



Agreement Between
THE U.S. DEPARTMENT OF THE INTERIOR – BUREAU OF INDIAN EDUCATION
And
THE U.S. DEPARTMENT OF EDUCATION

Section 8204 of the
Elementary and Secondary Education Act (ESEA), as amended by the
Every Student Succeeds Act (ESSA)

I. Background

The United States has a unique political and legal relationship with Federally recognized Indian Tribes. For centuries, the Federal Government’s relationship with these Tribes has been guided by a trust responsibility – a longstanding commitment on the part of the Federal Government to protect the unique rights and ensure the well-being of our Nation’s Tribes, while respecting their Tribal sovereignty.

The U.S. Department of Education’s (“ED’s”) mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access to a high-quality education. The U.S. Department of the Interior’s (“DOI’s”) Bureau of Indian Education’s (“BIE’s”) mission is to provide quality education opportunities from early childhood through adulthood in accordance with a Tribe’s needs for cultural and economic well-being and in keeping with the wide diversity of Tribes as distinct cultural and governmental entities. Both Agencies work toward their individual missions through the shared goals of supporting and enhancing Tribal sovereignty. Further, BIE’s mission is to manifest consideration of the whole person by taking into account the spiritual, mental, physical, and cultural aspects of the individual within his or her family and Tribal context.

II. Purposes of Agreement

The purpose of this Agreement is to establish the responsibilities of BIE and the K-12 schools that it funds, including BIE-operated and Tribally-controlled schools (“BIE-funded schools²”), for the use of funds provided by ED to BIE to improve educational opportunities for American Indian and Alaska Native (“AI/AN”) students under the Elementary and Secondary Education

² For purposes of this Memorandum of Understanding (“MOU”), BIE-funded schools mean BIE operated schools, schools operated pursuant to a grant under the *Tribally Controlled Schools Act of 1988* (25 U.S.C. § 2501 *et seq.*), and schools operated pursuant to a contract under the *Indian Self-Determination and Education Assistance Act* (25 U.S.C. § 5301 *et seq.*).

Act of 1965, as amended (“ESEA”),³ and the McKinney-Vento Act, as amended, as required by section 8204(a)(2) of the ESEA, and as described in Section III below. This Agreement does not address other funds transferred by ED to BIE (e.g., under Part B of the Individuals with Disabilities Education Act (IDEA) or other formula or discretionary programs not covered by this Agreement) or applicability of other legal authorities not discussed herein.

A. Specific Activities Designed to Reach Purpose of Agreement

1. Representatives from each Agency will meet regularly to advance the goals of this Agreement. The two Agencies will jointly develop a meeting structure and schedule. Regular meetings between BIE and ED will address the following topics among others:
 - a. Topics for joint Tribal consultation and the most appropriate ways to respond to specific and relevant issues raised during Tribal consultation or public comment.
 - b. Support for BIE’s efforts to monitor and enforce compliance with requirements of ED programs, as well as meet other State Educational Agency (“SEA”) responsibilities, with respect to the funding ED provides to BIE for award to BIE-funded schools under Section III of this Agreement, in particular with respect to Tribally controlled grant and contract schools. ED will provide technical assistance to BIE in meeting its obligations to oversee program implementation in its schools consistent with applicable requirements.
 - c. Ways to promote more effective school reform efforts that address critical issues and unique challenges affecting the quality of instruction, student achievement, and educational improvement in BIE-funded schools, and in public schools that serve AI/AN students, including students with disabilities.
 - d. Ways to involve Tribes in the education of AI/AN students who attend public schools, and ways to encourage and help SEAs, local educational agencies (LEAs), and public schools to provide cultural and language instruction.
 - e. Ways to enhance quality research, data collection, and dissemination of best practices with regard to the education of AI/AN students.
 - f. Ways to collaborate on external inquiries that involve the interests of both Agencies, for example, inquiries from Congress and the U.S. Government Accountability Office (“GAO”).

³ References to the ESEA throughout this document refer to the ESEA, as amended by the Every Student Succeeds Act (“ESSA”), unless otherwise indicated.

