

Culture as Safety

Data Governance & Tribal Sovereignty



This brief is developed by [The Indigenous Wellness Research Institute](#)

Drafted in partnership with Priscilla Day, Ph.D. for and developed under the guidance and direction of the National Tribal Advisory Board and the tribal sites: Red Lake Nation and Tlingit & Haida.

Child welfare systems realize that data systems, evaluation efforts, and monitoring the quality of services is essential for effective decision-making to improve child welfare practices. Data allows agencies to tell their own success stories both within their agency and externally to funders, leaders and the community they serve. Quality data analytics support the stability of the child welfare workforce to effectively serve families. The same is true for its effectiveness in tribal child welfare systems to help ensure the provision of culturally competent and responsive services. When working with tribal communities it is important to understand and honor tribal sovereignty and data governance. This brief provides some basic information about tribal governments including the laws, policies and structure of tribes and concludes with tips for respectful and effective tribal engagement.

The Federal Bar Association notes, “The U.S. Supreme Court has acknowledged that tribal governments are the oldest sovereigns on the continent - **Native American sovereignty predates the sovereignty of the United States.** Tribal sovereignty includes the right to govern one’s community, the ability to preserve one’s culture, and the right to control one’s own economy” including the ability to develop “military, social, and economic development” through constitutionally guaranteed powers to determine their own government structure, define who’s a citizen, “make and

enforce laws through their own police force and courts, collect taxes, and regulate property use”. The federal government has a “trust responsibility” to ensure the rights of Indian tribes.¹



Te'Ata Loper, Executive Director of the Oklahoma Indian Child Welfare Association. Chickasaw Citizen/Choctaw Descendent

“True and effective consultation shall result in information exchange, mutual understanding, and informed decision-making on behalf of the Tribal governments involved and the Federal Government.”

¹ <https://www.fedbar.org/blog/understanding-tribal-sovereignty/>

To implement this trust responsibility, governments should engage in meaningful consultation with tribal nations prior to implementing any policy that may impact their tribal citizens. One example is the consultation process between the Department of Health and Human Services and Indian Tribes to establish clear policies to execute the government-to-government relationship between the Federal Government and Indian Tribes. “True and effective consultation shall result in information exchange, mutual understanding, and informed decision-making on behalf of the Tribal governments involved and the Federal Government.” The importance of consultation with Indian Tribes was recognized in Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments) in 2000 and reaffirmed through Presidential Memoranda in 2004, 2009, 2021, and 2022.²

The Federal Register recognizes the “unique legal relationship, and to strengthen the government-to-government relationship, [Executive Order 13175](#) of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. [Executive Order 13175](#) also sets forth fundamental principles and policymaking criteria.”³

For a brief explanation see the video “[What is Tribal Sovereignty?](#)” created by the Native Governance Center, through the Minnesota Humanities Center, to learn about how Tribes exert their sovereignty to govern their citizens and why sovereignty matters. ⁴

Definitions

- **Tribal Sovereignty:** Retained the rights of Indian tribes in the U.S. that are codified in laws and treaties.
- **Data Sovereignty:** Right of tribes to oversee and manage any data related to their citizens. This includes design of data collection, methods used to gather information and collect data, any review and interpretation of data, access to and storage of data, ownership of data, and dissemination.
- **Data Governance:** The exercise of the inherent right of the tribe to oversee its data. Some tribes have a designated Institutional Review Board (IRB), and other tribes utilize their tribal council (elected leaders) to provide official approval to research and data collection. Occasionally tribes may partner with third parties to assist with reviewing and approving research activities. Whether there is an official IRB all research involving tribal citizens should seek approval from tribal partners. After a project concludes, discussions should occur regarding who data should be transferred to at the tribe, along with clarity and confirmation on how data at the university will be destroyed to avoid unauthorized use by researchers in the future
- **Trust Responsibility:** The federal Indian trust responsibility is where the United States government has a legal and ethical obligation to act in the best interest of federally recognized tribes and their land, assets, and resources, stemming from treaties and historical relationships.
- **Tribal Consultation:** An integral element of this government-to-government relationship is Tribal consultation. The implementation of this policy is in recognition of this unique legal and political relationship, as affirmed in statutes and Presidential Orders/Memoranda.

