



Comments from Public Funds Public Schools Regarding “ARP EANS Implementation”

April 22, 2021

Public Funds Public Schools (“PFPS”) writes in response to the invitation to submit comments regarding “ARP EANS Implementation.” PFPS is a national campaign supported by Education Law Center, the Southern Poverty Law Center, and SPLC Action Fund, with the goal of ensuring that public funds for education are used to maintain, support, and strengthen public schools and are not diverted to pay for private education.

The Emergency Assistance to Non-Public Schools (EANS) funding in the American Rescue Plan Act (ARPA) is governed by two specific limitations not present in EANS provisions in the earlier Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA). Under the ARPA, these funds must be used to provide services and assistance only in non-public schools that (1) enroll a **significant percentage of low-income students**, and (2) are **most impacted** by the COVID-19 emergency. Congress thus clearly intended the EANS funds in the ARPA to be targeted only to those private schools meeting these two criteria.

We believe it is essential that the U.S. Department of Education (USED) issue guidance that effectuates the intent and language of the statute and facilitates the targeting of these emergency funds to those schools most in need of additional resources to meet the academic, social-emotional, and health and safety needs of their low-income students most impacted by the pandemic.

Non-Public Schools Enrolling a Significant Percentage of Low-Income Students

Low-income private school students must be defined in the same way as low-income public school students: students from families that are at or below 185% of the federal poverty level.

Schools with a “significant percentage” of these students should be defined as those that enroll 75% or more low-income children. The Elementary and Secondary Education Act fixes 75% as the threshold for mandatory participation in Title I. In addition, the National Center for Education Statistics defines a “high-poverty” school as one that enrolls at least 75% of students who qualify for the National School Lunch Program (NSLP). Thus, 75% is consistent with the federal concept of a significant enrollment of students in poverty.

To further ensure EANS funds are targeted according to Congressional intent, private schools must verify the low-income status of their eligible students by reporting to State Education Agencies (SEAs) and the USED the same data used by public schools for direct certification for the NSLP, including family enrollment in Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), Food Distribution Program on Indian Reservations (FDPIR), or Medicaid.

Non-Public Schools Most Impacted by the Qualifying Emergency

Community health metrics, such as infection and mortality rates, are commonly accepted indicators of the impact of the pandemic. However, private school populations often are not representative of the demographics of their surrounding communities, and thus these schools may not be impacted by the pandemic to the same degree. Additional indicators must be considered for a more accurate designation of those private schools most impacted by the pandemic.

Under-served and historically marginalized populations have been disproportionately affected by COVID-19.¹ Students from these communities have experienced the loss of loved ones, housing and food insecurity, and other upheavals in their lives that will require greater social-emotional and other supports to mitigate the impacts on their learning and well-being. Additionally, some students, such as students with disabilities, have been disproportionately unable to access the academic and support services they need to learn during the pandemic.

Private schools that serve higher percentages of students from these groups are likely to be more impacted by the pandemic than private schools that do not. Therefore, the USED must instruct SEAs to take into account the demographic characteristics of a private school's student population—including race, disability, and English learner status—in determining which schools are most affected by the COVID-19 emergency.

SEAs should also take into consideration how much federal relief funding a private school has already received. Under the CRRSAA and the ARPA, private schools are not permitted to receive EANS funds if they received Paycheck Protection Program (PPP) loans. But SEAs should also take into account whether a private school received a PPP loan under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Furthermore, the SEA should consider how much money a private school previously received through equitable services funding under the CARES Act, Governor's Emergency Education Relief (GEER) funds, and/or EANS funds. The impact of the pandemic on a private school is not necessarily static throughout the health emergency, and significant previous grants of federal funds may have alleviated the impact of the pandemic on a specific school—for example, by

¹ The disproportionate negative impact of the pandemic on people of color is well documented. *See, e.g.*, The COVID Tracking Project, *The COVID Racial Data Tracker*, <https://covidtracking.com/race>; William F. Marshall, III, Mayo Clinic, *Coronavirus Infection by Race: What's Behind the Health Disparities?*, <https://www.mayoclinic.org/diseases-conditions/coronavirus/expert-answers/coronavirus-infection-by-race/faq-20488802> (“According to recent data from the Centers for Disease Control and Prevention (CDC), non-Hispanic American Indian or Alaska Native people had an age-adjusted COVID-19 hospitalization rate about 5.3 times that of non-Hispanic white people. COVID-19 hospitalization rates among non-Hispanic Black people and Hispanic or Latino people were both about 4.7 times the rate of non-Hispanic white people.”). The impact of the pandemic on students with disabilities is similarly well documented. *See, e.g.*, Perri Klass, *The Pandemic's Toll on Children with Special Needs and their Parents*, New York Times (July 27, 2020), <https://www.nytimes.com/2020/07/27/well/family/children-special-needs-pandemic.html>.

allowing a private school to make necessary renovations to its ventilation system—such that the private school would not qualify for additional EANS funding under the criteria in the ARPA.

Other Considerations

The USED should provide guidance to states on the *amount* of EANS funds a private school can receive. Unlike under the CRRSAA, which merely required prioritization of private schools that served low-income students, the new language in the ARPA means many private schools will not be eligible for EANS funding because they do not meet the statutory criteria. If only a small number of private schools in a state meets the ARPA criteria, simply splitting the state’s EANS funding between those schools could result in absurd amounts directed to them. At the least, per-pupil funding for private schools through the EANS program should not exceed per pupil funding for public schools under the ARPA.

Finally, we encourage the USED to remind states of the additional restrictions placed on EANS funding by the CRRSAA and the ARPA. These include the provisions laying out permissible uses of EANS funds; the requirement that EANS funds remain in the control of public agencies; the requirement that services or assistance provided with EANS funds be “secular, neutral, and non-ideological;” the prohibition on private schools receiving both EANS and PPP funds; and, with the narrow exception of continued funding for private school vouchers supported by CARES Act aid, the prohibition on using EANS funds for any type of private school voucher program or to provide financial assistance to voucher-granting organizations.