- g. Reciprocally provide technical assistance to the respective Agencies as necessary based on each Agency's area of expertise, for example, in managing stakeholder engagement with Tribes and other key stakeholders, and best practices in managing program performance.
 - h. Other issues that the Secretaries of BIE and ED ("Secretaries") may designate.
2. ED and BIE will work together and with Tribes, LEAs, SEAs, and other stakeholders to break down barriers to effective coordination and cooperation among all who provide education to AI/AN students. ED and BIE will also work to improve effective coordination between SEAs and Tribes, SEAs and BIE-funded schools, LEAs and BIE-funded schools and their Tribes, LEAs and local Tribes, and Tribal governments and BIE-funded schools. Activities may include:
 - a. Improved coordination and communication to address the mobility of many AI/AN students between one school to another under a variety of jurisdictions (e.g. BIE, State, local, and Tribal).
 - b. Greater communication between BIE and Tribes concerning appropriate Tribal access to educational records of students who are Tribal members, as described in B.4. below.
 - c. Coordination between ED and BIE to engage and consult with SEAs on a regular basis in order to address the requirements of ESEA section 8538, which requires affected LEAs to consult with Tribes prior to submitting a plan or application under "covered programs," as that term is defined in ESEA section 8101(11).
 3. ED and BIE will consult regularly with Tribes on issues that are appropriate to joint planning or consultation. The Agencies will each implement their own Tribal consultation policies but will coordinate with each other on whether to conduct joint or independent consultation activities for applicable issues. The Agencies will share input received during Tribal consultations that are of mutual interest to both Agencies.
 4. ED and BIE will work together to ensure appropriate access to education records of students who are Tribal members, consistent with BIE's regulations on the maintenance and control of student records in 25 C.F.R. Part 43 as well as the Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. § 552(a) and the implementing regulations at 43 C.F.R. Part 2 and DOI's System of Records Notice for BIE records and other privacy protections.
 5. ED and BIE will notify Tribes of Federal education funding opportunities related to programs covered in Section III.A.1 below.

6. ED and BIE will work together to ensure that the National Advisory Council on Indian Education is adequately funded, staffed, and supported in its mission of advising both Secretaries.

III. Programs Covered

- A. This Agreement presents terms and conditions that set the framework for future transfers of funds that Congress appropriates to ED and that ED transfers to DOI for use by BIE and BIE-funded schools under the following programs that Congress has authorized in the ESEA and the McKinney-Vento Act (collectively the “Covered Programs” for purposes of this document):

1. ESEA Programs

- a. Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies)
- b. Title I, Part B (State Assessment Grants)
- c. Title II, Part A (Supporting Effective Instruction)
- d. Title IV, Part A (Student Support and Academic Enrichment Grants)
- e. Title IV, Part B (21st Century Community Learning Centers)
- f. Title V, Part B, subpart 2 (Rural and Low-Income School Program)
- g. Title VI, Part A, subpart 1 (Indian Education Formula Grants)
- h. ESEA section 2222 (Comprehensive Literacy State Development program)

2. McKinney-Vento Act Programs

- a. Title VII, subtitle B (Education for Homeless Children and Youths)

Collectively these programs are referred to as “Covered Programs” in this Agreement for purposes of this Agreement only.

B. General Conditions Regarding Use and Responsibilities for Program Funds Transferred by ED to BIE

1. All ED and BIE responsibilities are undertaken with the goal of improving education for AI/AN students.
2. ED Responsibilities
 - a. ED Monitoring and Enforcement

- i. ED will monitor BIE for compliance with the provisions in this Agreement and ESEA requirements and to ensure, to the extent permitted by law, that subsequent transfers of funds for the activities outlined in this Agreement are utilized properly. BIE agrees to cooperate by providing information and documentation necessary to conduct such monitoring of BIE (and BIE-funded schools where applicable) and to participate in monitoring activities designed by ED. Consistent with ED's monitoring of SEAs, ED's monitoring activities may include the following: monitoring of BIE oversight of its schools, monitoring BIE's technical assistance to schools, and monitoring BIE's use of the administrative portion of ESEA funds.
- ii. In the event of disagreement between the two agencies on whether BIE is complying with this agreement or with provisions of the ESEA, or concerning ED's enforcement authority, the parties agree to follow the steps in Section III.F.9 of this Agreement.

