



Native American Graves Protection and Repatriation Act (NAGPRA) Compliance

No: 14-08

Authority: Native American Graves and Repatriation Act (NAGPRA) **Date:** _____
25 U.S.C. Chapter 32 and 43 CFR Part 10
[Regent Policy 8-2: Tribal Consultation](#)
[UW System Administrative Policy 645](#)

Initiator: Chancellor

Responsible Party: Provost and Vice Chancellor for Academic Affairs

I. Purpose

The purpose of this policy is to establish minimum standards for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) at the University of Wisconsin-Milwaukee. This policy does not supersede any stricter standards set by individual units or applicable law. In the event of a conflict with state or federal law, the law must control.

II. Scope

This policy applies to cultural items subject to and as defined in NAGPRA (human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony) that are in the University's physical custody or under the University's control.

III. Definitions

This policy uses terms defined in NAGPRA. These legal definitions are repeated below for convenience; however, in the event these legal definitions are updated, the definitions set forth under applicable law and regulations shall control. The laws, regulations, and defined terms are referring to the ancestors and cultural heritage of modern-day Native American and Native Hawaiian peoples, and the terms themselves may not reflect that as clearly as more current preferred phrasings. The terms are incorporated in this policy for legal precision, and no disrespect is intended in their use. Other terms included below are defined for the purposes of this policy and may have different meanings when used in other settings.

Accession / Accessioning: The formal and legal documentation of an incoming repository transaction, including a gift, purchase, exchange, transfer, or field collection. Also includes establishment of legal title and/or custody [[National Park Service \(NPS\) Managing Archeological Collections Glossary](#)].

Acquisition / Acquisitioning: A process to obtain custody of an object, document, or collection that involves physical transfer [[NPS Glossary](#)].

Ancestors / Ancestral Remains: See **Human Remains**.

Authorized Tribal Representative: A Tribal member who has official authority from their current government to discuss and make decisions about cultural items and repatriation on behalf of the Tribe. This role is often fulfilled by Tribal Historic Preservation Officers (THPO) or NAGPRA Representatives but can be individuals with other position titles.

Burial site: any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited [[25 U.S.C. § 3001\(1\)](#)].

Collection: Material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study [[36 CFR 79, Curation of Federally-Owned and Administered Archeological Collections](#)].

Consultation: A process involving the exchange of information, open discussion, and joint deliberations with respect to potential issues, changes, or actions by all interested parties [HR 101-877]. In NAGPRA practice, this can include both scheduled, formal consultation sessions and informal communications between authorized representatives. This definition includes consultations mandated by NAGPRA, [[25 U.S.C. § 3004-3005](#)] and by state law or Regent Policy.

Control: Having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of NAGPRA whether or not those objects are in the physical custody of the University. Generally, a museum or Federal agency that has loaned human remains, funerary objects, sacred objects, or objects of cultural patrimony to another individual, museum or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of these regulations [[43 CFR 10.2 \(a\)\(3\)\(ii\)](#)].

Cultural Affiliation: A relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe organization and an identifiable earlier group [[25 U.S.C. § 3001\(2\)](#)].

Cultural Items: As defined in NAGPRA, cultural items include human remains and:

- a. **Associated Funerary Objects:** Objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a museum or Federal agency [[25 U.S.C. § 3001\(3\)\(A\)](#)].

b. **Unassociated Funerary Objects:** Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe [25 U.S.C. § 3001(3)(B)].

c. **Sacred Objects:** Specific objects that may be used in Native American ceremony, either historically and/or contemporarily, which hold a high value for the practitioners.

d. **Objects of Cultural Patrimony:** An object having ongoing historical traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group [25 U.S.C. § 3001(3)(D)].

Funerary Objects: Items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or as being related to specific individuals or families or to known human remains. The term burial site means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of gravesite [43 CFR 10.2 (d)(2)].

Human Remains (Ancestors): The physical remains of the body of a person of Native American ancestry. This phrase does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into mats, ropes, or nets). For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony must be considered as part of that item [43 CFR 10.2].

Indian Tribe: Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians [25 U.S.C. § 3001(7)]. For purposes of this policy, “Indian Tribe” shall also include Native Hawaiian organizations.

