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

Under Executive Order 13592
And
Section 9204 of the
Elementary and Secondary Education Act, as amended by the
No Child Left Behind Act of 2001

I. Background

The United States has a unique political and legal relationship with the federally recognized American Indian and Alaska Native (AI/AN) tribes across the country, as set forth in the Constitution of the United States, treaties, Executive Orders, and court decisions. For centuries, the Federal Government's relationship with these tribes has been guided by a trust responsibility – a longstanding commitment on the part of our Government to protect the unique rights and ensure the well-being of our Nation's tribes, while respecting their tribal sovereignty.

In recognition of that special commitment – and in fulfillment of the solemn obligations it entails – Federal agencies must help improve educational opportunities provided to all AI/AN students, including students attending public schools in cities and in rural areas, students attending schools operated and funded by the U.S. Department of the Interior's Bureau of Indian Education (BIE), and students attending postsecondary institutions, including Tribal Colleges and Universities (TCUs). This is an urgent need. Recent studies show that AI/AN students are dropping out of school at an alarming rate, that our Nation has made little or no progress in closing the achievement gap between AI/AN students and their non-AI/AN student counterparts, and that many Native languages are on the verge of extinction.

On December 2, 2011, President Obama signed Executive Order 13592 (EO), which established the White House Initiative on American Indian and Alaska Native Education (Initiative) to help expand educational opportunities and improve educational outcomes for all AI/AN students. The EO addresses opportunities for students to learn their native languages, cultures, and histories and receive a complete and competitive education that prepares them for college and a career. It also includes a commitment to improve educational opportunities for students attending TCUs. The EO also requires a Memorandum of Understanding (MOU) between the U.S. Department of the Interior (DOI) and the U.S. Department of Education (ED) "[t]o facilitate a new partnership…to improve [American Indian and Alaska Native] education…." The MOU

is to "take advantage of both Departments' expertise, resources, and facilities" and "address how the Departments will collaborate in carrying out the policy" set out in the Executive Order.

The 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 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 Indian tribes as distinct cultural and governmental entities. 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.

Both Departments share a mutual goal of enhancing educational opportunities for AI/AN students. The ED has specific experience with federally funded education programs and a responsibility to work with the BIE funded school system to ensure excellence in education. The BIE has particular expertise in Indian education and specific experience with federally funded education programs. In addition, BIE plays a key part in fulfilling the Government's trust responsibility to Indian tribes regarding education. The BIE has an interest in accessing expertise, funding, and other resources available through ED, specifically to advance Indian education, to address areas of significant need, and to facilitate fulfillment of the Government's trust responsibility to Indian tribes.

II. Purposes of Agreement

The purposes of this Agreement are:

1) To establish the process by which ED and DOI will implement their responsibilities under Executive Order 13592 (EO) as required by the EO, and as described in Section III below; and
2) To establish the responsibilities of BIE and BIE funded schools for use of funds provided by ED to BIE for the benefit of AI/AN students under the Elementary and Secondary Education Act of 1965, as amended (ESEA), and the McKinney-Vento Homeless Assistance Act of 1987, as amended, as required by Section 9204 of the ESEA, and as described in Section IV below. Sections IV and V of this Agreement do not address other funds provided by ED to BIE (e.g., under Parts B and C of the Individuals with Disabilities Education Act or IDEA).

III. The White House Initiative

A. Structure

1. Initiative Leadership

The two Agencies agree to work with resolve to meet the goals of the EO. In this regard, the Secretary of the Interior and the Secretary of Education will

co-chair the Initiative. The Initiative's Executive Director is appointed by the Secretary of Education and will serve as liaison between the two Secretaries. The Executive Director will work closely with the BIE Director and provide periodic reports to both Secretaries regarding progress achieved under the Initiative.

