

Final Agreement Between
THE DEPARTMENT OF EDUCATION
and
THE DEPARTMENT OF THE INTERIOR - BUREAU OF INDIAN AFFAIRS,
OFFICE OF INDIAN EDUCATION PROGRAMS
(Subject to Tribal Consultation)

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

A. PURPOSE OF AGREEMENT AND PROGRAMS COVERED

This Final Agreement presents terms and conditions governing funds that Congress appropriates to the Department of Education (ED) and that ED transfers to the Department of the Interior (DOI) for use by the Bureau of Indian Affairs (the Bureau), Office of Indian Education Programs (OIEP) and bureau-funded-schools under the following programs that Congress has authorized in the No Child Left Behind Act of 2001 (NCLB):

1. Elementary and Secondary Education Act (ESEA) Programs

- Title I, part A (Improving Basic Programs Operated by Local Educational Agencies)
- Title I, part F (Comprehensive School Reform)
- Title II, part A (Teacher Quality Improvement Formula Grants)
- Title II, part D (Enhancing Education Through Technology)
- Title IV, part A (Safe and Drug-Free Schools and Communities)
- 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)

This Agreement is subject to Tribal consultation and revisions, if any, that result from such consultation. Until the conclusion of Tribal consultation and establishment of any revisions stemming from it, this Agreement shall operate on an interim basis only. The final Agreement will remain in effect for the duration of the period of these programs' authorization under NCLB.

B. PAYMENT AND APPLICABILITY

The content of this Agreement governs FY 2005 and subsequent-year funds that Congress makes available for administration and operation of OIEP and bureau-funded schools

under all programs identified in Parts A1 and A2 above, and FY 2003 and 2004 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 A-1 and A-2, with the exception of Title VII, part A, are forward-funded.

In the event of any conflict between terms of this final agreement and terms of any previously approved plan or application that the OIEP provided to ED, the terms of this final agreement (as ED and DOI may subsequently modify as described in Section C) control.

C. DURATION OF THIS AGREEMENT

This Agreement, as revised if necessary after Indian consultation, shall remain in effect for the remainder of the period for which the NCLB reauthorizes the ESEA and the McKinney-Vento Homeless Assistance Act. The Agreement may be modified at any time, following tribal consultation as needed, with the written consent of ED and OIEP.

D. KEY COMPONENTS OF THIS AGREEMENT

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 adequate yearly progress (AYP), assessments, and accountability needed under Title I, part A --

1. **Final Accountability System.** OIEP will ensure that each bureau-funded school, beginning with the 2005-06 school year, implements an accountability system established under section 1111 of Title I of the ESEA that is consistent both with regulations in 25 CFR Part 30 and with OIEP's approved Consolidated State Application Accountability Workbook.

2. **Interim Accountability System.** For purposes of implementing reporting and monitoring responsibilities under this Agreement (see Part F, "STATE-LEVEL ACTIVITIES AND ANNUAL REPORTING"), OIEP agrees that during the 2003-04 and 2004-05 school years all bureau-funded schools used either of the following procedure for identifying schools for school and local educational agency (LEA) improvement based on school and subgroup performance:

- a. The accountability system of the state in which the school is located, including having the definition of AYP determined using the criteria as identified in that state's accountability workbook; or
- b. A Bureau-approved accountability system that included the following interim definition of AYP that the OIEP used during the '03-'04 and '04-'05 school years:

- (i) Each group of students --all students, special education students, and Limited English Proficient students -- must have met or exceeded the annual measurable objectives the OIEP established for making AYP. The purpose of establishing the determination of AYP in this manner was to ensure that 100% of the students are proficient in 12 years.
- (ii) The OIEP's Adequate Yearly Progress Annual and Intermediate Objectives and Timeline are as follows:

| | | | |
|-------------------------------------|--------------------------------|---|----------------|
| Move 5.5 % of students out of Basic | Final Goal | 100% of students Proficient/ Advanced | 13 - 14 |
| Move 5.5 % of students out of Basic | Annual Goal | 94.5.5% of students Proficient/ Advanced | 12 - 13 |
| Move 5.5 % of students out of Basic | Annual Goal | 89% of students Proficient/ Advanced | 11 - 12 |
| Move 5.5 % of students out of Basic | Intermediate Objective | 83.5% of students Proficient/ Advanced | 10 - 11 |
| Move 5.5 % of students out of Basic | Annual Goal | 78% of students Proficient/ Advanced | 09 - 10 |
| Move 5.5 % of students out of Basic | Annual Goal | 72.5% of students Proficient/ Advanced | 08 - 09 |
| Move 5.5 % of students out of Basic | Intermediate Objective | 67% of students Proficient/ Advanced | 07 -08 |
| Move 5.5 % of students out of Basic | Annual Goal | 61.5% of students Proficient/ Advanced | 06 - 07 |
| Move 5.5 % of students out of Basic | Annual Goal | 56% of students Proficient/ Advanced | 05 - 06 |
| Move 4.75% of students out of Basic | Intermediate Objective | 50.5% of students Proficient/Advanced | 04 - 05 |
| Move 4.75% of students out of Basic | Annual Objective | 45.75% of students Proficient/Advanced | 03 - 04 |
| Move 7% of students out of Basic | Annual Objective | 41% Proficient/Advanced | 02 - 03 |
| | 34% Starting Point | | 01 - 02 |
| | Intermediate Objective: | 50.5% of students Proficient/Advanced | 04 - 05 |
| | Intermediate Objective: | 67% of students Proficient/ Advanced | 07 - 08 |
| | Intermediate Objective: | 83.5% of students Proficient/ Advanced | 10 - 11 |
| | Final Goal: | 100% of students Proficient/ Advanced | 13 - 14 |

3. Consolidated Application. By September 1, 2005, the OIEP will submit the remainder of all required baseline data and performance targets for ESEA Goals 1-5 of its Consolidated Application. ED understands that this information may reflect the unique circumstances and needs of OIEP and bureau-funded schools. ED will review the consolidated application and provide OIEP with feedback within 60 days, either approving the application or denying the application with an explanation of why the application was denied.

4. OIEP and ED Responsibilities to include Monitoring and Enforcement.

OIEP Responsibilities. ED and the OIEP acknowledge that the Secretary of the Department 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 Indian

Education administered by OIEP. The Assistant Secretary carries out such functions through the Director OIEP. For the purposes of this Agreement OIEP's responsibilities are comparable to those of a state educational agency (SEA) to--

- To provide assistance to bureau-funded schools to help them implement, and where necessary to enforce, those schools' adoption and use of AYP definitions (including those the schools would adopt under the waiver provision in ESEA section 1116(g)) and the Title I, part A accountability system applicable to bureau-funded schools, and
- More generally, to a) monitor the activities and recordkeeping of all bureau-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 enforcement measures; 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 states.

ED Responsibilities. ED may monitor, and receive the information necessary to conduct such monitoring, OIEP and bureau-funded schools to ensure the funds in this agreement are utilized properly, to the extent permitted by law. ED may monitor OIEP for compliance with this Agreement and NCLB requirements in areas that include:

- Determination of AYP for each school and wide dissemination of the results;
- Development of School Improvement Plans developed by bureau-funded schools, and
- OIEP oversight, technical assistance, and administration, consistent with oversight responsibilities of SEAs, under NCLB programs, the Tribally Controlled School Act, and the Indian Self-Determination Act.

ED will schedule any monitoring of bureau-funded schools in coordination with OIEP.

5. Fiscal Matters. Pursuant to ESEA section 9204(b), notwithstanding provisions of individual program statutes, the OIEP is permitted to reserve up to 1.5 percent of funds provided under the programs identified in Part A-1 and B-1 of this Agreement for the OIEP's costs of administering these programs, including the costs of evaluation and provision of technical assistance. The OIEP will use these funds to meet administration responsibilities similar to those performed by SEAs under those programs.