²www.hhs.gov/sites/default/files/iea/tribal/tribalconsultation/hhs-consultation-policy.pdf

³<https://www.federalregister.gov/documents/2022/12/05/2022-26555/uniform-standards-for-tribal-consultation>

⁴ <https://nativegov.org/resources/what-is-tribal-sovereignty/>

⁵ *NCAI and Montana State University, Walk Softly and Listen Carefully: Building Research Relationships with Tribal Communities*, 2012.

Core Values

The National Congress of American Indians Policy Research Center recommends understanding the following core values to work effectively with tribal cultures.

- Indigenous knowledge is valid and valued. Indigenous ways of being are as valid as Western methodologies.
- Culture is a part of data and thus, data is not culturally neutral. Use care in making statements about tribal cultures so as not to perpetuate stereotypes and half-truths.
- Responsible stewardship includes how to interpret and understand data. Practice meaningful consultation with tribal governments, tribal IRBs, tribal elected officials and elders and relevant staff.
- Tribes must exercise sovereignty when conducting evaluation and managing data. This means the co-development of **memorandum of understanding** (MOU's) and **data sharing agreements** (DSA's) that specify purpose, methods, outcomes, data ownership, and dissemination.
- Appropriate use of data should benefit tribal nation citizens and not just researchers.

While both a DSA and MOU facilitate collaboration and data sharing, a DSA is a legally binding document that outlines specific terms for sharing data, with detailed provisions for data management and protection.

In contrast, MOUs are documents that broadly describes the terms of collaboration between parties. Data practices with tribes should rely on a relational, collaborative approach and should clarify the purpose of the data collection, specify what data will be collected and why. Engagement through a data sharing agreement should include review/approval of tools/forms, data analysis and findings, negotiated data management such as who has

access, assurance of confidentiality, agreement about storage, security, and what will happen to the data after the project ends. In addition, it should be clear how results will be shared and if there are any risks and benefits for participation.⁵

Past inappropriate research by non-tribal researchers has created a distrust of the research process among tribal communities. For example, in 2010, Arizona State University researchers were involved in a dispute with the Havasupai Tribe over unauthorized research conducted without the tribe's knowledge or consent, leading to stigma and emotional distress.⁶ The tribe's bio-specimens were also used for unapproved studies on schizophrenia and population migration, highlighting the potential harms tribes face in research and the importance of considering group interests.

Working collaboratively with tribes means understanding the history and current realities of how tribes view data. Making sure that you understand the tribal perspective around data can work to create better partnerships.



Becky Main, Tribal Child Welfare Consultant
Wasco & Warm Springs Tribal Member

Video Explainer: [What is Tribal Sovereignty?](#)

By the Native Governance Center

⁶ Garrison, Nanibaa'A. "Genomic justice for Native Americans: impact of the Havasupai case on genetic research." *Science, Technology, & Human Values* 38, no. 2 (2013): 201-223.

⁷ Day, P., Geary, E., Ingoldsby, E. M., & Ahonen, P. (2021). *Tribal child welfare systems' experiences with prenatal exposure to alcohol and other drugs: A case study.* Children's Bureau,

- Approach relationships with tribes with humility and a willingness to be collaborative. This includes an openness to learn, and a willingness to understand and respect their cultural perspectives and traditions. Educate yourself and others about the tribe's history, culture, and current issues. This involves recognizing and honoring tribal sovereignty and cultural practices. Engage by active listening rather than coming in with set methods and designs. Understand that each tribe is unique, so be sure to learn about the specific tribes you work with, if possible, hire a tribal consultant from that tribe to be your guide.
- Participatory approaches in evaluation when working with tribes includes engaging the community and tribal elders and leaders in the evaluation process to build cultural responsiveness and relevance. These approaches place an emphasis on building community, highlighting strengths, and incorporating traditional methods such as storytelling to gather perspectives, and helping empower the community to have ownership over the evaluation. Prioritize tribal involvement, contributions, and permission in all study activities to develop shared goals. Respect cultural local knowledge and be willing to incorporate these into your research methodology.
- Emphasize sensitivity to culture and traditional values as well as consider definitions and expectations of behavior within each tribal community.
- Ensure that the tribal community maintains “ownership” of the data. Report findings back to tribal representatives *throughout the process*, ensure that the tribe can review and provide feedback on reporting of results, and ensure tribal authorship in all reports of findings. The idea of ownership also extends to involving tribal members in the planning stages of the evaluation, including the development of evaluation questions, design, and selection of measures. This ensures that the evaluation is culturally relevant and addresses the community's priorities.
- Be flexible about the timing of all study activities and remain open to changes in circumstances, time frames, and tribal communities' preferences. Plan for sustainability and make sure the tribal community benefits rather than just getting something from them.