2. Working Group

   The Secretaries of the Interior and Education are also co-chairs of the Interagency Working Group on American Indian and Alaska Native Education and Tribal Colleges and Universities (Working Group); the Working Group includes many other Federal agencies. Because the two Agencies agree that tribal involvement is essential to achieving the goals of the EO, the two Secretaries will recommend to the Working Group that representatives of tribal governments be invited to participate in meetings.

3. BIE-ED Committee

   To facilitate communication between BIE and ED, representatives from BIE and ED who serve on the Working Group will meet as the BIE-ED Committee. The BIE and ED may jointly agree to name, as additional members to the BIE-ED Committee, BIE or ED employees who are not members of the larger Working Group. In addition, because the two Agencies agree that tribal involvement is essential to achieving the goals of the EO, the BIE-ED Committee will also include no fewer than three tribal government representatives, who shall be jointly appointed by the two Secretaries. The BIE-ED Committee will meet at least quarterly. Subcommittees may be formed to work on specific issues, and may meet more frequently. For example, there will be a Data Subcommittee that will work to resolve issues concerning BIE's submission of data to ED, including the issue as described in Section IV(B)(7) below.

B. Goals

In accordance with the EO, ED and DOI agree to:

1. Work to improve educational opportunities and education outcomes of all AI/AN students, including students attending public schools in cities and in rural areas, students attending schools operated and funded by BIE, and students attending postsecondary institutions, including TCUs;

2. Enhance tribal sovereignty by supporting efforts, consistent with applicable law, to build the capacity of tribal educational agencies (TEAs) and TCUs to provide high quality education services to AI/AN children and young adults;

3. Develop in partnership with TEAs a more routine and streamlined process for entering into agreements for educational studies conducted on tribal lands;

4. Develop sufficient data resources to inform progress on Federal performance indicators, in close collaboration with ED's National Center for Education Statistics, and collect and study information on the education of AI/AN students;

5. Encourage and coordinate Federal partnerships with public, private, philanthropic, and nonprofit entities to help increase the readiness of AI/AN students for school, college, and careers, and to help increase the number and percentage of AI/AN students completing college;

6. Develop a national network of individuals, organizations, and communities to share best practices in AI/AN education and encourage them to implement these practices; and

7. Strengthen the relationship between ED and BIE to help improve primary, secondary, and postsecondary education for all AI/AN children and young adults, including those with disabilities.

C. **Specific Activities Designed to Reach the Stated Goals**

1. The BIE-ED Committee described in Section III.A., above, will meet at least quarterly to advance the goals of this Agreement. In addition, both Agencies will informally work together to further those goals. Such informal work will include regular communication and consultation between each ED office responsible for administering programs that provide funds to the BIE for the education of AI/AN students and the corresponding office in BIE.

   Collaborating through the BIE-ED Committee, and other means, BIE and ED will explore:

   a) The most appropriate ways to respond to specific and relevant issues raised during tribal consultation;

   b) Ways to expand the eligibility of BIE for funds from ED and other Federal agencies that currently are provided to state educational agencies (SEAs) or to other state agencies;

   c) Support for BIE's efforts to monitor and enforce compliance with requirements of ED programs, as well as meet other SEA responsibilities, with respect to the funding ED provides to BIE for award to BIE funded schools, in particular with respect to tribally controlled grant and contract schools, including funding under Section IV of this Agreement, and funds provided under the Individuals with

Disabilities Education Act. The Committee will explore options to support these BIE responsibilities, including the option of having ED establish conditions to the funding it provides to BIE consistent with applicable law.

In working to resolve these issues, the two Agencies recognize the view of many tribal members that provisions of the Tribally Controlled Schools Act significantly impact the Agencies' consideration of these issues:

d) Ways to promote more effective school reform efforts to 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;

e) 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 native language instruction;

f) Ways to enhance quality research, data collection, and dissemination of best practices with regard to the education of AI/AN students;

g) The need for any revisions as to how the two Agencies apply the terms "SEA," "LEA," and "school" with regard to the BIE funded school system, including the references in Section IV.B.4 of this Agreement, to better reflect (1) the roles and responsibilities of each entity, and (2) how the use of ED funds in the BIE system is consistent with the requirements of the applicable ED programs; and

h) Other issues that the Secretaries may designate.