Institution Representative: The entity (faculty, academic staff, or university staff) who has the authority to act and make decisions related to NAGPRA on behalf of the

University (see **Museum Official**). This person may or may not also serve dually as a Unit Representative.

Lineal Descendant: Any individual tracing their ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or by the common law system of descentance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations [i.e., NAGPRA] [[43 CFR 10.2](#)].

Museum: Any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items [[25 U.S.C. § 3001\(8\)](#)].

Museum official: The official within a museum designated as being responsible for matters relating to NAGPRA [[43 CFR 10.2 \(a\)\(4\)](#)].

NAGPRA: The Native American Graves and Repatriation Act as set forth in 25 USC Chapter 32 and 43 CFR Part 10.

Native American: Of, or relating to, a tribe, nation, people, or culture that is indigenous to the United States [[25 U.S.C. § 3001\(9\)](#), [43 CFR 10.2 \(d\)](#)].

Object: A collective term to include any individual item, biological or non-biological, in a collection. This includes simple items (bone), composite items (a kachina doll, made of many different parts and materials), and can also refer to associated collection materials (like archives). This term encompasses traditional collection terms like “artifact,” “material” and “specimen.”

Possession or control: Having a sufficient interest in an object or item to independently direct, manage, oversee, or restrict the use of the object or item. An institution may have possession or control regardless of the physical location of the object or item. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not a sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency [[43 CFR 10.2](#)].

Repatriate (Repatriation): To transfer physical custody of and legal interest in (return of possession or control of) Native American cultural items to lineal descendants, culturally affiliated Indian tribes [[25 U.S.C. § 3005](#), [25 U.S.C. s 3009](#), [43 CFR 10.2](#)]

Tribal Nation: See **Indian tribe**.

Unit Representative: Any entity (faculty, academic staff, or university staff) who is actively involved in NAGPRA-related activities and has the authority to make NAGPRA-related decisions on behalf of their unit at the University in any way (see **Museum Official**). This entity must typically defer some decisions to the Institution Representative.

University: The University of Wisconsin-Milwaukee.

Wisconsin Tribes: “American Indian Tribal governments in Wisconsin” [RPD 8-2, Tribal Consultation].

IV. Policy

I. INSTITUTIONAL OVERSIGHT

The University is committed to compliance with all federal, state, and local laws pertaining to human remains and cultural items.

The University’s Chancellor shall designate an Institution Representative to oversee and ensure institutional NAGPRA compliance and to serve as the main point of contact with the Universities of Wisconsin for NAGPRA-related issues. The Institution Representative will also oversee the NAGPRA-related efforts of the University’s Unit Representatives.

II. CONSULTATION

All requirements below shall be executed in a manner consistent with the Regent Policy 8-2, Tribal Consultation.

The University will strive to resolve questions or issues concerning treatment and disposition/repatriation of human remains/ancestors and cultural items through consultation with Tribal nations.

The University will supply relevant, information concerning NAGPRA-eligible collections as requested by Authorized Tribal Representatives. If the requested information will require significant time to compile, the Unit Representative will provide an estimated time frame for completion and report all responsive activities to the Institution Representative.

The University will make available clear instructions and contact information to Tribal nations, outlining its process for requesting a consultation.

The University will accommodate consultation with an Authorized Tribal Representative in a manner of their choosing whenever practicable. All consultation sessions must be proctored by either the Institution Representative or the Universities of Wisconsin NAGPRA Director.

The University will consult as needed with Tribal nations to negotiate and approve practices for addressing information that meet the needs of the Universities of Wisconsin, the University, and the Tribal nations during the NAGPRA process, subject to applicable law. Some topics to address could include:

Traditional care practices and preferences, storage requirements (including rehousing, if requested), handling, and access;

The specific collection(s) and/or objects of concern, and subjects or types of information that are considered confidential;

Recording preferences or restrictions before, during, and after consultation sessions, including note taking and use of recording devices (including cameras); and

Information allowed to be made available to tribal members, University staff, researchers, government officials, the press, or members of the public who submit a request for information.

The University shall endeavor to collaborate with other institutions to combine formal consultation sessions at the request of Authorized Tribal Representatives.