3. BIE Responsibilities

a. Monitoring and Enforcement

Consistent with 25 U.S.C. § 2006(a), the Secretary of the Interior has vested in the Assistant Secretary of Indian Affairs all functions with respect to formulation and establishment of policy and procedures and supervision of programs and expenditures of Federal funds for the purpose of American Indian education administered by BIE. Consistent with 25 USC § 2006(a), the Assistant Secretary carries out such functions through the BIE Director. For the purposes of this Agreement, BIE's responsibilities are comparable to those of an SEA to:

- i. Monitor the activities and record-keeping of all BIE-funded schools for compliance with applicable programmatic and fiscal requirements;
 - ii. Document the purpose, scope, and results of such monitoring;
 - iii. Provide appropriate technical assistance and take appropriate enforcement actions, as necessary; and
 - iv. Systematically analyze the results of the school audits and other oversight activities to identify trends in findings and improvements in monitoring and technical assistance strategies.
- b. For purposes of this Agreement, BIE assumes the responsibility of an SEA with respect to BIE-funded schools (including data collection coordinating

programs covered by this Agreement with other programs, and providing technical assistance), whether or not these responsibilities are set forth in individual program applications or plans.

For those schools that do not have approved applications and/or fail to provide an application, BIE may attach specific conditions for covered programs until an approved application is completed. Prior to taking such action, BIE will provide technical assistance.

Except as exempted by statute or modified by this Agreement or by subsequent agreement of ED and BIE, all provisions of the ESEA or the McKinney-Vento Act governing programs identified in Section III that apply to SEAs, as well as any applicable regulations, apply to BIE.

The following statutory provisions are not applicable:

1. Equitable Services Requirements (ESEA section 1117 and ESEA sections 8501-8506 (Part F, Subpart I – Private Schools))
 2. ESEA section 8521 (Maintenance of Effort)
 3. ESEA section 8540 (Consultation with the Governor)
 4. Supplement not supplant requirements (ESEA section 1118(b)(1), ESEA section 2301, ESEA section 4110, ESEA section 4204(b)(2)(G), ESEA section 4203(a)(9), ESEA section 5232, and ESEA section 6114(c)(1)).
- c. BIE will implement all activities and strategies with regard to all Covered Programs as described in Section E. BIE's Agency Plan is consistent with ESEA section 1111, taking into account the unique circumstances and needs of the schools and the students served.
- i. BIE is responsible, similar to other SEAs, for ensuring that all funds it receives from ED under separate documents that are subject to this Agreement are properly spent – whether by BIE, BIE operated schools, or Tribally controlled grant schools or contract schools funded by BIE.
 - ii. BIE will undertake such monitoring and other administrative responsibilities with regard to its activities and the activities of all BIE-funded schools to ensure compliance with all statutory and regulatory requirements applicable to the Covered Programs.

4. Submission of Data

BIE is required to submit annual SEA- and school-level performance data to ED via ED's collection mechanism used for SEAs, and to participate in other data collections

as required by ED, according to the schedule and deadlines set forth each year by ED to all SEAs. To the extent that certain file specifications are not applicable, BIE agrees to work with ED to determine the appropriate file specifications on an annual basis. The Agencies agree to work cooperatively to resolve issues and problems involving data submissions. Further, BIE must meet all established timelines and work to improve the quality of data submissions throughout the annual data collection cycle.

5. BIE-funded schools

- a. For purposes of this Agreement, ED and BIE consider all BIE-funded schools as having the responsibility of both LEAs and schools except as provided below. Hence, except as exempted by statute or modified by this Agreement or by subsequent agreement of ED and BIE, all provisions of the ESEA and the McKinney-Vento Act governing the Covered Programs that apply to LEAs or schools apply to BIE-funded schools.
 - i. Exceptions:
 - 1) Tribal education agencies (TEAs) and BIE-funded schools are not required to submit LEA Plans as defined in ESEA 1112 on an annual basis.
 - 2) In situations when BIE provides funds directly to a Tribal government or a TEA instead of to a school, the Tribe or TEA assumes the responsibilities of an LEA under the Covered Programs, and the BIE-funded schools are treated as schools under those programs.
- b. BIE-funded schools must submit information consistent with what is required within BIE's OnePlan, or subsequently titled document ("OnePlan").
- c. Consistent with the principles identified in Section B.3 and 4 of this Section that concern BIE responsibilities, the Agencies will work to ensure that BIE-funded schools implement all ESEA and McKinney-Vento Act statutory responsibilities of LEAs or schools (including data collection, coordinating Covered Programs with other programs, and consistent with approved OnePlans) – whether or not these responsibilities are set forth in individual applications or plans.
- d. All program funds provided to BIE-funded schools subject to the terms of this Agreement must be expended pursuant to applicable ESEA or McKinney-Vento Act requirements.
- e. Under ED regulations, BIE-funded schools are not eligible for Impact Aid. (34 CFR Part 222.30-31). Certain limited exceptions apply to BIE-funded

