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January 10, 2023

Tribal-State Collaboration Act Report

This report is submitted pursuant to 5 M.R.S. 11055(2), which requires the Department of Education (DOE) to file biennial reports with this Committee describing our implementation of the Tribal-State Implementation Act.

Background:

In 2022, representatives of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation, and the Governor's Office negotiated the terms of legislation intended to expand economic opportunities for and improve the welfare of the Wabanaki Nations and their citizens, and to make structural changes in certain state agency decision-making to promote government-to-government dialogue with the Wabanaki Nations. That legislation, enacted as Public Law 2021, c. 681, contains three parts. First, it amends Maine's tax laws both to provide financial benefits to Tribal citizens residing on Tribal lands, and to encourage economic development on Tribal lands. Second, it provides each of the four Wabanaki Nations located in Maine the exclusive opportunity to conduct mobile sports wagering operations within the state. Third, it establishes in law a Tribal-State collaboration process designed to promote meaningful communication on issues of particular significance to the Tribes and their citizens.

The Tribal-State Collaboration Act:

The Tribal-State Collaboration Act, 5 M.R.S. §§11051 *et seq.*, requires 15 agencies identified in the statute to engage in a Tribal collaboration process regarding contemplated programs, rules, or services that substantially and uniquely affect Maine's four federally recognized Tribes or their citizens. It is intended to be a user-friendly process free from unnecessary bureaucracy that will be implemented within existing resources.

Title 5 M.R.S. §§11053(1) requires each agency covered by the statute to adopt a collaboration policy. The Department of Education adopted its collaboration policy, which is appended to this report, on January 10, 2023. The Department's Tribal liaison, as required by 5 M.R.S. §§11053(3), is Mary Herman, who can be reached at 207-485-5743 or mary.herman@maine.gov. On December 6, 2022, the Governor's Office provided training on how to implement the statute in a manner that promotes effective communication and positive government-to-government relations with the Tribes. The Governor's Office has also requested that the Maine Indian Tribal State Commission (MITSC) help to facilitate training of state

agency Tribal liaisons on issues of cultural competency, and MITSC has agreed to do so. We look forward to that training as soon as it can be arranged in 2023.

The Tribal-State Collaboration Act became law on August 8, 2022. The Department of Education has not yet had occasion to engage in Tribal collaboration under the statute but will be vigilant in looking for opportunities to do so in the coming biennium. We have no recommendations for changes to the statute at this time.

As part of the Department of Education's support for the field in interdisciplinary education, the Maine Online Opportunities for Sustained Education (MOOSE) project is developing project-based learning modules specifically centered on Wabanaki History & Culture for PreK-12 students. This work is being led by a Penobscot educator who is a certified Maine Teacher and is contracted as a Distinguished Educator from her home school district for the 2022-2023 school year. The team of Instructional Designers on this project represent a group of Maine educators who demonstrated lived and/or professional experience around equity & inclusion and a clear dedication to learning from Tribal Citizens.

The lived experience and traditional wisdom necessary to create meaningful, authentic modules is being provided by an array of Citizens from all Maine Tribes representing the Houlton Band of Maliseets, the Mi'kmaq Nation, the Passamaquoddy Tribe at Indian Township, the Passamaquoddy Tribe at Pleasant Point, and the Penobscot Nation. Tribal Citizens have signed on to either be intensive collaborators working in community with the educators, or to come in as advisors on an ad hoc basis. Additionally, any member of the Wabanaki Confederacy (regardless of their involvement with the project) can attend open monthly meetings that provide a forum for keeping the Tribes informed and soliciting their input as our modules are developed.

The DOE team leader prioritized meeting with Tribal Chiefs at the start of the process to discuss the MOOSE project and how to best involve members of their respective Tribes. We have also prioritized ongoing communication with the Tribes, with a goal of creating rich relationships built on trust and avenues for questions and concerns being surfaced early and often throughout the process. Team development has similarly proceeded at the 'speed of trust', both with the training and development of the Instructional Designers and with the gathering of the Tribal Citizens. This deliberate process has helped to ensure truly meaningful connections and the best opportunity for drafting modules that are rich and deep with history and culture as well as strong in quality free online education and overall pedagogy.

