

LIST OF ACTIVITIES FOR WHICH FEDERAL EDUCATION FUNDS MIGHT BE USED IN BIE-FUNDED SCHOOLS

I. GENERAL

This responds to questions posed by the Department of the Interior's Bureau of Indian Education (BIE) regarding activities that might be supported with funds received by BIE-funded elementary and secondary schools¹ under: (1) the specific programs listed in the December 3, 2012, Agreement Between BIE and the Department of Education (ED), which includes certain formula grant programs under the Elementary and Secondary Education Act of 1965 (ESEA) and the McKinney-Vento Homeless Assistance Act; and (2) the Individuals with Disabilities Education Act (IDEA).

In general, the use of funds under any grant program must be authorized under the program statute or regulations and must be consistent with the intent and purpose of the program. In addition, under ED's regulations at 34 CFR §80.22 and the applicable cost principles in 2 CFR part 225 (2013 edition),² in order for a cost to be allowable, it must be necessary and reasonable to carry out that program and must meet the other requirements of the general cost principles.³

The remainder of this document is organized by program. Under the discussion of each program, we have identified, from specific questions posed by BIE, those activities that generally may be supported with the program funds, and included a brief explanation of how each activity might be supported with the program funds. Whether a particular use of funds is allowable depends on the specific facts and circumstances. Therefore, this discussion focuses on what is "generally" allowable; you should contact the appropriate ED program office for more specific guidance.

¹ This document addresses only the general ED requirements regarding the use of ED funds, and there may be additional legal or procedural restrictions to consider, for either tribally controlled schools (e.g., under the Tribally Controlled Schools Act of 1988) or for BIE-operated schools.

² These regulations generally codify former OMB Circular A-87. The Department is in the process of adopting the cost principles in 2 CFR part 200, subpart E, which would apply to ED grantees for grants made after those cost principles are adopted.

³ Under the cost principles (2 CFR part 225, Appendix A, section C (2013 edition), the cost must:

- a) Be necessary and reasonable for proper and efficient performance and administration of Federal awards;
- b) Be allocable to Federal awards under the provisions of OMB Circular A-87;
- c) Be authorized or not prohibited under State or local laws or regulations;
- d) Conform to any limitations or exclusions set forth in OMB Circular A-87, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items;
- e) Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit;
- f) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost;
- g) Except as otherwise provided for in OMB Circular A-87, be determined in accordance with generally accepted accounting principles;
- h) Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation;
- i) Be the net of all applicable credits; and
- j) Be adequately documented.

The last section of the document lists activities from BIE's questions that generally may not be supported with funds available under any of the programs identified in the 2012 Agreement between BIE and ED or under the IDEA.

II. ESEA TITLE I, PART A FUNDS

Funds received under Title I, Part A of the ESEA must be used to improve the academic achievement of low-achieving students in schools with high concentrations of children from low-income families. The use of funds is governed by the statutory and regulatory requirements of Title I, Part A of the ESEA. How Title I, Part A funds may be used to benefit low-achieving students depends on whether, with respect to funds distributed to individual schools, the Title I school using the funds operates a schoolwide program or a targeted assistance program,⁴ or whether the funds are used at the district level. We understand that all BIE-funded schools operate Title I schoolwide programs, and that every school functions as its own LEA. Accordingly, the information that follows focuses on the requirements applicable to a school that operates a schoolwide program (i.e., a "schoolwide school").

A schoolwide school generally may use Title I, Part A funds for any activity that supports the needs of students in the school, as identified through a comprehensive needs assessment and included in a schoolwide plan (ESEA §1114(b)). However, Title I, Part A funds may not replace non-Title I funds that otherwise are necessary to carry out the basic educational program of the school. A schoolwide school must also, among other things, use effective methods and instructional strategies that are based on scientifically based research, provide instruction by highly qualified teachers, provide high-quality and ongoing professional development, and increase parent involvement (ESEA §1114(b)(1)). A schoolwide school must provide effective, timely additional assistance to students who are at risk of failing to meet the State's academic achievement standards (ESEA §1114(b)(1)(I)). A schoolwide school also must receive the amount of funds that the school would have received if it were not a Title I schoolwide school, including the funds needed to provide basic educational services, as well as services that are required by law for students with disabilities and English Learners (ESEA §1114(a)(2)(B)).