schools that enroll students who receive State aid and not Individual Student Equalization Program (ISEP) funding.

f. Ability of BIE-funded schools to apply for ED funds as LEAs

As provided in ESEA section 8101(30)(C), BIE-funded schools are eligible to apply to ED for any discretionary grant program under the ESEA, including programs administered by the Office of Indian Education (OIE), for which an LEA is eligible.

ESEA section 8101(30) provides that the term “local educational agency” includes a school funded by BIE under certain conditions, and ESEA section 8103 provides that a consortium that includes a BIE-funded school is given the same consideration as an LEA for competitive grant programs.

g. Prohibition against duplicate funding:

- i. When the State in which a BIE-funded school is located considers the school to be an LEA in its own right, a BIE-funded school may compete for competitive funds for a Covered Program under both BIE and SEA competitions. However, the school may only receive an award from either BIE or the State in which the school is located. To ensure compliance with this provision, BIE may require schools to certify in their applications that they will not accept funds awarded from the same program under both BIE and SEA competitions.
- ii. A BIE-funded school may not receive a formula award under any of the Covered Programs listed in Part IV, A from both a State and the BIE.
- iii. Nothing in this Agreement prevents a BIE-funded school from receiving State aid or being treated by a State as an LEA.

C. Fiscal Matters

1. Consistent with BIE’s status as an SEA under this agreement, BIE or BIE-funded schools may obligate all program funds provided annually that are subject to the terms under this Agreement through the end of the second succeeding fiscal year (i.e., the Department obligates FY 2024 funds to BIE on July 1, 2024 and those funds remain available for BIE to obligate until September 30, 2026, the end of FY 2026), subject to Congressional action, except for funds provided under Title VI, Part A, Subpart 1 of the ESEA (Indian Education). Funds made available under Title VI, Part A, subpart 1 may be obligated through the end of the 12-month grant project period. Funds are obligated by BIE only when they are committed for specific activities.

2. Except as may otherwise be specified in this Agreement, in any subsequent funds transfer, or in the approved BIE Agency Plan, BIE will calculate the formula award allocation to be provided each year to BIE-funded schools rather than the subgrant formulas in the ESEA and McKinney-Vento program statutes.
3. For each Covered Program included in this Agreement, Section E below identifies the percentages of each fiscal year's funds that BIE may reserve for administration, "State-level" activities and other "SEA-level" uses, and the percentage that BIE must award to BIE-funded schools through formula or competitive awards, and in the case of the McKinney-Vento Act, through procedures described in Section E.
4. BIE may exercise the transferability authority under ESEA section 5103 as it applies to funds awarded under the ESEA Title II, Part A and Title IV, Part A.

D. Transfers of Funds

Obligations of funds from ED to BIE for the Covered Programs under this agreement shall be made through transfer of funds documents, or using the G5 or other electronic system, in accordance with applicable laws and regulations. The informational details in this Agreement govern those funds, and this Agreement shall be incorporated into each award of funds to BIE.

E. Specific Program Requirements

1. Agency Plan

- a. BIE will maintain an Agency Plan consistent with 25 C.F.R. Part 30. The program requirements, use of funds reserved for BIE "State-level" activities, and the measures for program effectiveness for Covered Programs are incorporated into this document in Section E 1-11.
- a. BIE's Agency Plan is not subject to peer review, except for the specific assessments required under Title I of the ESEA. ED will review BIE's Agency Plan for consistency with statutory requirements, taking into account the unique circumstances and needs of BIE-funded schools and the students served by such schools. ED may recommend revisions to the Agency Plan to meet those requirements.
- b. The Agency Plan remains in effect until such time that the ESEA is reauthorized or ED recommends updates or modifications from all SEAs. ED and BIE acknowledge that any changes to the Agency Plan may be subject to BIE's Tribal consultation policy as appropriate.