Strategies for Implementing Reciprocity:

Reciprocity helps in building long-term relationships rather than short-term transactions which is crucial for sustained collaboration and support. This approach not only enhances the effectiveness of the collaboration but also ensures that the needs and values of both parties are respected and addressed. To build trust as well as authentic and effective collaborative relationships, the study team and tribal communities need to get to know one another, which requires time and effort. By incorporating the elements below into the relationship between states and tribal communities, it becomes possible to create a more balanced, respectful, and mutually beneficial partnership:

- **Mutual Respect and Trust:** Reciprocity fosters mutual respect and trust, which are foundational for any successful partnership. When both parties feel they are being treated fairly and their needs are being considered, it creates a positive environment for collaboration.
- **Equitable Exchange:** It ensures that the benefits and responsibilities are shared equitably. This means that states should not only ask for what they need but also offer something in return that addresses the needs and priorities of the tribal community.
- **Ongoing Communication:** Regular meetings allow for ongoing communication and collaboration, which can help address any concerns or issues as they arise. It also provides an opportunity to discuss and implement reciprocal arrangements.

- **Formalized Structures:** Establishing formalized teams, work groups, coalitions, or taskforces can provide a structured platform for regular engagement. This ensures that interactions are consistent and that both parties have a clear understanding of their roles and responsibilities.
- **Equitable Compensation:** Ensure that any data or resources provided by the tribal community are compensated fairly. This could be in the form of financial compensation, resources, or other forms of support.
- **Recognition and Acknowledgment:** Recognize and acknowledge the contributions of the tribal community in any publications, reports, or presentations. This can be done through co-authorship, acknowledgments, or other forms of recognition.

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Data governance frameworks support the protection of tribal sovereignty in child welfare decision-making by ensuring that tribes have control over their data, by integrating tribal cultural values into data practices, facilitating data sharing and collaboration, and empowering tribal communities to manage their own data. These frameworks are essential for promoting culturally appropriate and effective child welfare practices that respect and uphold tribal sovereignty.

An example of this is [The National Committee on Vital and Health Statistics \(NCVHS\) Stewardship Framework](#).⁸ It provides a more concrete way to think about health data stewardship by identifying the key elements that communities must consider to achieve effective stewardship. These elements include ensuring openness, transparency, and choice in data collection; specifying the purpose of data collection; engaging communities in decision-making; maintaining data integrity and security; establishing accountability for data governance; protecting de-identified data; managing risks associated with enhanced

data sets; and preventing stigma and discrimination through responsible data use. NCVHS also recognizes that while stewardship values are universal, the way that the elements are implemented will vary because the communities vary.

Data governance and tribal sovereignty in the child welfare system are essential for ensuring that Tribal children and families receive culturally appropriate and effective care. By exercising their sovereignty and governing their data, tribes work to establish an environment of culture as safety through the creation of child welfare systems that reflect their values, protect their children, and promote community well-being.

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⁸ *A Stewardship Framework for the Use of Community Health Data Microsoft Word - 2012 Ltr to Sec'y-Stwrdsip Frmwrk 4 Comm Hlth Data Nov. 15 Privacylt-rmsg.docx*

Resources

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- Data Governance Strategies for States and Tribal Nations <https://www.networkforphl.org/wp-content/uploads/2020/09/Data-Governance-Strategies-for-States-and-Tribal-Nations-.pdf>