

**AGREEMENT BETWEEN THE U.S. DEPARTMENT OF EDUCATION AND THE
ARIZONA DEPARTMENT OF EDUCATION CONCERNING SUBGRANT
ALLOCATIONS UNDER TITLE I, PART A OF THE ELEMENTARY AND
SECONDARY EDUCATION ACT OF 1965, AS AMENDED**

The U.S. Department of Education (ED) and the Arizona Department of Education (ADE), through their undersigned representatives, enter into this agreement to affirm the steps that ADE will take to (1) correct for past misallocations of subgrant funds that ADE awarded to local educational agencies (LEAs), including both traditional LEAs and charter school LEAs, under Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB),¹ and (2) resolve miscalculated reservations of Title I funds for school improvement activities.

Background

The ESEA requires ED to allocate Title I funds, through each State educational agency (SEA), to eligible LEAs within a State under four separate Federal formulas. All the Federal formulas are based in part on the count of children specified in section 1124(c) of the ESEA, predominantly the number of children aged 5 to 17, inclusive, residing in an LEA from families below the poverty level published by the Census Bureau. To ensure that Title I allocations reflect current concentrations of poverty, the Census Bureau updates its poverty estimates annually. However, to mitigate shifts in an LEA's allocation from year to year due to updated child counts, changes in the amount appropriated for Title I, or updates to other formula data elements, the statute establishes a variable hold-harmless amount under each formula for each LEA, depending on the LEA's poverty percentage.

Under the Title I regulations at 34 C.F.R. § 200.72, for each Federal formula, an SEA must adjust the allocations ED has determined for each LEA to account for (1) consolidations, divisions, and boundary changes that have occurred since the Census Bureau updated its list of

¹ All references to the ESEA in this Agreement are to the ESEA, as amended by NCLB, unless otherwise specified.

LEAs and (2) special LEAs, such as charter school LEAs, that are not on the list of traditional LEAs provided to ED by the Census Bureau. Section 1122(c) of the ESEA and 34 C.F.R. § 200.73(a)(1)-(3) require that, on a Federal formula-by-formula basis, an SEA may not reduce any LEA's allocation below its hold-harmless amount, except if there are insufficient funds to pay all LEAs their hold-harmless amount or when the SEA is reserving Title I funds for State administration or the State academic achievement awards program.

The ESEA and Title I regulations also authorize State-level reservations that result in further adjustments by an SEA to the ED-determined LEA allocations. Under section 1003(a) of the ESEA, each SEA is generally required to reserve four percent of the amount it receives under Title I for school improvement activities. In reserving funds for this purpose, under the "special rule" in section 1003(e) of the ESEA, an SEA must ensure that no LEA receives less in total under Title I than it received in the prior year because of the four percent reservation. Section 1004(a) of the ESEA allows an SEA to reserve funds to administer Title I.

For purposes of this agreement, ADE does not contest ED's determination that:

- ADE did not properly adjust the ED-determined LEA allocations, reserve funds for school improvement, or apply the special rule that that no LEA receives less in total under Title I than it received in the prior year because of the four percent school improvement reservation for school years (SYs) 2013–2014 through 2016–2017 (from the State's Federal fiscal year (FY) 2013 through FY 2016 Title I grant awards);
- ADE did not properly apply the hold harmless to LEA allocations on a formula-by-formula basis for SYs 2013-2014 through 2016-2017; and

- As a result of these errors, some LEAs received more Title I funds than they were entitled, other LEAs received less than they were entitled, and the State-level school improvement reservation amounts were not correct.

ADE, in consultation with ED, developed revised procedures for adjusting the ED-determined Title I LEA allocations and making State-level reservations from the LEA allocations in accordance with Title I requirements. ADE used the revised procedures to calculate adjustments to the ED determined allocations for SY 2017–2018. In addition, ADE used the revised procedures to recalculate its adjustments to the ED-determined allocations for FYs 2013–2016 and provided the recalculations for ED’s review and approval. ED and ADE agree that the revised allocations reflect reasonable recalculations for SYs 2013–2014 through 2016–2017 of the amount of Title I funds that LEAs in Arizona were entitled to receive and of the amount of the school improvement reservation.

To ensure that these matters are addressed, and in place of other corrective actions that ED could pursue, such as the recovery of funds that ADE misallocated, ADE agrees to take the corrective action steps described in the next section.