The Institution Representative must maintain a standard record of all planned formal consultation sessions and report them to the Universities of Wisconsin NAGPRA Director in advance (see Reporting Obligations below).

The Institution Representative must report the University's annual NAGPRA compliance activities at the annual tribal consultation meeting conducted by the Universities of Wisconsin under RPD 8-2, Tribal Consultation. The frequency of reporting for each Institution Representative will be at the discretion of the Universities of Wisconsin NAGPRA Director.

III. IDENTIFICATION OF NAGPRA-ELIGIBLE HUMAN REMAINS/ANCESTORS AND CULTURAL ITEMS

The University shall develop and maintain a strategic plan and appropriate protocols for identifying and reporting NAGPRA-eligible human remains/ancestors and cultural items in the University's control. The plan and protocols shall address identification of such items in existing collections, new acquisitions, and new discoveries, and shall be routinely reviewed.

Upon identifying human remains/ancestors or cultural items as potentially subject to NAGPRA, research on such human remains/ancestors or cultural items must immediately cease and may not continue unless and until informed consent is received from applicable lineal descendants or Indian Tribes. Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about human remains/ancestors or cultural items, including any activity to generate new or additional information beyond the information that is already available.

The reporting protocol shall include communication within the University, to the Universities of Wisconsin, to Authorized Tribal Representatives as appropriate, and to the National NAGPRA Office.

If control is determined to belong to Federal agencies or State entities, the University will confer with the agency or entity regarding either transfer or management according to a long-term repository agreement.

The University shall consult with Tribal nations regarding identification of other items under the University's control that might be culturally sensitive even though they are not covered by NAGPRA or this policy.

IV. REPORTING AND ACQUISITION

The University, within three months of the effective date of this policy, will provide a summary and status listing of NAGPRA-eligible collections and cultural items to the Universities of Wisconsin NAGPRA Director.

Upon proposed receipt or purchase of human remains or cultural items that could be subject to NAGPRA, regardless of whether such human remains and cultural items originated in or outside of the United States, the intended recipient must notify the Institution Representative in advance of such receipt.

Human Remains and Cultural Items may not be accepted without Chancellor approval.

Potential Human Remains and Cultural Items may not be acquired or accepted without utilizing the protocols described above, as well as those set forth in applicable campus policies for treatment of human remains.

If new (i.e., not previously reported) human remains/ancestors or cultural items are discovered within existing collections or new acquisitions that are under the control of the University, the Unit Representative will report such findings to the Institution Representative within 30 days of such acquisition or discovery, and the Institution Representative will convey such report to the Universities of Wisconsin NAGPRA Director within 90 days of the date of acquisition or discovery. The Institution Representative's report will also address how the University plans to comply with 43 CFR 10.13 (Future Applicability) with respect to such items.

The University shall establish and maintain oversight and review processes for evaluating collections being considered for acquisition through purchase, donation, or other means (e.g., curation agreements) to identify potential NAGPRA issues in those collections. These processes shall also meet the requirements of international, Federal, State, and local laws and Universities of Wisconsin and University policies.

To the extent the University manages any long-term repository contracts or temporary custody agreements with other entities, it shall maintain clear documentation concerning legal control as well as the management of and access to these collections that comply with both tribal guidance and each contract or agreement.

V. CARE, STORAGE, AND HANDLING

The University shall consult with lineal descendants, Indian Tribes on the appropriate storage, treatment, or handling of human remains or cultural items. The University shall maintain protocols regarding care, storage, and handling of human remains/ancestors and cultural items. These protocols shall comply with current preferences of Authorized Tribal Representatives, when possible and as appropriate, and should be documented by the Unit Representative and made available to both the Institution Representative and the appropriate Authorized Tribal Representative(s).

The University shall make a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian

Tribes in the storage, treatment, or handling of human remains or cultural items. When possible and appropriate, the University shall make reasonable efforts to provide a process for facilitating ceremonies on its property in a manner that meets with Authorized Tribal Representatives' requests, employee and visitor safety, and facility/building policies.

The University shall obtain the free, prior, and informed consent of the lineal descendants, Indian Tribes before any exhibition of, access to, or research on human remains or cultural items. Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about human remains or cultural items. Research of any kind on human remains or cultural items is not required by NAGPRA or this policy.