Collaboration Policy:

A core requirement of the Act is that each participating agency set forth the processes it will follow in order to carry out the provisions of the Act. The following policy governs the Department of Education's implementation of the Tribal-State Collaboration Act 5 M.R.S. §§11051. The purpose of the Act is to promote respectful, government-to-government dialogue, and improve communication between state agencies and the Houlton Band of Maliseet Indians, the Mi'kmaq Nation, the Passamaquoddy Tribe, and the Penobscot Nation. The Act is intended to be implemented within existing resources, and therefore should be administered in a way that is practical, user-friendly, and efficient. The goal is to ensure the Tribes are afforded a reasonable

opportunity to be heard, in addition to the public process, during the development of programs, rules and services that substantially and uniquely affect them or their citizens, while minimizing administrative burdens for both state and tribal staff. This policy incorporates Tribal-State Collaboration Agency Guidance of November 29, 2022, which is attached and incorporated herein.

I. Collaboration Required

Staff shall engage in tribal collaboration regarding a contemplated program, rule or service that substantially and uniquely affects an Indian Tribe or its members. In determining whether a contemplated action triggers the need for collaboration, staff should consider whether it will have a meaningful and significant impact on an Indian Tribe or its members that is distinct from the general population. This will always be a subjective determination and should be informed by the Act's purpose of improving communication between the State and the Tribes. When in doubt, staff should consider whether some initial, informal communication with potentially affected Tribes would assist in making this determination. If the standard for collaboration is not met, but some communication with one or more Tribes would nonetheless be beneficial, staff should ensure that occurs. Decisions about whether and how to engage in collaboration should not be formalistic but should be driven by common sense and good judgement. The overarching goal is to increase and improve communication with the Tribes, rather than technical compliance with the Act for its own sake.

A. The Process of Collaboration

The Act requires the agency to provide the Tribes with written notice of the contemplated action, allow the Tribes a reasonable opportunity to provide information, advice and opinions on the contemplated action, and consider the comments it receives.

1. **Notice (sub-§ 11053(1)(D)(1)).** Once the determination has been made that collaboration is appropriate, the tribal liaison or project manager should email the point of contact that each of the four Tribes has provided for the purpose of collaboration. This email should explain that the agency is initiating the collaboration process, provide a description of the proposed action, identify the date within which comments are requested, and offer to answer any questions.
2. **Opportunity to Comment (sub-§ 11053(1)(D)(2)).** There is no statutorily required comment period for tribal collaboration. The schedule should take into account the nature of the proposed action, its relative complexity, the magnitude of its impact, the relative urgency to act, and other factors. The schedule may be extended or truncated as appropriate, depending on the level of interest the Tribes may express. Comments may be submitted in writing or

provided orally in a meeting or via teleconference. The comment period and the manner in which information is exchanged should be flexible to accommodate the needs of tribal and state agency staff, and to promote efficiency and good communication. The agency must use reasonable efforts to complete the process before taking final action.

3. **Consideration of Comments (sub-§ 11053(1)(D)(3)).** The agency must consider in good faith the information, advice, and opinions it receives from the Tribes in the course of collaboration. The agency is not required to provide a written response to submissions it receives from the Tribes, but it may choose to provide feedback, including informally, in the interests of respectful dialogue. The agency should include any written materials received or generated in the collaboration process in the record of its decision-making. To the extent the Tribes provide comments orally, the agency should prepare a memorandum summarizing those comments for its record.

4. **Collaboration in Rulemaking (sub-§§ 11053(1)(D) & (D)(4)).** In the context of rulemaking, agencies must engage in collaboration consistent with applicable provisions of the Administrative Procedures Act, 5 M.R.S. §§ 8051 *et seq.* (APA), as well as the Tribal-State Collaboration Act, 5 M.R.S. §§ 11051 *et seq.* The Act directs the agency to use reasonable efforts to complete collaboration before formal publication of a proposed rule pursuant to 5 M.R.S. § 8053(5). Completing collaboration before publication of a proposed rule will also avoid procedural confusion that could arise from collaboration occurring at the same time as the public notice and comment process under the APA. If it is necessary to engage in collaboration following publication of the proposed rule, the agency should work closely with the Attorney General's Office to ensure compliance with both statutes.

In the context of emergency rulemaking pursuant to 5 M.R.S. § 8054, the agency must provide notice and engage in collaboration to the extent practicable.

Informing Agency Staff (sub-§ 11053(1)(E)). The tribal liaison shall promote awareness of the Tribal-State Collaboration Act and this policy within the agency by conspicuously posting this policy on the agency's website and ensuring appropriate references are made to the policy in agency employment manuals and training materials.

Tribal Liaison Contact: Mary Herman, Director of Special Projects

Training Received:

On December 6, 2022, the Governor's Office provided implementation of the statute training to the Department Tribal Liaisons. Ms. Herman attended the video briefing and briefed the senior

leadership of DOE that the next steps of implementation include 1.) Posting the collaboration policy and a PDF of the U.S. Department of Health and Human Services, Center for Disease Control, Indian Health Service, and Centers for Medicare & Medicaid Services Culture Card, A guide to Build Cultural Awareness – American Indian and Alaska Native on DOE’s website, 2.) Post the policy in a visible area in DOE’s offices, and 3.) Raise staff awareness about the policy by briefing all DOE staff. These three steps were implemented by DOE in January 2023.