Adjustments for Prior Years’ Under- and Over-Allocations

1. Beginning with FY 2018 Title I subgrants to LEAs for SY 2018–2019, ADE will make adjustments to LEA allocations that reflect, in part, the under- and over-allocations that LEAs received for SYs 2013–2014 through 2016–2017. Also, beginning with FY 2018 allocations, ADE will make adjustments to State-level reservations that reflect the corrected reservation amounts for SYs 2013–2014 through 2016–2017. ADE will continue to make the adjustments to Title I subgrants and to State-level reservations over the next three years after FY 2018 — *i.e.*, FYs 2019–2021 — so that all under- and over-allocations for SYs 2013–2014 through 2016–2017 will be fully corrected by SY 2021–2022. In this regard:

- a. On August 24, 2018 ADE submitted a schedule to ED that identifies the Title I subgrant adjustments that ADE will make in SYs 2018–2019 through 2021–2022 for under- and over-allocations to LEAs and the under-allocation of the school improvement reservation for SYs 2013–2014 through 2016–2017.
- b. The schedule reflects that—
 - i. All adjustments for under- and over-allocations will be completed by SY 2021–2022 subgrants to LEAs.
 - ii. ADE will begin making these adjustments as part of the SY 2018–2019 subgrants to LEAs.

2. ADE will ensure that any LEA receiving additional Title I funds as a result of the adjustments required under Paragraph 1 or re-allocations described in Paragraph 3 of this Agreement calculates the proportional share of such funds to provide equitable services to eligible private school students consistent with section 1117 of the ESEA, as amended by the Every Student Succeeds Act (ESSA).

3. To mitigate downward adjustments to LEA allocations as a result of past over-allocations, ADE may allocate to those LEAs any Title I funds that are available for reallocation under section 1126(c) of the ESEA, as amended by the ESSA. In addition, if ADE determines, consistent with section 1003(g) of the ESEA, as amended by the ESSA, that it has unneeded school improvement funds, ADE may establish procedures to reallocate the unneeded funds to LEAs receiving downward adjustments.

4. ED agrees that if an LEA receives additional Title I funds as a result of the adjustments required under Paragraph 1 or re-allocations under Paragraph 3 of this Agreement, the LEA's hold-harmless amount will be the pre-adjusted amount determined for the LEA before the required adjustment.

5. ED agrees that if an LEA receives additional Title I funds as a result of the adjustments required under Paragraph 1 or re-allocations under Paragraph 3 of this Agreement, that amount of funds will be excluded for purposes of applying the carryover limitation under section 1127(a) of the ESEA, as amended by the ESSA.

Other Terms and Conditions

6. This Agreement will be incorporated by reference into the terms and conditions of the Title I grants that ED awards to ADE during the period of the Agreement.

7. If ADE fails to comply with the terms of this agreement, ED may (a) revoke ADE's authority to use Title I funds to resolve these matters and (b) may proceed to take such actions as may be appropriate for the unfulfilled portion of this Agreement to recover non-Federal funds commensurate with the over- and under-payments in question, including all rights and remedies ED would have pursuant to the May 31, 2016 program determination letter from Ann Whalen, Senior Advisor to the Secretary Delegated the Duties of Assistant Secretary for the Office of Elementary and Secondary Education, to the Honorable Diane Douglas, Superintendent of Public Instruction, Arizona Department of Education, regarding Audit Control No. 09-14-59557.

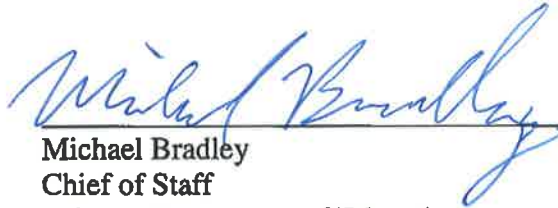
8. If ED determines that ADE has failed to comply with the terms of this Agreement, ED must notify ADE of the failure to comply, identify the specific actions for which ADE has failed to comply, and provide at least thirty days for ADE to remedy any failure determined by ED.

9. ED hereby releases ADE from any claims for corrective actions from misallocations in years prior to SY 2013–14, unless ADE fails to comply with the terms of this agreement. In that case, any such claims would be considered not to be released and would be encompassed in Finding 2014-112 in the May 31, 2016, program determination letter with respect to Audit Control No. 09-14-59557.

10. The terms of this Agreement may be revised by the written agreement of both ED and ADE.

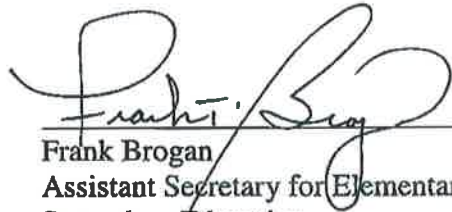
Date:

September 4, 2018



Michael Bradley
Chief of Staff
Arizona Department of Education

Date: **AUG 30 2018**



Frank Brogan
Assistant Secretary for Elementary and
Secondary Education
U.S. Department of Education