2. ESEA Title I, Part A (Improving Basic Programs Operated by LEAs)

- a. Required Use of Funds

- i. BIE may reserve up to 1.5 percent of funds for administration. BIE may pay portions of that 1.5 percent set-aside to Tribal governing bodies or school boards that have had alternative requirements approved under ESEA section 8204(c)(2) and 25 C.F.R. Part 30 for their administration of standards, assessments, and/or accountability systems under Title I, Part A. BIE may also use these administrative funds for meeting the technical assistance requirements in ESEA section 8204(c)(3).
- ii. BIE must reserve the amount calculated under ESEA section 1003(a) to carry out its responsibilities with regard to school improvement and other activities identified in ESEA section 1003. BIE must allocate at least 95 percent of those school improvement funds to the schools that it has identified for comprehensive or targeted support and improvement. BIE will use the remaining school improvement funds in a manner consistent with ESEA section 1003(b)(2). Pursuant to section 1003(h), the amount of funds that BIE reserves under section 1003(a) cannot result in a reduction of the Title I allocation to any school below the amount that school received in the preceding year.
- iii. BIE may award up to 3 percent of its total Title I, Part A allocation to provide funds to BIE-funded schools for direct student services as provided under section 1003A.
- iv. BIE will award all other funds by formula to BIE-funded schools.
- v. With respect to payments to LEAs for out-of-state AI/AN students in schools operated by those LEAs under special contracts with DOI, the amount of such payment may not exceed, for each child, the greater of (A) 40% of the State average per-pupil expenditure (APPE), or (B) 48% of the national APPE.

b. Measures of Program Effectiveness

BIE will maintain an Agency Plan that describes how it will meet the requirements of the applicable elements for Title I, Part A. BIE's performance will be measured against its implementation of the required elements.

c. Other Program Requirements

- i. As required under ESEA section 8204, BIE has developed and will implement regulations to implement a standards, assessments, and accountability system that is consistent with ESEA section 1111.

- ii. BIE will implement a Title I program consistent with the requirements in ESEA sections 1111(g) and 1112(b)-(e) and 34 CFR 200.58.
- iii. BIE and ED agree that ESEA section 1111(a) and 1112(a) requiring the submission of State and local plans and ESEA sections 1117-1118 do not apply.
- iv. BIE-funded schools will comply with all requirements for schoolwide programs in ESEA section 1114.
- v. BIE-funded schools will use funds for parent and family engagement consistent with ESEA section 1116(a)(3) and otherwise comply with the parent and family engagement requirements in ESEA section 1116(b)-(f).
- vi. BIE has developed and will implement regulations to prepare and disseminate widely to the public an annual report card for the BIE-funded school system as a whole, and also report cards for individual BIE-funded schools, consistent with the requirements of ESEA section 1111(h).
- vii. Waivers of BIE's standards, assessments, and/or accountability under ESEA Title I, part A, by a Tribal governing body or school board:
 - (a) When either BIE or ED receives a request from a tribal governing body or school board for approval of requirements alternative to BIE's standards, assessments, and/or accountability system, the Agency that receives the request will notify the other Agency immediately upon receipt of the request.
 - (b) BIE and ED agree to develop a process for reviewing proposals for alternative requirements from tribal governing bodies or school boards. Further, the two Agencies will work together with the goal of reaching a decision on such alternative proposals in a timely manner.

In any document approving alternative requirements, the Agencies will include provisions detailing the data that the Tribe will provide to BIE for inclusion in BIE's accountability system or in cases in which the schools will be included in a State's accountability system, the

data that the Tribe will provide to the State. In the case where the Tribe will be calculating its own accountability determinations, BIE agrees to provide data to the Tribe in a timely manner. With any data sharing, BIE agrees to share data in accordance with applicable privacy laws.