2. The two Agencies will, subject to available funding, conduct joint training sessions or workshops for TEAs, tribal schools, BIE funded schools, TCUs, and related entities, to increase the capacity of those entities to compete for and implement Federal education grants for which they are eligible.

3. The two Agencies will consult regularly with tribes in accordance with EO 13175 and President Obama's 2009 Memorandum on Tribal Consultation. The Agencies will each implement their own tribal consultation policies, but in doing so will consult with each other as to whether to conduct joint or independent consultation activities for various issues as they arise. The two Agencies will also work to create a process for more effectively responding to input received during tribal consultations.

4. The Fiscal Year (FY) 2012 appropriation for ED included funding for a pilot program under the Indian Education National Activities authority. Under the pilot, ED awarded competitive grants to TEAs, defined as including tribal departments of education, to increase their role in the education of AI/AN students, including education to meet the unique educational and culturally related academic needs of AI/AN students, improve their academic achievement, and enhance tribal sovereignty. Under this pilot, TEAs will enter into collaborative agreements with SEAs to perform certain state-level functions under ESEA formula grant programs for schools located on reservations (or, in Oklahoma, former reservations).

5. The ED will work with SEAs to promote greater communication between SEAs and tribes, between SEAs and BIE funded schools, and between tribal governments and BIE funded schools concerning tribal access to education records of students who are tribal members, consistent with the Family Educational Rights and Privacy Act of 1974, as amended (FERPA), the Individuals with Disabilities Education Act, as amended (IDEA), and other privacy protections. In this regard, ED will take steps to communicate that the FERPA does not prohibit data-sharing with tribes or TEAs if required steps and safeguards are followed. For example, ED will communicate that –

    a) While FERPA and the IDEA generally prohibit the disclosure of personally identifiable information from students' education records without parental consent; an LEA or SEA could release information on students to a tribe or TEA in non-personally identifiable form, and that;

    b) An LEA or an SEA may designate an Indian tribe or TEA as its authorized representative under FERPA to audit or evaluate Federal or state-supported education programs, under the conditions set forth in the Department's regulations. (34 CFR 99.3, 99.31(a)(3), 99.35, 76 FR 75604 (December 2, 2011)).

    The BIE will likewise work to promote greater communication between BIE operated schools and tribes concerning appropriate tribal access to educational records of students who are tribal members.

6. The ED and BIE will work proactively to notify tribes of Federal funding opportunities.

7. The ED and BIE will engage in discussions, between themselves and with tribes, LEAs, SEAs, and other stakeholders, to look for ways to break down barriers to effective coordination and cooperation among all who provide education to Indian students. Discussions will address the situation of many Indian students moving from one school to another under a variety of

jurisdictions (BIE, local, and tribal) and how to achieve adequate coordination and communication among those entities.

IV. ESEA and McKinney-Vento Act Program Funding

A. Purpose of Agreement and Programs Covered

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 Homeless Assistance Act:

1. ESEA Programs
   - Section 1003(g), School Improvement Grants
   - Title I, part A (Improving Basic Programs Operated by Local Educational Agencies)
   - Title II, part A (Teacher Quality Improvement Formula Grants)
   - Title IV, part B (21st Century Community Learning Centers)
   - Title VI, part B (Rural Education)
   - Title VII, part A, subpart 1 (Indian Education)

2. McKinney-Vento Homeless Assistance Act Programs
   - Title VII, subtitle B (Education for Homeless Children and Youths)

B. Key Components of Agreement Regarding Use and Responsibilities for Funds Provided by ED to BIE

The Appendix to this Agreement contains details governing payment, fiscal matters, and specific requirements for each program covered by this Agreement.