6. OIEP and Bureau-funded School Responsibilities.

- a. The OIEP

- i. For purposes of this Agreement, the OIEP assumes the responsibility of an SEA. Hence, except as exempted by statute or modified by this Agreement or by subsequent agreement of ED and DOI, all provisions of the ESEA or the McKinney-Vento Act governing programs identified in Part A that apply to SEAs, as well as any applicable regulations, apply to OIEP.
- ii. The ESEA generally sets forth statutory requirements that govern these programs in three forms: (1) as affirmative operational requirements; (2) as 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) as assurances to be included in those applications or plans. However, the OIEP (like other SEAs) has submitted to ED a consolidated State application rather than these individual program applications or plans and has had bureau-funded schools (like LEAs in many States) submit to the OIEP consolidated local applications rather than the 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 the ESEA otherwise would require the OIEP and bureau-funded schools to include in individual program applications or plans.

Therefore, the OIEP is to implement all ESEA 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 the program statutes as affirmative responsibilities or as an individual application or plan descriptions or assurances. Likewise, the OIEP 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 School Act or the Department of the Interior’s statutes or regulations control.

- iii. Except as modified by this Agreement, the OIEP 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 that the OIEP may propose to ED for prior approval.

b. Bureau-funded schools

- i. For purposes of this Agreement, all bureau-funded schools assume 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 section 1116(g)(2). Hence, except as exempted by statute or modified by this Agreement or by subsequent agreement of ED and DOI, all provisions of the ESEA or the McKinney-Vento Act governing programs identified in Part A that apply to LEAs or schools, apply to bureau-funded school.

- ii. Consistent with the principles identified in section D.6.1, above, that concern OIEP responsibilities bureau-funded schools are to implement all ESEA statutory responsibilities of LEAs or schools (including data collection, coordinating programs covered by this Agreement with other programs, and expanding program funds provided by the OIEP consistent with approved applications) – whether or not these responsibilities are set forth in the program statutes as affirmative responsibilities or as individual application or plan descriptions or assurances. Likewise, bureau-funded schools will 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 School Act or the Department of the Interior’s statutes or regulations control.
- iii. All program funds provided to LEAs under terms of this Agreement must be expended pursuant to applicable ESEA or McKinney-Vento Act requirements.

7. OIEP Competitive Subgrants

When the State in which a bureau-funded school is located considers the school to be an LEA in its own right, the bureau-funded school may compete for competitive subgrant funds under both OIEP and SEA competitions. However, the school may only receive a subgrant from either the OIEP or the State in which the school is located. To ensure compliance with this provision, the OIEP may require schools to certify in their applications that they will not accept subgrant funds awarded from the same program under both the OIEP and SEA competitions.

The OIEP will annually submit to ED a summary of its annual program evaluations, (which for the Comprehensive School Reform program must include information on bureau schools’ implementation of comprehensive school reforms as well as student achievement results).

8. Other Provisions

For each program included in this Agreement, Part E identifies the percentages of each fiscal year’s funds that the OIEP may reserve for administration, “state-level” activities and other “SEA-level” uses, and the percentage that OIEP awards to bureau-funded schools through formula or competitive subgrants, and in the case of the McKinney-Vento Homeless Assistance Act through procedures described in the OIEP’s consolidated application. Except as may otherwise be specified in this Agreement or in the approved Bureau consolidated State application, the OIEP will calculate the formula-grant allocation to be provided each year to bureau 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.

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

E. PROGRAMMATIC RESPONSIBILITIES UNDER THIS AGREEMENT

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

Planned Use of Amount Transferred

- After reserving 1.5 percent for administration, the OIEP reserves an additional four percent for FYs 2005-2007, 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 OIEP will award all other funds by formula to bureau-funded schools.

Achievement Measures

The BIA/OIEP will utilize state assessments, adequate yearly progress, and proficiency levels in the core areas of language arts and/or reading and mathematics as performance measures for bureau-funded schools.