Actions:

Maine Online Learning Opportunities for Sustained Education (MOOSE) - MOOSE offers a learning library of age-appropriate, project-based learning experiences. Modules are self-paced and offer variety and choice across grades, subjects, topics, and interests. MOOSE modules are aligned with the Maine Learning Results and Guiding Principles, are available for access anytime, anywhere, for no cost to educators, parents, or students. MOOSE is made possible by a collaboration of the DOE with curriculum coordinators, Maine educational community organizations, museums, learning centers, and our own Maine educators. The Maine Department of Education embraces a strategy of continuous improvement. To this end, we are working to continue development of and improvements to the MOOSE modules. For example, modules created in the first year of MOOSE are currently under revision. New modules are also under development. The DOE Interdisciplinary Instruction Team is currently mid-way through development of Wabanaki History and Culture within the MOOSE Modules. These exercises are under the stewardship of Penobscot Nation member Brianne Lolar and will be made available at no cost to educators throughout the state.

Maine Learning Results (MLR) – Social Studies Updates – As part of the Maine DOE’s commitment to supporting schools in the delivery of effective K-12 instructional programs, the State of Maine reviews the System of Learning Results on an on-going basis. Each of the eight content areas is reviewed every five years; the Social Studies state standards review was last completed in 2019. During the revision process, effort was given to strengthen the teaching of Maine Native American history. This review process included a public comment period, listening sessions in northern, central, and southern regions of Maine, and a public hearing with the Education and Cultural Affairs Committee. The social studies standards include four content areas: Civics & Government, Personal Finance & Economics, Geography, and History. Each of these content areas contains expectations for each separate grade, K-5, and grade bands for grades 6-8 and 9-Diploma. The standards revision process included a Tribal consultant who worked with each writing group to ensure opportunities to emphasize authentic teaching about Maine Native Americans were embedded in the revised standards. The Maine Native American performance expectations have been broken out into a separate category of performance expectation in order to highlight opportunities to teach about them within the various content areas and across the grade spans. To support educators in implementing the revised standards, all-day workshops were held related to the teaching of Maine Native American history.

The resources provided on the Maine DOE Social Studies website are meant to be a representative, not comprehensive listing of available materials and guides that have been reviewed by cultural experts designated by Wabanaki tribal leaders and practicing Maine educators.

Diversity, Equity, and Inclusion Work – The Maine DOE has committed to support academic and non-academic programming that is culturally responsive and co-constructed with community members. We encourage curriculum leaders to review curricula and materials to ensure the resources are well-rounded, decolonized, and represent all experiences so that students can be engaged with rigorous curricula.

Within Wabanaki studies, Diversity, equity, and inclusion work (DEI) focuses on equity and justice and the Native American Truth and Reconciliation Commission. The Maine DOE DEI Committee discussed the Native American Truth and Reconciliation Commission, and Maine DOE's Director of DEI delivered a workshop on Truth and Reconciliation on October 12, 2022. The hybrid in-person and Zoom workshop provided participants with an overview of social change, racial justice, and equity and inclusion as related to the experience of Maine Native Americans. Educational resources related to Tribal lands in Maine and the Wabanaki Alliance were shared to raise awareness of Wabanaki history and the national truth-seeking process that worked to uncover the truth about the off-reservation Indian boarding schools that confined Native American children away from their families of origin. Diversity, equity and inclusion work has been embedded in the MOOSE modules since the platform's creation in 2020.

Partnerships and Resources - The Maine Department of Education partners with many organizations throughout Maine to offer resources that supplement the traditional curriculum. These resources are developed with Tribal members and Maine teachers working collaboratively to develop age and culturally appropriate curriculum resources to Maine. Many of these materials meet the requirements of the Maine Native American Studies Law that was enacted in 2001. Other organizations providing educator resources include:

- The Abbe Museum
- Maine Memory Network
- Hudson Museum
- Penobscot nation Curriculum
- Maliseet-Passamaquoddy Language Resources
- The Maine Folklife Center

Recommendations for Changes to the Act:

The Maine Department of Education has no recommendations for changes to the Tribal-State Collaboration act as of the implementation of this report in 2022.

Respectfully submitted,

Mary Herman, Director of Special Projects
Maine Department of Education
207-485-5743
mary.herman@maine.gov