1. Accountability System

   Consistent with (a) ESEA section 9204(a); (b) ED's general requirements for ESEA consolidated state applications under ESEA section 9302 (see, generally, ED's notice published in the Federal Register on May 22, 2002); and (c) ED's procedures for securing from all states information on standards, assessments, and accountability determinations and systems under Title I, part A:

   The BIE will comply with the provisions of the Consolidated State Application Accountability Workbook approved by ED. The two Agencies recognize the rights of a tribal governing body or school board to waive all or part of the Secretary of the Interior's definition of academic content and achievement standards, assessments, and adequate yearly progress (AYP) (ESEA §1116(g)(1)(B); (25 CFR § 30.105), subject to approval of the

alternative definition in accordance with 25 CFR §30.113 (see 25 CFR §§ 30.105-30.113).

2. Ability of BIE funded Schools to Apply for ED funds as LEAs

The BIE funded schools are eligible to apply to ED for any discretionary grant program under the ESEA for which an LEA is eligible. In this regard, section 9101 of the ESEA provides that the term "local educational agency" includes a school funded by BIE under certain conditions, and section 9103 of the ESEA provides that a consortium that includes a BIE funded school is given the same consideration as an LEA for competitive grant programs.

The ED and BIE agree to work to increase the awareness, among BIE funded schools, of the availability of funding under competitive ED grant programs.

3. BIE and ED Responsibilities to include Monitoring and Enforcement

BIE Responsibilities. Consistent with 25 USC § 2006(a), the Secretary of the Interior has vested in the Assistant Secretary – 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:

- Provide assistance to BIE funded schools (including those schools that adopt their own AYP definitions under the waiver provisions in ESEA section 1116(g)(1)(B) and 25 CFR § 105) to help them implement AYP definitions, and the Title I, part A accountability system applicable to BIE funded schools, and
- More generally, (a) monitor the activities and record keeping of all BIE funded schools for compliance with applicable programmatic and fiscal requirements; (b) document the purpose, scope, and results of such monitoring; (c) provide appropriate technical assistance and take appropriate enforcement actions, as necessary; (d) systematically analyze the results of the LEA audits and other oversight activities to identify trends in findings and improvements in monitoring and technical assistance strategies; and (e) submit performance reports and other information to ED required of all SEAs. These responsibilities are undertaken by BIE with the goal of improving education for AI/AN students.

ED Responsibilities. The ED may monitor and receive the information necessary to conduct such monitoring of BIE and BIE funded schools to ensure, to the extent permitted by law, that subsequent transfers of funds for

the activities outlined in this Agreement are utilized properly. The ED may monitor BIE for compliance with this Agreement and ESEA requirements in areas that include:

- The Title I, part A accountability determination for each school and wide dissemination of the results of that determination, as well as the individual components that comprise that determination (i.e., performance against annual measurable objectives, proficiency rates, participation rates, and graduation rates or performance on the other academic indicator);
- Development of School Improvement Plans by BIE funded schools; and
- BIE oversight, technical assistance, and administration, consistent with oversight responsibilities of SEAs, under ESEA programs; the Tribally Controlled Schools Act of 1988, as amended; and the Indian Self-Determination and Education Assistance Act of 1975, as amended; and any other applicable laws.

The ED will schedule any monitoring of BIE funded schools in coordination with BIE. These responsibilities are undertaken by ED with the goal of improving education for AI/AN students.