- (c) BIE will provide assistance to BIE-funded schools (including those schools that adopt their own assessment or accountability system under the waiver provisions in ESEA section 8204(c)(2)) to help them implement the Title I, Part A assessment and accountability requirements applicable to BIE-funded schools.

d. Waivers by BIE

BIE is dedicated to upholding its trust responsibility to Indian tribes by continuing to provide mission critical services such as education delivery. If at any time BIE determines due to exceptional circumstances that it is in the best interest of Indians to not apply or enforce, for a temporary period, BIE's standards, assessments, and/or accountability system, it will consult with Indian tribes concerning the Secretary of the Interior's authority to waive or make exceptions to certain regulations in Title 25 of the Code of Federal Regulations, including those applicable to BIE-funded schools, in any case where permitted by law so long as such waiver or exception is in the best interests of the Indians. BIE will then confer with ED regarding next steps.

3. ESEA Title I, Part B (State Assessment Grants)

a. Required Use of Funds

- i. BIE shall use the funds transferred under ESEA section 1203(a)(1) in accordance with the provisions of section 1201. Once BIE has completed development of its assessments required by the ESEA, BIE may use Title I, Part B funds to provide the costs associated with administering assessments to its schools as well as developing new assessments.
- ii. BIE may use these funds for the development of assessments for Tribes that seek to develop alternative assessments, consistent with ESEA section 1111, that take into account the unique circumstances and needs of schools and the students served, that will be used for Federal accountability purposes, including native language versions of

assessments. However, in no case is BIE required to use funds for such purpose.

b. Measures of Program Effectiveness

BIE is required to submit annual SEA- and school-level performance data to ED via ED's collection mechanism used for SEAs, and to participate in other data collections as required by ED, according to the schedule and deadlines set forth each year by ED to all SEAs.

4. ESEA Title II, Part A (Supporting Effective Instruction)

a. Required Use of Funds

- i. BIE will award 95 percent by formula to BIE-funded schools. Of this amount of funds, BIE may set aside up to 3 percent (i.e. up to 2.85% of the total BIE Title II, Part A allocation) for activities for principals and other school leaders consistent with ESEA section 2101(c)(3).
- ii. BIE will not use more than 1.5 percent of its Title II, Part A allocation for administration.
- iii. BIE will use the remainder for activities described in section 2101(c)(4), which may be carried out through a grant or contract with a for-profit or nonprofit entity including an institution of higher education.

b. Measures of Program Effectiveness

BIE is required to submit annual SEA- and school-level performance data to ED via ED's collection mechanism used for SEAs, and to participate in other data collections as required by ED, according to the schedule and deadlines set forth each year by ED to all SEAs.

5. ESEA Title IV, Part A (Student Support and Academic Enrichment Grants)

a. Required Use of Funds

- i. BIE will not reserve less than 95 percent of the allotment to make allocations to LEAs under ESEA section 4105.
- ii. BIE will not reserve more than 1 percent of the allotment for the administrative costs of carrying out its responsibilities under this subpart. Those responsibilities include public reporting on how funds made available under this subpart are being expended by LEAs. and

the degree to which the LEAs have made progress toward meeting the objectives and outcomes described in ESEA section 4106(e)(1)(E).

- iii. From funds not reserved for use by the BIE, the BIE will allocate funds to BIE-funded schools for activities to support well-rounded educational opportunities; activities to support safe and healthy students; and activities to support the effective use of technology.
- iv. BIE will use the amount remaining after the reservations under subparagraphs 5(a)(i) and (ii) above for State-level activities described in section ESEA section 4104(b).

b. Measures of Program Effectiveness

Consistent with ESEA 4104(a)(2), BIE will submit to ED its public reports on how funds under Title IV, Part A funds are expended by BIE-funded schools, including the degree to which BIE-funded schools have made progress towards meeting the objectives and outcomes described in ESEA section 4106(e)(1)(E), according to a schedule set forth by ED.

6. ESEA Title IV, Part B (21st Century Community Learning Centers)

a. Required Use of Funds

- i. BIE will award at least 93 percent to eligible entities on a competitive basis (see ESEA section 4204).
- ii. BIE will reserve up to 2 percent of the funds for administration for establishing and implementing the peer-review process described in ESEA section 4202(c)(2)(B) and for the costs of awarding funds under ESEA sections 4202(c)(2)(C) and 4204.
- iii. BIE may reserve up to 5 percent for agency-level activities described under ESEA section 4202(c)(3).
- iv. From the amounts not reserved for use by BIE, BIE will allocate funding to support a broad array of activities that advance student academic achievement and support student success.
- v. All other funds must be provided to eligible entities on a competitive basis (See ESEA section 4204).

b. Measures of Program Effectiveness

BIE is required to submit annual SEA- and school-level performance data to ED via ED's collection mechanism used for SEAs, and to participate in other data collections as required by ED, according to the schedule and deadlines set forth each year by ED to all SEAs.

