



POLICY & PROCEDURE DOCUMENT

NUMBER: 8.1060

DIVISION:

TITLE: Native American Graves Protection and Repatriation Act (NAGPRA) Policy

DATE: March 10, 2025

APPROVED BY: President's Cabinet

I. Purpose and Scope

The purpose of this Policy is to provide guidance and create a procedure for Western Kentucky University employees to follow that ensures compliance with the Native American Graves Protection and Repatriation Act (NAGPRA).

Western Kentucky University is a state funded institution and therefore is subject to NAGPRA. Beyond this, the University has moral and ethical standards to uphold by ensuring the proper treatment and repatriation of Native American cultural items and ancestral remains.

This Policy applies to all staff, faculty, and students who have or may have access to any Native American collections. While the law applies to ancestral (human) remains, funerary objects, sacred objects, and/or objects of cultural patrimony, any possibly Native American materials may be subject to this Policy and procedures.

II. Definitions

Definitions in this part are copied exactly as identified in the 25 U.S.C. § 3001 (1990).

A. **"Consultation" or "Consult"**: The exchange of information, open discussion, and joint deliberations made between all parties in good faith and in order to:

- (1) Seek, discuss, and consider the views of all parties;
- (2) Strive for consensus, agreement, or mutually acceptable alternatives; and
- (3) Enable meaningful consideration of the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

B. **"Cultural affiliation"**: a reasonable connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization based on a relationship of shared group identity. Cultural affiliation may be identified clearly by the information available or reasonably by the geographical location or acquisition history of the human remains or cultural items.

C. **“Cultural item”**: funerary object, sacred object, or object of cultural patrimony according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

D. **“Funerary object”**: any object reasonably believed to have been placed intentionally with or near human remains. A funerary object is any object connected, either at the time of death or later, to a death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. This term does not include any object returned or distributed to living persons according to traditional custom after a death rite or ceremony. Funerary objects are either associated funerary objects or unassociated funerary objects.

(1) **“Associated funerary object”**: any funerary object related to human remains that were removed, and the location of the human remains is known. Any object made exclusively for burial purposes or to contain human remains is always an associated funerary object regardless of the physical location or existence of any related human remains.

(2) **“Unassociated funerary object”**: any funerary object that is not an associated funerary object and is identified by a preponderance of the evidence as one or more of the following:

- (i) Related to human remains but the human remains were not removed, or the location of the human remains is unknown,
- (ii) Related to specific individuals or families,
- (iii) Removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization, or
- (iv) Removed from a specific area where a burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization is known to have existed, but the burial site is no longer extant.

E. **“Human/ancestral remains”**: any physical part of the body of a Native American individual. This term does not include human remains to which a museum or Federal agency can prove it has a right of possession.

- (1) Human remains reasonably believed to be comingled with other materials (such as soil or faunal remains) may be treated as human remains.
- (2) Human remains incorporated into a funerary object, sacred object, or object of cultural patrimony are considered part of the cultural items rather than human remains.
- (3) Human remains incorporated into an object or item that is not a funerary object, sacred object, or object of cultural patrimony are considered human remains.

F. “**Object of cultural patrimony**”: Any object that has ongoing historical, traditional, or cultural importance central to a Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization. An object of cultural patrimony may have been entrusted to a caretaker, along with the authority to confer that responsibility to another caretaker. The object must be reasonably identified as being of such importance central to the group that it:

- (1) Cannot or could not be alienated, appropriated, or conveyed by any person, including its caretaker, regardless of whether the person is a member of the group, and
- (2) Must have been considered inalienable by the group at the time the object was separated from the group.

III. Policy

A. Western Kentucky University will comply with NAGPRA (25 U.S.C. § 3001 et seq. (1990)) and its implementing federal regulations (43 C.F.R. pt. 10). NAGPRA applies to any institution or state or local government agencies (including any institution of higher learning) within the United States that receives Federal funds and has possession or control of a holding or collection of the following: Native American and Native Hawaiian human remains, funerary objects, sacred objects, and objects of cultural patrimony. If any confusion were to arise from the wording of this document, 25 U.S.C. §§ 3001-13 or 43 C.F.R. Part 10 would supersede this document and become the guiding procedure.

1. In addition to cultural items and ancestral remains covered under NAGPRA, WKU will also require consultation and written approval for the use of any Native American hair, any DNA samples, images (appendix 1), or art.

B. Physical Access to where cultural items and ancestral remains are housed must be a space of restricted access. Access is to be handled by the University NAGPRA Specialist or designee. Unsupervised access is only permitted when an immediate emergency occurs.

IV. Procedure

A. Any currently present or acquired Native American collections, acquired from archaeological contexts; by donation, through purchase, or field work, must be documented and approved by the acting University NAGPRA Specialist or designee. The University NAGPRA specialist or NAGPRA designee will follow the legal requirements of NAGPRA using this general procedure.

1. If through consultation the collection is deemed not to be NAGPRA eligible or of any cultural sensitivity, then there are no further steps to be taken.

2. If/when Human remains, or collections are deemed to be NAGPRA-eligible, the University will take the following steps:
 - a. Collect all information that is presently available. No further research is required.
 - b. Next, the remains or collections must be consulted on with the appropriate tribal nation/s.
 - c. Following consultation, the University NAGPRA specialist will make a determination of cultural affiliation. This is a written record that briefly describes the information available, what Tribes were consulted with, and what decision was made. Cultural affiliation of human remains, or cultural items may be with more than one Indian Tribe or Native Hawaiian organization.
- B. When the University NAGPRA Specialist becomes aware of any collections that may be subject to NAGPRA, the process of consultation will be initiated. Depending on the preferences of the consulting Tribal representative, this may occur through a physical letter sent through the mail, an email, or phone call.
- C. Attention will be given to the Duty of Care (43 CFR 10.1(d)) portion of the 2023 regulations.
 1. Duty of care (43 CFR 10.1(d)). This regulation requires that WKU care for, safeguard, and preserve any human remains or cultural items in its custody or in its possession. Under this requirement, WKU is mandated to:
 - a. Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, or handling of human remains or cultural items.
 - b. Make a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian Tribes, or Native Hawaiian organizations in the storage, treatment, or handling of human remains or cultural items; and
 - c. Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing 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 of human remains or cultural items is not required by the Act or these regulations.

V. Related Policies

See also:

2.7204 Policy on Research on Human Subjects

2.0002 Research Policies

2.7301 Research Misconduct and Non-compliance

4.8001 Standards of Conduct

Appendices

- For the purposes of this Policy, “images” is defined to include, but not limit to, photographs, scans, 3D printing, CT and PET scans, MRIs, drawings, and any other depictions of NAGPRA-eligible human remains and/or cultural objects
- Further questions of definitions or the handling of NAGPRA, please review the [Federal Law](#) and [Regulations](#).