4. Other Responsibilities of BIE, ED, and BIE funded Schools

a) BIE

i. For purposes of this Agreement, BIE assumes the responsibility of an SEA with respect to BIE funded schools. Hence, 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 IV.A that apply to SEAs, as well as any applicable regulations, apply to BIE.

ii. The ESEA and McKinney-Vento Act generally set forth three types of statutory requirements that govern these programs: (1) affirmative operational requirements; (2) descriptions to be included in individual program applications or plans that SEAs or subrecipients respectively prepare and submit for ED or SEA review and approval; and (3) assurances to be included in those applications or plans. The BIE (like other SEAs) has submitted to ED a consolidated state application rather than individual program applications or plans and has had BIE funded schools (like LEAs in many states) submit to BIE consolidated local applications rather than individual program applications or plans. Consistent with ESEA Sections 9302 and 9305, these consolidated

applications do not contain many of the programmatic descriptions and assurances that BIE and BIE funded schools would otherwise include in individual program applications or plans.

The BIE will implement all ESEA and McKinney-Vento Act statutory responsibilities of SEAs (including data collection, reviewing LEA funding applications, coordinating programs covered by this Agreement with other programs disbursing funds to LEAs with approved applications, monitoring program improvement, and technical assistance) – whether or not these responsibilities are set forth in individual program applications or plans. Likewise, BIE will implement all responsibilities of SEAs set forth in applicable program regulations contained in 34 CFR Part 200, except where provisions of the Tribally Controlled Schools Act of 1988, as amended, other statutes, or the Department of the Interior's regulations control. In determining a course of action, BIE will hold paramount the goal of improving education for AI/AN students.

iii. Except as modified by this Agreement, BIE will implement all activities and strategies with regard to all included programs as described in the consolidated application submitted to ED for review in June 2002 – subject to modifications proposed by BIE and approved by ED.

b) ED

i. The ED considers BIE to be 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. Through the Initiative established by the Executive Order and the BIE-ED Committee established in Section III.A of this Agreement, ED and BIE will collaborate to explore BIE's legal authority for both the monitoring of tribally controlled grant schools' or contract schools' compliance with all statutory and regulatory requirements applicable to these programs, as well as ensuring the proper expenditure of all funds transferred to tribally controlled grant schools or contract schools. ED will provide targeted technical assistance to BIE to resolve these issues regarding programmatic and fiscal monitoring of BIE funded grant schools and contract schools.

ii. The ED expects BIE to 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 these programs.

iii. The ED may take such actions as may be proper, including withholding of funds and requiring corrective action as permitted by law or regulation, in the event of any noncompliance with such statutory and regulatory requirements.

iv. In determining a course of action, ED will hold paramount the goal of improving education for AI/AN students.

c) BIE funded schools

i. For purposes of this Agreement, ED and BIE consider all BIE funded schools as having the responsibility of both LEAs and schools, except with regard to requirements governing public school choice and supplemental educational services in ESEA sections 1116(b) and (e). See ESEA section 1116(g)(2). Hence, 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 Part A that apply to LEAs or schools apply to BIE funded schools.

ii. Consistent with the principles identified in Sections B.3 and B.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 programs covered by this Agreement with other programs, and expanding program funds provided by BIE consistent with approved applications) – whether or not these responsibilities are set forth in individual applications or plans. Likewise, the Agencies will work to ensure that BIE funded schools implement all responsibilities of LEAs or schools set forth in applicable program regulations contained in 34 CFR Part 200, except where provisions of the Tribally Controlled Schools Act of 1988, as amended, other statutes, or the Department of the Interior's regulations control.

iii. All program funds provided to BIE funded schools under separate documents subject to the terms of this Agreement must be expended pursuant to applicable ESEA or McKinney-Vento Act requirements.

5. BIE Competitive Subgrants

When the state in which a BIE funded school is located considers the school to be an LEA in its own right, the BIE funded school may compete for competitive subgrant funds under both BIE and SEA competitions. However, the school may only receive a subgrant 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 subgrant funds awarded from the same program under both BIE and SEA competitions.

6. Program Evaluations of BIE-funded Schools

The BIE will annually submit to ED a summary of its annual program evaluations.