7. ESEA Title V, Part B, Subpart 2 (Rural and Low-Income School Program)

a. Required Use of Funds

- i. BIE may reserve up to 5 percent for administration and to provide technical assistance to BIE-funded schools that meet the eligibility requirements of ESEA section 5221(b)(1).
- ii. BIE will distribute the remaining funds to schools eligible under ESEA section 5221(b)(1) on either a competitive or formula basis.

b. Measures of Program Effectiveness

BIE is required to submit annual SEA- and school-level performance data to ED via ED's collection mechanism used for SEAs, and to participate in other data collections as required by ED, according to the schedule and deadlines set forth each year by ED to all SEAs.

8. ESEA Title VI, Part A, Subpart 1 (Indian Education Formula Grants)

a. Planned Use of Amount Transferred

- i. In order to ensure the orderly operation of the program, ED's OIE will administer the formula program (i.e., prepare the application package, solicit, review, prepare, and approve applications, and determine the size of awards).
- ii. ED will work with BIE to ensure that BIE-funded schools apply for program funds annually. All BIE-funded schools apply to ED for funds. A BIE-funded school may use either the ED-506 forms, or the ISEP student count, for the number of students claimed on its application for Indian Education formula grants.
- iii. BIE will furnish OIE a timely and accurate list of BIE-funded schools to receive program funds on the basis of approved applications.
- iv. ED provides grants directly to BIE-funded Tribally-controlled (grant and contract) schools and is responsible for oversight and administration of those grants.
- v. For BIE-operated schools, as soon as possible after determining the

amount of funds to be awarded to the schools, ED will transfer to BIE the total funds to be awarded to BIE-operated schools. BIE will distribute funds to these schools in the amounts provided by ED. BIE assumes the responsibility of oversight and administration of the awards to BIE-operated schools.

- vi. When BIE exercises its authority to reserve for the administration of this program up to 1.5 percent of the funds provided to it for awards to BIE operated schools, it must reduce all awards it will make to these schools under this program by this same percentage.
- vii. BIE-funded schools may include funds received under Title VI, Part A subpart 1 in a school-wide program, subject to the conditions in ESEA section 6115(c).

b. Measures of Program Effectiveness

- i. Annually, BIE will ensure that OIE formula grant program funds transferred from ED will be distributed to its BIE operated schools in a timely manner and in accordance with the program grant requirements.
- ii. ED will be responsible for conducting monitoring of Title VI Indian Education formula grants to evaluate the implementation of the project objectives. For any onsite visits, ED will invite BIE to accompany ED on monitoring of BIE-funded schools with those grants.

9. ESEA Section 6116 (Integration of Services Authorized)

a. Program Requirements

- i. ED and DOI are the lead Agencies under ESEA section 6116(g) and the Agencies are implementing section 6116(g) through the terms of this section of the Agreement.
- ii. ED and BIE will cooperate in the implementation of ESEA section 6116, including the transfer of funds between the Agencies in a manner to ensure that ED and BIE can meet the requirements of this section. These requirements include the timely issuance of awards and consideration of proposals for alternative requirements.
- iii. Pursuant to section 6116, DOI is the lead Agency for all BIE-funded schools, and ED is the lead Agency for all other applicants.
- iv. ED will receive and review all applications (including those from BIE-funded schools) under section 6116 to determine that applications meet the requirements of Title VI, Part A, subpart 1, as well as for any

other ED programs listed in the application.

- v. Annually, ED will notify BIE and all BIE-funded schools of any approved applications.
- vi. ED will transfer funds to DOI for those BIE-funded schools that are eligible applicants under this provision.

