is essential in building a good consultative relationship. To establish and maintain trust:

- First Things First will meet with Arizona Tribes on a consistent basis as mutually agreed upon. If follow-up is needed, the First Things First Senior Director for Tribal Affairs or other designated staff will provide the follow-up.

- First Things First is committed to developing cooperative relationships with Arizona Tribes. First Things First will invite Tribal Government Officials and Early Childhood Representatives to training programs when and where appropriate and encourages Tribes to request participation if they so desire.
- First Things First will solicit Tribal Officials and Leaders for participation on Partnership Councils, special committees and work groups that will either directly or indirectly affect Arizona Tribes.
- First Things First will utilize various communication strategies, including electronic communication that supports interactive communication and understanding with Tribal Governments.

**ESTABLISHMENT OF JOINT TRIBAL/FIRST THINGS FIRST WORKGROUPS AND/OR TASKFORCES**

The need to develop or revise a policy may be identified from within First Things First or by an Indian Tribe(s). When new or revised state early childhood development and policy, regulations or legislation affects an Indian Tribe(s), an Indian Tribe(s) or First Things First may recommend the establishment of a workgroup and/or task force. In response, First Things First may establish such a workgroup and/or task force to develop recommendations on various technical, regulatory, or policy issues.

**REPORTING**

By June 30th of each year, First Things First shall review their Tribal Consultation Policy and submit an electronic report to the Governor and the Legislature describing all actions taken as a result of the implementation of the Tribal Consultation Policy. Electronic copies of these annual reports shall be provided to the Arizona Commission of Indian Affairs, which will make them available to Arizona Tribal Leaders.

**SUMMARY**

This policy is reflected in the First Things First Agency Strategic Plan, which confirms the belief that First Things First will develop and maintain a culture of strong collaboration and cooperation both internally and externally with the Board, staff, Regional Council members, Arizona Tribes and community partners. First Things First recognizes this Tribal Government Consultation Policy will be a developing document, changing as circumstances and Tribal input indicate a need for revisions.

Approved by:



Steven W. Lynn, Chair  
 First Things First - the Arizona Early Childhood Development and Health Board

Date  
 12/11/2012

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