7. Submission of Data

The parties recognize that ED has an interest in obtaining data from BIE that are timely, complete, and accurate; the parties also recognize that factors, including BIE's multi-state system, make such submissions difficult for BIE. The parties agree to work cooperatively through the Data Subcommittee set forth in Section III.A.3 above to resolve issues and problems involving data submissions.

V. General Provisions

1. The BIE agrees to the assurances contained in section 9304 of the ESEA.

2. The maintenance-of-effort requirement in section 9521 of the ESEA does not apply to the BIE.

3. Applicable provisions of the Education Department General Administrative Regulations (EDGAR) are those in 34 CFR Parts 76, 77, 80, 81, 82, 85, 86, 97, 98, and 99 except where provisions of the Tribally Controlled Schools Act of 1988, as amended, other statutes, or the Department of the Interior's regulations control.

4. This Agreement extends to BIE the same right to seek waivers of ESEA requirements that section 9401 of the ESEA extends to SEAs, LEAs, Indian tribes, and schools.

5. Any transfers of ESEA and McKinney-Vento Act funds between the Agencies will be made through transfer of funds documents that incorporate the terms of this Agreement. Each party to this Agreement will bear its own costs of performing its respective duties under this Agreement.

6. The contents of the Appendix to this document are incorporated herein and the undersigned agree to comply with their provisions.

7. This Agreement shall remain in effect until modified by agreement of the parties. With regard to the programs under Section IV, the Agreement shall remain in effect for the duration of the period of these programs' current authorization under their relevant statutes. The Agreement may be modified at any time, following tribal consultation as needed, with the written consent of ED and BIE.

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 final Agreement (as ED and BIE may subsequently modify) shall control.

VI. Signature Authorities

Ken Salazar
Secretary
U.S. Department of the Interior

Date: DEC 03 2012

Arne Duncan
Secretary
U.S. Department of Education

Date: DEC 03 2012

Appendix to Agreement
between the
U.S. Department of the Interior – Bureau of Indian Education
and the
U.S. Department of Education
(Subject to Tribal Consultation) Under Executive Order 13592 and Section 9204 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001

Programmatic Responsibilities Under this Agreement

Any subsequent transfers of funds between the Agencies shall be made through transfer of funds documents in accordance with applicable laws and regulations. The informational details in this Appendix contain the framework for any subsequent documents transferring funds. If there is any conflict between this document and the terms of any document that transfers funds, the funds transfer document will govern the use of the funding transferred therein. For each program included in this Agreement, Section A 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 awards to BIE funded schools through formula or competitive subgrants, and in the case of the McKinney-Vento Homeless Assistance Act of 1987, as amended, through procedures described in BIE's consolidated application. Except as may otherwise be specified in this Agreement, in any subsequent funds transfer document, or in the approved BIE consolidated State application, BIE will calculate the formula-grant allocation to be provided each year to BIE funded schools using provisions of the formula that was created and consulted upon in 1991 and has been used since, rather than the subgrant formulas in the ESEA program statutes.

The content of this Agreement and subsequent funds transfer documents govern FY 2012 and subsequent-year funds that Congress makes available for administration and operation of BIE and BIE funded schools under all programs identified in Section IV.A of the Agreement, and funds that ED previously provided to DOI under these programs that are still available for obligation when this Agreement becomes final.

Funds provided for all programs under Section IV.A, with the exception of ESEA Title VII, part A, are forward-funded.

A. Specific Program Requirements

1. ESEA Title I, part A (Improving Basic Programs Operated by LEAs)

Planned Use of Amount Transferred

- After reserving 1.5 percent for administration, BIE reserves an additional 4 percent, subject to any limitation in section 1003(e) of the ESEA, to carry out state responsibilities with regard to school improvement and other activities identified in ESEA sections 1116 and 1117.

- The BIE will award all other funds by formula to BIE funded schools.

Achievement Measures

- The BIE will establish performance measures based on the percentage of students who achieve proficiency in at least reading or language arts and mathematics, based on state assessments, or other assessments as permitted under the Secretary of the Interior's definition of adequate yearly progress and approved through the U.S. Department of Education's peer review process, and proficiency levels.