10. ESEA Section 2222 (Comprehensive Literacy State Development Program (CLSD))

a. Planned Use of Amount Transferred

- i. ED will reserve one half of 1 percent for the Secretary of DOI to carry out a program described in this section at schools operated or funded by BIE as described in ESEA section 2222(b)(2).
- ii. BIE will award no less than 95 percent of funds received under CLSD to BIE-funded schools for the implementation of comprehensive literacy instruction as defined in ESEA section 2221(b)(1).
- iii. BIE will ensure that at least—
 - 1) 15 percent of the awarded funds serve children from birth through age five;
 - 2) 40 percent of the awarded funds serve students in kindergarten through grade five; and
 - 3) 40 percent of the awarded funds serve students in middle and high school, including an equitable distribution of funds between middle and high schools.

b. Measures of Program Effectiveness

BIE is required to submit annual SEA- and school-level performance data to ED via ED's collection mechanism used for SEAs, and to participate in other data collections as required by ED, according to the schedule and deadlines set forth each year by ED to all SEAs.

11. McKinney-Vento Act, Title VII, Subpart B (Education for Homeless Children and Youths)

a. Planned Use of Funds Transferred

- i. BIE will award 75 percent or more of its Education for Homeless Children and Youth (EHCY) program allocation by competition at least once every three years to BIE-funded schools as outlined in Section 723 of the McKinney-Vento Act (Local Educational Agency Subgrants for the Education of Homeless Children and Youths).
- ii. BIE will not use more than 25 percent of its EHCY allocation for SEA-level activities as outlined in Section 722(f) of the McKinney-Vento Act (Functions of the Office of the Coordinator), including for direct administrative costs.

b. Measures of Program Effectiveness

BIE is required to submit annual SEA- and school-level performance data to ED via ED's collection mechanism used for SEAs, and to participate in other data collections as required by ED, according to the schedule and deadlines set forth each year by ED to all SEAs.

F. General Provisions

1. This Agreement governs funds that are given following the date of the signing, regardless of which fiscal year the funds are for; subsequent-year funds that Congress makes available for administration and operation of BIE and BIE-funded schools under all programs covered by this Agreement; and funds that ED previously provided to DOI under these programs that are still available for obligation when this Agreement becomes final.
2. BIE agrees to implement the programs listed herein consistent with the requirements contained in relevant provisions of the ESEA and the McKinney-Vento Act as well as any applicable regulations. BIE agrees to adhere to regulations and guidelines of DOI.
3. BIE agrees to the assurances contained in ESEA section 8304.
4. This Agreement extends to BIE the same right to seek waivers of ESEA requirements that ESEA section 8401 extends to SEAs, LEAs, Indian Tribes, and schools.
5. With the exception of BIE's permitted use of funds for administrative activities or activities comparable to those of an SEA using funds under this Agreement, each party will bear its own costs of performing its respective duties under this Agreement.
6. This Agreement shall remain in effect until modified by agreement of the Agencies. With regard to the programs under Section IV.A, the Agreement shall remain in effect for the duration of the period of these programs' current authorization under their relevant statutes.
7. The terms of this Agreement may be modified at any time, following Tribal consultation as needed, with the written consent of ED and BIE through their duly

authorized representatives. The Agencies agree to meet to review, discuss, and/or modify the terms of this Agreement, as necessary, at least every five years. Either Agency may request the initiation of such meetings at any time.

8. In the event of any conflict between terms of this final Agreement, and terms of any previously approved plan or application that BIE provided to ED, the terms of this Agreement (as ED and BIE may subsequently modify) shall control.
9. In the event of non-compliance with the terms and conditions of this agreement, ED, depending on the extent of noncompliance, may take the following actions:
 - a. require additional, more detailed financial reports;
 - b. require additional project monitoring;
 - c. require BIE to obtain technical or management assistance; and
 - d. temporarily withhold funds pending correction.

Prior to temporarily withholding funds pending correction, ED and BIE agree to first seek to resolve the dispute collaboratively. If collaborative resolution is not successful, ED and BIE will seek mediation of any such dispute through the Office of Management and Budget (“OMB”) under OMB’s general authorities regarding program oversight, management, coordination, and performance consistent with 31 U.S.C. §§ 503(b)-(c).

10. Prior to proceeding to seek resolution of a dispute in any court, the Parties agree to seek resolution of any such dispute by submitting it to the United States Attorney General for resolution, consistent with Section 1-402 of Executive Order No. 12146, 44 Fed. Reg. 42657.

G. Signature Authorities
