



**Conducting investigations in Indian Countryⁱ:
Acknowledging historical trauma and cultural implications
Insight Paper***

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Tribal colleges and universities (also known as TCUs), once overlooked, are growing in popularity as Native American (and some non-Native) students are increasingly recognizing the valuable opportunities provided by their local TCUs, including affordability. With increased student enrollment at these tribal institutions, the need and demand for culturally sensitive Title IX and Title VII investigations is growing as well.

Currently, there are 37 TCUs nationwide with an estimated enrollment of 28,000 full and part-time students combined.ⁱⁱ TCUs are tribally-run and controlled, yet they rely heavily upon federal funding and therefore must adhere to the requirements of Title IX and Title VII. Although federally funded, it is important to note that TCUs are also considered unique in that they are considered an important example of tribal sovereignty and offer educational experiences grounded in cultural, traditional, and holistic values and ways of life.

Many TCUs are located on remote tribal reservations and serve tribal communities grappling with serious social, economic, and political challenges. An astonishingly high number of tribal members have experienced some form of sexual violence. Statistics from the U.S. Government revealed that American Indian and Alaska Native women suffer a higher rate of sexual violence than any other group of people in the United States.ⁱⁱⁱ In addition, tribal communities are some of the poorest communities in the United States with some communities reporting an 85% unemployment rate.^{iv}

Despite these bleak statistics, tribal communities are resilient and have continued to persevere while preserving the values, customs, and traditions that make-up their cultural identities and way of life.

Considering this complicated background and history, conducting Title IX investigations within Indian Country can present its own set of unique challenges. It is important to be mindful of the various implications that may arise throughout the investigative process such as the following:

- 1) High rate of sexual violence among Native American women – According to the DOJ, more than four in five American Indian and Alaska Native adults have experienced some form of violence in their lifetime and an alarming 56.1% of Native American women have experienced sexual violence in their lifetime.^v Given these statistics, there is a fair to even high probability that some of the parties and/or witnesses in an investigation have already experienced sexual violence, thus increasing the need for a trauma informed resolution process and access to counseling/advocacy resources and services.
- 2) Reporting potential policy violations and participation in investigation process – Although a separate and distinct process, the historical barriers faced by tribal communities in reporting to law enforcement can bear upon a tribal complainant's decision in reporting potential Title IX violations. In addition, it can create a climate of hesitancy and distrust (for parties and witnesses) in the investigative process and may affect their decision to participate or even respond to allegations. Criminal and civil matters in Indian Country is a patchwork of tribal, state, and federal law and jurisdiction that depends upon the status of those involved and the nature of the offense committed. This complicated tapestry has resulted in severe underreporting of crime and utilization of law enforcement and social services as well as tribal members' distrust of state systems. And, actual or expected negative experiences with non-Native American law enforcement and other social service providers who do not consider implications of tribal culture and historic trauma when interacting with tribal members.
- 3) Lack of access to resources – In addition to the jurisdictional complexities noted above, support services and healthcare on tribal reservations are chronically underfunded, short staffed, or non-existent. This means that tribal members sometimes have to travel many miles away from home in order to access care services such as counseling and forensic exams when these services are unavailable on the reservation. In addition, when such services are provided on the reservation, chronic underfunding commonly results in staff shortage, staff that are not adequately trained to administer and properly store sexual assault kits and forensic exam evidence, shortage of sexual assault kits and forensic exam

materials, and hospitals that are unable to adequately track sexual assault resources provided.

- 4) Poverty – As noted above, poverty is a chronic issue on many tribal reservations. With an estimated one in four American Indians and Alaska Natives living in poverty, many parties to an investigation will not be able to afford the services of an attorney or other paid advocate as an advisor, leaving them at a potential disadvantage. In addition, lack of infrastructure and the remoteness of reservations has resulted in tribal communities lagging behind in technologic advances such as adequate cell phone coverage and access to high speed internet. Many tribal students have to rely on internet services at their local library, tribal office or school. This lack of technologic resources may impact the 60-day completion timeline for Title IX investigations.
- 5) Indigenous Peacemaking also known as Restorative Justice – Many tribal communities have traditionally embraced a system of mediation that seeks to restore victims, offenders, and their families and communities rather than more formal or adversarial processes generally adopted by non-Natives. In indigenous peace-making, the focus is not on punishment but on healing, forgiveness, and restoring harmony for the parties, their families, and communities. Given the traditional cornerstone that peacemaking is in tribal communities and the inclusion of peacemaking systems in many tribal courts, you may find that the parties' participation and actions in the resolution process are reflective of the holistic philosophy found in peacemaking. For example, in indigenous peacemaking: 1) time limits on the process are fluid and rarely invoked as listening, silence, understanding, and patience are valued; 2) spirituality and meditation is often invoked in the process; 3) inclusiveness is encouraged in that all affected individuals (family and community) are allowed to be a part of the resolution process or represent parties involved; and 4) fluid talk and discussion are encouraged and valued rather than argumentative or adversarial.
- 6) Credibility – For better or worse, there is a lot of emphasis placed on credibility in Title IX investigations. In addition to other factors such as plausibility and reliability of the evidence, Investigators also gauge the credibility of the parties by relying on factors that might not be culturally competent or culturally sensitive to tribal members and communities. For example: 1) For many tribes, direct eye contact may be considered rude or disrespectful whereas it may appear as a hallmark of dishonesty in a credibility assessment; 2) For many tribal members, their native indigenous language is their first and primary language spoken at

home. This may result in difficulty in understanding the investigation process and describing or sharing their experience with an Investigator. It is important to offer the services of a translator in these circumstances.

As you work through an investigation, one may find additional challenges that may arise that are unique to Indian Country. However, it is important to understand that consideration and respect for cultural implications and trauma is not a departure from the objectivity and neutrality required in Title IX and Title IV investigations; rather it makes for a safer and more trustworthy process for the tribal community as a whole.

Resources & References

ⁱ The term "Indian Country" refers to land within the limits of any Indian reservation under the jurisdiction of the United States Government, Indian allotments, and dependent Indian communities within the borders of the United States.

ⁱⁱ Information taken from The American Indian Education Consortium website

ⁱⁱⁱ <https://www.amnestyusa.org/reports/maze-of-injustice/>

^{iv} https://indiancountrytoday.com/archive/terrible-statistics-15-native-tribes-with-unemployment-rates-over-80-percent-iAV-3u_770-C6fEcCc3lfA

^v <https://www.ncjrs.gov/pdffiles1/nij/249815.pdf>

**This paper is intended as a helpful policy document and not as legal advice.*

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