2. ESEA Title II, part A (Teacher Quality Improvement Formula Grants)

Planned Use of Amount Transferred

After reserving up to 1.5 percent of funds for administration, BIE will:

- Reserve 2.5 percent for state-level activities;

- Reserve 2.5 percent for subgrants to partnerships of BIE funded schools and higher education institutions (see ESEA section 2113(a)); and

- Award 95 percent by formula to BIE funded schools;

Achievement Measures

- Performance will be measured according to the percentage of highly qualified teachers, including specialists in core academic subjects, based on a performance target of 100 percent.

3. ESEA Section 1003(g), School Improvement Grants (SIG)

Planned Use of Amount Transferred

- The BIE can reserve up to 5 percent of School Improvement Grant funds for activities, as outlined in the final requirements and guidance.
- The BIE will award all other funds as subgrants on a competitive basis.

Achievement Measures

- The BIE will collect, report, and utilize the achievement measures and leading indicators described in the SIG regulations.

4. ESEA Title IV, part B (21st Century Community Learning Centers)

Planned Use of Amount Transferred

- In addition to the 1.5 percent of funds that BIE may reserve for administration, BIE may reserve up to 3 percent for state-level activities described under ESEA Section 4202(c)(3).
- All other funds must be provided to BIE funded schools on a competitive basis (see ESEA section 4204).

Achievement Measures

The BIE 21st CCLC program will utilize State Assessment Scores, or other assessments as permitted under the Secretary of the Interior's definition of adequate yearly progress and approved through the U.S. Department of Education's peer review process, Adequate Yearly Progress, and proficiency levels in the core areas of Language Arts and Mathematics as performance measures for BIE funded schools receiving 21st CCLC Competitive Grant Funds.

5. ESEA Title VI, part B (Rural Education)

Planned Use of Amount Transferred

- In addition to reserving up to 1.5 percent of funds for administration, the BIE may reserve up to an additional 3.5 percent to provide technical assistance to BIE funded schools that meet the eligibility requirements of section 6221(b)(1) of the ESEA.
- The BIE will distribute the remaining funds to schools eligible under section 6221(b)(1) of the ESEA on either a competitive or formula basis.

Achievement Measures

The BIE will examine whether all schools participating in the Rural and Low-Income Schools program for 3 or more years are making adequate yearly progress.

6. McKinney-Vento Homeless Assistance Act of 1978, Title VII, subtitle B, as amended (Education for Homeless Children and Youth)

Planned Use of Amount Transferred

- After reserving up to 1.5 percent of funds for administration, BIE may allot up to 23.5 percent for state-level activities.

- All remaining funds are to be distributed to LEAs as provided in the approved BIE consolidated application.

- The BIE program shall provide "Homeless" services to all students identified in need of such services. The BIE shall utilize the reporting format proposed by ED to report these numbers.

Achievement Measures

- Performance will be measured according to (1) the percentage of homeless children and youth included in statewide assessments, or other assessments as permitted under the Secretary of the Interior's definition of adequate yearly progress and approved through the U.S. Department of Education's peer review process, in reading and mathematics and (2) the percentage of assessed homeless students who meet or exceed proficiency on state assessments, or other assessments as permitted under the Secretary of the Interior's definition of adequate yearly progress and approved through the U.S. Department of Education's peer review process, in reading and mathematics.

7. ESEA Title VII, Part A, Subpart 1 (Indian Education)

a. Provisions Other Than Section 7116

- Until ED and BIE agree otherwise, in order to ensure the orderly operation of the program, ED/Office of Indian Education (OIE) will administer the formula program (i.e., prepare the application package, solicit, review, prepare, and approve applications, determine the size of awards, and monitor projects).

- The ED will work with BIE to ensure that all BIE funded schools apply for program funds. All BIE funded schools apply directly to ED; ED funds BIE grant and contract schools directly.