Moreover, it is important to bear in mind that, in a schoolwide school, not all of a school's activities that may be supported with Title I, Part A funds necessarily should be supported with those funds. In other words, a school should not let the fact that a particular activity may be supported with Title I, Part A funds be the sole determinant of whether it will support that activity with those funds. Rather, a school should develop a comprehensive plan for improving student achievement and then, viewing all of the sources of funds available to it, determine which funds should be used to support the various components of the plan, consistent with the requirements for each source of funds.

The specific activities listed below can generally be supported with Title I, Part A funds.

⁴ For the differences between these types of programs, see pp. 4-5 of ED's Title I guidance, *Using Title I, Part A ARRA Funds for Grants to Local Educational Agencies to Strengthen Education, Drive Reform, and Improve Results for Students*, available at: <http://www.ed.gov/policy/gen/leg/recovery/guidance/titlei-reform.pdf>. This document also contains the general principles governing allowable uses of Title I funds (see the introduction to Section B), which should be helpful to BIE-funded schools. Although this Title I guidance refers to Title I funds provided through the American Recovery and Reinvestment Act (ARRA), it also applies to Title I funds in general.

A. TEACHERS

Teacher Incentives: Payment of bonuses for teacher recruiting

Section 1113(c)(4) of the ESEA specifically authorizes an LEA to reserve up to 5 percent of its Title I, Part A allocation to provide financial incentives and rewards to teachers who work in Title I schools that are identified for improvement, corrective action, or restructuring for the purpose of attracting and retaining qualified and effective teachers in those schools.

B. FACILITIES

1. Renovation of classrooms

ESEA Title I, Part A funds may be used for “minor remodeling,” which is defined in 34 CFR §77.1(c) as “minor alterations in a previously completed building,” as well as “the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building.” The definition specifically excludes “building construction, structural alterations to buildings, building maintenance, or repairs.” Note that such minor remodeling must be consistent with the needs identified in the school’s schoolwide plan.

2. Playgrounds with new equipment and safety foundations

ESEA Title I, Part A funds may be used to purchase equipment for playgrounds to the extent that such a purchase is consistent with the needs identified in the school’s schoolwide plan. It is likely that purchasing playground equipment would be consistent with the academic needs identified for the school only in a preschool or early elementary school in which those needs include improving the gross motor skills of students.

3. Cultural/Parent Centers

ESEA Title I, Part A funds may be used to fund a family literacy program for parents who need to improve their literacy skills in order to support their children’s learning, if the LEA has exhausted all other reasonably available sources of funding for those activities, and such a program is consistent with the needs identified in the schoolwide plans of the schools served by the LEA (ESEA §1118(e)(7)).

C. INFORMATION TECHNOLOGY

1. Upgrade of bandwidth

ESEA Title I, Part A funds may be used to rewire a school (e.g., install cabling, electrical drops, etc.) to support the use of technology to the extent that the wiring is necessary to support technology that is otherwise allowable under Title I, Part A, and it is consistent with the definition of “minor remodeling” (including taking place “within the confines of the previously completed building”).

2. **Computer hardware and software**

In general, an LEA may use Title I, Part A funds to purchase technology for use in a Title I school as long as the use of the technology is consistent with the needs identified in a school's schoolwide plan. Such technology could include computer labs, mobile devices such as tablets, and distance learning capabilities.

D. PRESCHOOL

Title I funds may be used to operate, in whole or in part, a preschool program consistent with Title I requirements (ESEA section 1112(b)(1)(K)). See *Serving Preschool Children through Title I Part A of the Elementary and Secondary Education Act of 1965, as Amended, Non-Regulatory Guidance*, available at <http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf>.