2. Title I, part F (Comprehensive School Reform (CSR))

Planned Use of Amount Transferred

- In addition to a reservation of up to 1.5 percent of grant funds to be used for administration, the OIEP may reserve not more than 3.5 percent of the grant funds for evaluation and technical assistance expenses.
- The OIEP will award all other funds as subgrants on a competitive basis.

Achievement Measures

Goals are consistent with Title I, Part F, Section 1606. State assessments, adequate yearly progress and proficiency levels in the core areas of language arts and/or reading, and math serve as performance measures.

3. 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, the OIEP will

--

- Reserve 2.5 percent for State-level activities;

- Reserve 2.5 percent for subgrants to partnerships of bureau-funded schools and higher education institutions (see ESEA section 2113(a)) and
- Award 95 percent by formula to bureau-funded schools;

Achievement Measures

Performance will be measured according to the percent of highly qualified teachers, including specialists in core academic subjects, principals, and pupil services personnel, based on a performance target of 95 percent in FY2006 and 100 percent in FY2007.

4. Title II, part D (Enhancing Education through Technology)

Planned Use of Amount Transferred

- The OIEP may reserve up to 5 percent of funds for State-level activities and administration identified in ESEA section 2415. Of the amount so reserved, the OIEP may use not more than 30 percent (i.e., not more than 1.5 percent of the total amount transferred to OIEP for the program) for administration.
- The OIEP will distribute the remaining funds as specified below:
 - a. Up to 50 percent for infrastructure, development and competitive grants of which not more than 30 percent of the total amount remaining for distribution may be used for infrastructure development to support the school network initiative as outlined in its five-year budget for school-wide area network upgrades, technology training, network security, and curriculum development; and
 - b. The remaining funds will be distributed by formula to bureau-funded schools that meet applicable program application requirements (see ESEA section 2414) for activities described in section 2416.

Achievement Measures

Performance will be measured according to (1) an increase, relative to a FY2004 baseline, in the percentage of schools that have effectively and fully integrated technology; (2) an increase, relative to a FY2004 baseline, in the percentage of teachers that meet their state technology standards; and (3) an increase in the percent of classrooms with internet access in

bureau-schools to an amount equal to the percent in high-poverty schools of the states in which the bureau schools are located.

5. Title IV, part A (Safe and Drug-Free Schools and Communities) (SDFSCA)

Planned Use of Amount Transferred

- The OIEP may reserve up to 1.5 percent of funds for administration.
- OIEP may reserve up to an additional 5 percent of funds for activities described in ESEA section 4112 (c)(1).
- All bureau-funded schools are to be eligible for the SDFS Indian Youth Program.

Achievement Measures

All schools and residential programs shall provide a safe and secure environment by decreasing the incidents of violence and substance abuse by 2% annually as reflected in the results of the Annual Report/Report Card.

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

Planned Use of Amount Transferred

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

Achievement Measures

The BIA/OIEP/21st CCLC program will utilize State Assessment Scores, Adequate Yearly Progress, and proficiency levels in the core areas of Language Arts and Mathematics as performance measures for BIA Schools receiving 21st CCLC Competitive Grant Funds.

7. Title VI, part B (Rural Education)

Planned Use of Amount Transferred

- In addition to reserving up to 1.5% of funds for administration, the OIEP may reserve up to an additional 3.5% to provide technical

assistance to bureau-funded schools that meet the eligibility requirements of section 6221(b)(1) of the ESEA.

- The OIEP will distribute the remaining funds to schools eligible under section 6221(b)(1) on either a competitive or formula basis.

Achievement Measures

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

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

Planned Use of Amount Transferred

- After reserving up to 1.5 percent of funds for administration, the OIEP 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 OIEP consolidated application.

Achievement Measures

The BIA/OIEP Title X, B shall provide "Homeless" services to all students identified in need of such services. The OIEP shall utilize the reporting format proposed by ED to report these numbers.