- For schools using the Indian Student Equalization Program (ISEP) count as the basis for their Indian student counts, BIE will furnish ED/OIE timely and accurate child counts of Indian students attending schools in order for the BIE funded schools to receive program funds on the basis of approved applications.

- As soon as possible after determining the amount of funds to be awarded to BIE operated schools, ED will provide to BIE the total funds to be awarded to BIE operated schools. The BIE will distribute funds to these schools in the amounts provided by ED.

- The ED will be responsible for conducting onsite monitoring of Title VII Indian Education formula grants. The ED will invite BIE to accompany ED on monitoring of BIE funded schools with those grants.

- 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.

- Funds provided under Title VII, Part A subpart 1 may be included in a school-wide program, subject to the conditions in Section 7115(c) of the ESEA.

b. Special terms for Section 7116:

All of the provisions in section 7116 apply generally. In implementing section 7116, ED and BIE agree to the following:

- The ED and DOI are the lead agencies under Sec. 7116(g) and the Departments are implementing this Agreement pursuant to section 7116(g).

- The ED and BIE will cooperate in the implementation of section 7116, including the transfer of funds between the two 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 waiver requests.

- Pursuant to section 7116, DOI is the lead agency for all BIE funded schools, and ED is the lead agency for all other applicants.

- The ED will receive and review all applications (including those from BIE-funded schools) to determine that applications meet the requirements of Title VII, part A, subpart 1, as well as for any other ED programs listed in the application.

- The ED will transfer applications from BIE funded schools to DOI, indicating those applications that meet the requirements of ED programs listed in the application package.

- The ED will transfer funds to DOI for those BIE funded schools that are eligible applicants under this provision.

B. State-Level Activities and Reporting

1. State-Level Activities

Unless it requests a change, BIE will continue to implement the proposal it presented to ED, for the use of FY 2002 funds, describing its plans for using funds reserved for BIE "state-level" activities under:

Title I, part A (Improving Basic Programs Operated by LEAs, funds reserved for school improvement); and
Title II, part A (Teacher Quality Improvement Formula Grants).

The BIE must submit a year-end grant performance report by October 1 each year while this Agreement is in effect that describes, for the preceding school year, the activities conducted with funds reserved for state-level activities and the amounts expended for those activities. The ED program staff will conduct quarterly performance reports by telephone with BIE staff during the year.

2. Program Evaluations

The BIE will annually submit to ED a summary of its annual program evaluations.

3. Data Submissions

As set forth in Section IV(B)(7) of the Agreement, the parties recognize that ED has an interest in obtaining data submissions from BIE that are timely, complete, and accurate; and the parties also recognize that factors, including BIE's multi-state system, make such submissions difficult for BIE. The parties have agreed to work cooperatively through the Data Subcommittee set forth in Section III.A of the Agreement to resolve issues and problems involving data submissions.

C. Period during which Funds may be Obligated

The 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 except for funds provided under Title VII, part A, Subpart 1 of the ESEA (Indian Education). The BIE or BIE funded schools may obligate all funds provided under Title I, Part A and Title II, Part A through September 30 of the fiscal year for which the funds are received.

Funds made available under Title VII, Part A, subpart 1 are available for obligation through the end of the first succeeding fiscal year.

Funds are obligated only when they are committed for specific activities. See Section 76.707 of

the Education Department General Administrative Regulations (EDGAR). The award of funds through subgrants to BIE funded schools is not an obligation.

D. Fiscal Matters

Pursuant to ESEA section 9204(b), notwithstanding provisions of individual program statutes, BIE is permitted to reserve up to 1.5 percent of funds provided under the programs identified in Section IV.A of this Agreement for BIE's costs of administering these programs, including the costs of evaluation and provision of technical assistance. The BIE will use these funds to meet administrative responsibilities similar to those performed by SEAs under those programs.