III. ESEA TITLE II, PART A FUNDS

LEAs and schools may use program funds provided under Title II, Part A of the ESEA in a wide variety of ways that are designed to improve the skills and abilities of schools' teachers, principals, and assistant principals, and (in some cases) other staff, and thereby to increase student academic achievement. Authorized activities are identified in section 2123 of the ESEA, and include, but are not limited to, recruitment and retention mechanisms and incentives, professional development of teachers in subject-matter content that is tied to required content standards and/or teaching strategies, professional development of principals and assistant principals in school leadership, paying for additional teachers to reduce class size, paying for course work to help teachers become highly qualified, and other activities designed to improve the quality of the teaching force.

Among these many options, the determination of how to use Title II, Part A funds must be based on the results of the local assessment of needs for professional development and hiring (the needs assessment) addressed in sections 2122(b) and 2122(c) of the ESEA, which must be conducted in collaboration with school teachers and other staff. Moreover, the use of program funds also must comply with program application requirements in section 2122(b).

The specific activities listed below can generally be supported with Title II, Part A funds.

A. TEACHERS

1. Teacher Housing

- a. Renovating and improving existing Bureau of Indian Affairs (BIA) houses**
- b. Purchasing trailers for housing use by teaching staff**

If, based on the results of the required local needs assessment, schools have significant needs for hiring and retaining qualified teachers that cannot be met because of a lack of available housing, teacher housing costs may be allowable as hiring incentives under Title II, Part A (ESEA §2123(a)(2)) or as activities needed to improve the teaching force (under §2123(a)(5)).

2. Teacher Incentives: Tuition payments for instructional aides

Consistent with the results of the school's needs assessment, Title II, Part A funds may be used to recruit qualified professionals, "including highly qualified paraprofessionals," and to provide them with alternative routes to teacher certification (ESEA §2123(a)(2)(C)(iii)).

"Highly qualified paraprofessionals" are paraprofessionals who have at least two years of: (a) experience in the classroom, or (b) postsecondary education or demonstrated competence in a field or academic subject for which there is a significant shortage of qualified teachers. See ESEA §2102(4).

As noted above, Title II, Part A funds can also be used in ways that improve the quality of the teaching force (ESEA, §2123(a)(5)). The ESEA does not require that the benefits from these services flow immediately; rather, use of Title II, Part A funds could be part of a long-term plan that shows benefits down the road. Therefore, it is possible that, based on its needs assessment, a school that has "highly qualified paraprofessionals" could justify using Title II, Part A funds under section 2123(a)(2)(C)(iii) for course work these individuals need to become certified and highly qualified teachers.

3. Teacher Incentives: Payment of bonuses

Payment of bonuses and other financial incentives (including differential pay) is allowable if needed to hire — or retain — teachers who are highly qualified to teach in: (a) academic subjects in which there is a shortage of highly qualified teachers within a school or the LEA, and/or (b) schools in which there exists a shortage of highly qualified teachers (ESEA §2123(a)(2)).

IV. SCHOOL IMPROVEMENT GRANT (SIG) FUNDS

SIG funds must be used consistent with the SIG final requirements, published in the *Federal Register* on October 28, 2010 (75 Fed. Reg. 66363, available at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-28/pdf/2010-27313.pdf>; note that ED has published new proposed SIG requirements at <http://www.gpo.gov/fdsys/pkg/FR-2014-09-08/pdf/2014-21185.pdf>). Pursuant to the 2010 requirements, all SIG funds must be used to support implementation of one of the SIG intervention models, each of which represents a comprehensive approach to addressing the particular needs of the students in a school as identified through a needs assessment. Accordingly, SIG funds may be used only for activities that are directly related to the full and effective implementation of the school's selected model consistent with the school's approved SIG application.

The specific activities listed below can generally be supported with SIG funds.

A. TEACHERS

Teacher Incentives: Payment of bonuses above and beyond ESEA Title II, Part A

SIG funds may be used in a school that is implementing the "turnaround" or "transformation" model to "implement such strategies as financial incentives" that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the school,

if those costs are directly related to the full and effective implementation of the selected model consistent with the school's approved SIG application.