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

a. Provisions Other Than Section 7116

- Until ED and the OIEP 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).
- ED will work with the OIEP to ensure that all bureau-funded schools apply for program funds.
- For schools using the ISEP count as the basis for their Indian student counts, OIEP will furnish ED/OIE timely and accurate child counts of Indian students attending 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 bureau-operated schools, ED will provide to the OIEP the total funds to be awarded to those schools. OIEP will distribute funds to these schools in amounts provided by ED.
- OIEP and ED will pursue joint monitoring and prepare joint review-of-progress reports for bureau-operated schools, in order to avoid duplication of activities by the two agencies.
- When OIEP 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 bureau-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.

b. Special terms for Section 7116:

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

- ED and DOI are the lead agencies under Sec. 7116 (g) (1) and the Departments are implementing this Agreement pursuant to section 7116(g).
- ED and the OIEP 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 OIEP 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 bureau-funded schools, and ED is the lead agency for all other applicants.
- ED will receive and review all applications (including those from bureau-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.
- ED will transfer applications from bureau-funded schools to DOI, indicating those applications that meet the requirements of ED programs listed in the application package.
- ED will transfer funds to DOI for those bureau-funded schools that are

eligible applicants under this provision.

F. STATE-LEVEL ACTIVITIES AND REPORTING

Unless it requests a change, OIEP 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 OIEP "State-level" activities under:

- Title I, part A (Improving Basic Programs Operated by LEAs; funds reserved for school improvement);
- Title II, part A (Teacher Quality Improvement Formula Grants);
- Title II, part D (Enhancing Education through Technology); and
- Title IV, part A (Safe and Drug-Free Schools and Communities (SDFS)).

OIEP must submit a year-end grant performance report by October 1, 2005, and every October 1 thereafter 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. ED program staff will conduct quarterly performance reports by phone with OIEP staff during the year.

The OIEP will annually submit to ED a summary of its annual program evaluations, (which for the Comprehensive School Reform program must include information on bureau schools' implementation of comprehensive school reforms as well as student achievement results).

By August 15, 2005, the OIEP will provide to ED a chart that identifies, first for the 2003-2004 school year and then for the 2004-2005 school year, each bureau-funded school (broken out separately for schools that are and are not bureau-operated), and whether the school that year used--

- (a) The assessment system and definition of AYP of the state in which the school is located, or
- (b) The OIEP's system of assessments and interim definition of AYP.

As discussed in part D.3, OIEP will submit all remaining information required of states in the 2003-04 annual consolidated state performance report by September 1, 2005, and all data for future years by the due date ED annually announces. ED understands that this information may reflect the unique circumstances and needs of the OIEP and bureau-funded schools.

G. PERIOD DURING WHICH FUNDS MAY BE OBLIGATED

The OIEP or bureau-funded schools, as appropriate, may obligate all program funds provided annually under this Agreement through the end of the second succeeding fiscal

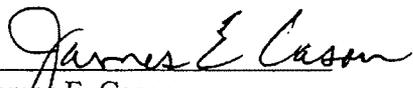
year except for funds provided under Title VII, part A, Subpart 1 of the ESEA (Indian Education). OIEP or bureau-funded schools may obligate all FY 2005 funds provided under Title I, Part A and Title II, Part A through September 30, 2007.

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

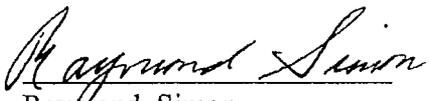
Funds are obligated only when they are committed for specific activities. See Section 76.707 of the Education Department General Administrative Regulations (EDGAR). The award of funds through sub grants to bureau-funded schools is **not** an obligation.

H. MISCELLANEOUS

1. The Bureau 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.
3. Applicable provisions of EDGAR are those in parts 76, 77, 80, 81, 82, 85, 86, 97, 98, and 99 except where provisions of the Tribally Controlled Schools Act or the Department of the Interior's statutes or regulations control.


James E. Cason
Associate Deputy Secretary
DEPARTMENT OF THE INTERIOR

Date: *JUNE 30, 2005*


Raymond Simon
Deputy Secretary
DEPARTMENT OF EDUCATION

Date: **JUN 30 2005**