Every attempt will be made to identify past treatments performed on human remains/ancestors and cultural items, to take steps to isolate and eliminate exposure to harmful chemicals, and to report all known treatments to appropriate Authorized Tribal Representatives once identified.

VI. PHOTOGRAPHY/IMAGING AND ARCHIVES

The University shall maintain protocols that address imaging (photographs, scans, 3-D models, etc.) or documentation of cultural items, including access to and security of these files. These protocols shall make reasonable efforts to incorporate guidance received during tribal consultation.

VII. DISPLAY AND INTERPRETATION

The display of cultural items is prohibited, regardless of the repatriation status of such items, unless permission on a case-by-case basis has been received from applicable lineal descendants, Indian Tribes.

The University will collaborate with the tribes for interpretation and exhibition of cultural objects.

VIII. PHYSICAL ACCESS

Access to buildings, rooms, or areas of rooms where cultural items are stored must be consistently restricted. Access to these areas must be thoroughly reviewed in advance and monitored. Requests for access by Authorized Tribal Representatives must be accommodated as soon as reasonably possible, taking into account staff availability, building access, and preparation logistics.

Unsupervised access to buildings, rooms, or areas of rooms where human remains/ancestors and cultural items are stored unless training has been completed regarding NAGPRA compliance and appropriate care and handling procedures is prohibited except in case of emergencies.

Any unit holding cultural items shall maintain protocols for the care, storage, and handling of such cultural items. Such protocols shall, at minimum, reflect the

requirements set forth in this policy and shall be subject to annual review and approval by the Institution Representative.

IX. RESEARCH ACCESS, LOANS, AND OTHER ACTIVITIES

The University shall host a webpage for NAGPRA compliance that includes, at minimum:

A link to the Universities of Wisconsin NAGPRA compliance webpage;

Current contact information for the Institution Representative; and

A summary of reported NAGPRA activities, with links to publicly available information such as Federal Register entries and the National NAGPRA Program databases.

The University shall refuse research or loan requests for any cultural items that are the subject of a repatriation request or that have been approved for repatriation without permission from the Authorized Tribal Representative. Per NAGPRA Regulations, requests from Tribal nations for documentation relating to NAGPRA-eligible collections must not be construed as authorizing either: 1) The initiation of new scientific studies of the human remains and associated funerary objects; or 2) Other means of acquiring or preserving additional scientific information from the remains and objects. [43 CFR 10.9(e)(5)(iii)]

The University prohibits the scientific investigation or loan of potential cultural items that have not yet been formally claimed under the provisions of NAGPRA until determination of non-coverage or tribal consultation is complete and recommendations have been received.

Nothing in this policy may be read or interpreted to conflict with the Wisconsin Public Records Law.

X. TRAINING

The University requires and shall provide scheduled and routine training on NAGPRA compliance to all applicable employees. Institution Representatives and Unit Representatives must provide proof of current trained status prior to engaging in NAGPRA compliance activities.

The University shall review and update (if necessary) its training protocols at least every two years, to ensure compliance with current federal regulations and other applicable state and local laws.

XI. GENERAL REPORTING OBLIGATIONS

Unit Representatives must report all NAGPRA compliance activities to the Institution Representative in a consistent and clear format and in a timely manner. This includes tribal communication (outside of formal consultation) and documentation provided to

Authorized Tribal Representatives and the National NAGPRA Office. Such reports can be in either a digital or paper format but cannot be solely verbal.

The Institution Representative must report summaries of all NAGPRA compliance activities to the Universities of Wisconsin NAGPRA Director in a consistent and clear format and in a timely manner. This includes tribal communication (outside of formal consultation) and documentation provided to Authorized Tribal Representatives and the National NAGPRA Office. Such reports can be in either a digital or paper format but cannot be solely verbal.

Institution Representatives must maintain comprehensive records of NAGPRA compliance.

XII. CONSEQUENCES OF NONCOMPLIANCE

Violations of this policy and/or associated policies, protocols, or procedures may be subject to disciplinary action. Note that NAGPRA law includes civil and criminal penalties for compliance violations.