B. FACILITIES

Cultural/Parent Centers

SIG funds may be used in a school that is implementing the turnaround or transformation model to provide ongoing mechanisms for family and community engagement. While SIG program funds may not be used to "construct" a cultural/parent center, activities in cultural/parent centers that provide mechanisms to engage the families of students attending those schools may be allowable uses of SIG funds, if those costs are directly related to the full and effective implementation of the selected model, consistent with the school's approved SIG application.

C. INFORMATION TECHNOLOGY

SIG funds may be used in a school implementing a turnaround or transformation model to use and integrate technology-based supports and interventions as part of the school's instructional program, if those costs are directly related to the full and effective implementation of the selected model, consistent with the school's approved SIG application and the SIG final requirements. Thus, if computer hardware or software, or programs such as online career and technical education, are part of the school's instructional program, SIG funds may be used to provide access to them. Further, question H-29 of the March 1, 2012, SIG Frequently Asked Questions⁵ states that SIG funds may be used for the costs of minor remodeling (as defined in 34 CFR §77.1(c)) necessary to support technology in certain circumstances.

V. 21ST CENTURY COMMUNITY LEARNING CENTERS (21ST CCLC) FUNDS

The specific activities listed below can generally be supported with 21st CCLC program funds.

A. FACILITIES

Cultural/Parent Centers

21st CCLC program funds may not be used to "construct" a cultural/parent center, but they may be used to carry out a broad range of non-school-hour activities (such as before school, after school, or during summer recess) at such a center, including activities that promote parental involvement and family literacy, arts and music education activities, and other programs that advance student academic achievement.

⁵ This guidance is available at <http://www2.ed.gov/programs/sif/legislation.html>.

B. INFORMATION TECHNOLOGY

21st CCLC program funds may be used for distance learning and online career and technical education programs to the extent that those activities are provided as part of an authorized non-school-hour program, and they advance student academic achievement.

C. OTHER: CREATE SPORTS TEAMS

21st CCLC program funds may be used to create new sports teams, provided that those activities are carried out **as part of an authorized non-school-hour program and they advance student academic achievement.**

VI. ESEA TITLE VII FUNDS

Funds provided under Title VII, Part A of the ESEA must be used to meet the unique educational and culturally related academic needs of Indian students. The specific activities listed below can generally be supported with ESEA Title VII funds.

A. FACILITIES

Cultural/Parent Centers

ESEA Title VII formula grants may be used for services/programs for parents of Indian students, but may not be used to “construct” a center.

B. INFORMATION TECHNOLOGY

ESEA Title VII formula grants may be used for supplies, including laptops, tablets, and software, for Indian students when those supplies are specifically needed to achieve project goals. ESEA Title VII formula grants may also be used for software and online programs, such as career and technical education programs for Indian students, to the extent that that use is aligned with project goals.

VII. IDEA, PART B FUNDS

In general, IDEA Part B funds must be used to benefit children with disabilities in accordance with IDEA Part B requirements, and to identify, locate, and evaluate children who are suspected of having a disability. BIE-funded schools must use IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities, such as costs for special education teachers and administrators; related services providers (such as speech therapists and psychologists); materials and supplies for use with children with disabilities; professional development for special education personnel; professional development for regular education teachers who teach children with disabilities; and specialized equipment or devices to assist children with disabilities. In other words, IDEA Part B funds are intended to be an extra support to provide special education and related services to students with disabilities, not to replace other funding sources that should be used to provide basic educational services to those students. Generally, IDEA Part B funds may not be used for core instruction in the general education classroom, instructional materials for use with nondisabled children, or for professional development of general education teachers that is

not related to meeting the needs of students with disabilities. An exception to this general rule is when IDEA Part B funds are used for coordinated early intervening services (CEIS); under 34 CFR §300.711, the Secretary of the Interior may allow a BIE-funded school to use not more than 15 percent of the amount the school receives under 34 CFR §300.707(b) for any fiscal year, to develop and implement CEIS in accordance with IDEA section 613(f).

IDEA section 605 authorizes the Secretary of Education to allow the use of IDEA funds to construct new facilities or alter existing facilities, or to acquire appropriate equipment, if the Secretary determines that the special education program would be improved by allowing funds to be used for those purposes. In general, to be able to use IDEA funds for these costs, the BIE must obtain prior approval from ED; and BIE-funded schools must obtain prior approval from the BIE. (See 2 CFR part 225 (2013 Edition), Appendix B, section 15, for specific rules of allowability that apply to these types of expenditures.) In addition, any construction or alteration of facilities must comply with the “Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities,” or the “Uniform Federal Accessibility Standards,” pursuant to 34 CFR §300.718. The BIE and BIE-funded schools also must comply with requirements in 34 CFR part 76 regarding construction, including the requirements in 34 CFR §§75.600-75.617, which are incorporated by reference in 34 CFR §76.600.

The specific activities listed below can generally be supported with IDEA funds.

**1. Facilities - complying with the Americans with Disabilities Act of 1990 (ADA)
(sidewalks, doorways, bathrooms)**

A BIE-funded school may use IDEA Part B funds to construct new, or alter existing, sidewalks, doorways, and bathrooms, to comply with ADA requirements, if the school obtains prior approval from the BIE, and the BIE determines that the use of Part B funds for that purpose would improve the school’s special education program, consistent with IDEA section 605.

2. Purchasing buses with wheelchair lifts

A BIE-funded school may use IDEA Part B funds to purchase buses that are equipped with wheelchair lifts if the school obtains prior approval from the BIE, and the BIE determines that the use of Part B funds for that purpose would improve the school’s special education program, consistent with IDEA §605. Buses should not be purchased with IDEA funds with the expectation that the buses will be used, in whole or in part, to transport children without disabilities. Under circumstances in which buses are purchased exclusively to transport children with disabilities but are not full and are able to pick up nondisabled children along the usual bus routes, and no additional IDEA funds would need to be expended to transport those nondisabled children, buses purchased with IDEA funds may be used to transport nondisabled children under the permissive-use-of-funds provisions in IDEA section 613(a)(4)(A)(i) and 34 CFR §300.28(a)(1), because the use of IDEA Part B funds in this situation would confer only an incidental benefit on the nondisabled children. Whether BIE-funded schools could rely on this provision in other situations would depend on the specific facts involved.

3. Providing vehicles to visit parents or pick up students in remote areas

We do not have enough information to determine whether IDEA Part B funds may be used to purchase such vehicles, because it is unclear what the purpose would be for visiting parents and picking up students in remote areas. For example, purchasing a vehicle for the express purpose of picking up only students with disabilities so that they can attend school would be an allowable use of IDEA Part B funds. Without more detail regarding the purpose of the proposed purchase, we are unable to determine whether IDEA Part B would allow such a purchase.

4. Hiring of specific staff to liaison only with parents of students with disabilities

We do not have enough information to determine whether IDEA Part B funds may be used to hire such staff, because the purpose of the liaison is unclear. In general, IDEA Part B funds may be used to hire such staff if doing so will benefit children with disabilities in accordance with IDEA Part B requirements, or the staff will be used to identify, locate, and evaluate children suspected of having a disability. Until we learn more about the specific purpose of the proposed liaison, we are unable to determine whether IDEA Part B would allow hiring such staff.

VIII. UNALLOWABLE ACTIVITIES

The following activities raised by BIE generally cannot be supported by any of the Federal education program funds discussed in this memorandum (although for questions about special circumstances, contact ED program staff):

1. Upgrading bandwidth, to the extent the installation of long-distance lines would be for the benefit of the entire community or tribe, rather than for the benefit of a particular school
2. Expanding dorms to seven days per week
3. Providing equine therapy programs
4. Repairing roads around campuses
5. Installing fencing for safety
6. Purchasing bigger mixing bowls for kitchen (although this may be allowable if part of a culinary education program)
7. Installing football fields (or baseball or softball fields)
8. Installing track or activity fields
9. Installing outdoor basketball courts