



OKLAHOMA STATE
DEPARTMENT of EDUCATION

June 17, 2022

VIA E-MAIL WITH CERTIFIED U.S. MAIL TO FOLLOW

Infinity Generation Preparatory School
c/o Gina Darby, Director of Operations
P.O. Box 17433
Oklahoma City, OK 73117
info@iggokc.org

RE: Notice of noncompliance, accreditation
status and future State program participation

Director Darby,

This letter is to inform you, as Director of Operations at Infinity Generations Preparatory School (the "School"), that the Oklahoma State Department of Education ("OSDE") is discontinuing services to the School under the American Rescue Plan Act of 2021 ("ARP") Emergency Assistance to Nonpublic Schools ("EANS") program.¹ This action is taken as a result of the School failing to provide evidence to substantiate the certified claims to the OSDE for purposes of participating in the program and receiving \$1,002,589.16 in allocated funds for services and assistance under the program. As a result of these actions and a history of leaders of the School engaging in misconduct relating to federal programs and funds associated therewith, the OSDE has determined the actions and certifications to be knowingly false and/or a misrepresentation. As such and in light of the information below, the OSDE will be recommending that the State Board of Education revoke the School's accreditation.

Generally, to be eligible to apply for services or assistance under the EANS program, a non-public elementary or secondary school must: 1) be a non-profit; 2) be accredited, licensed, or otherwise operate in accordance with state law; 3) have been in existence prior to March 13, 2020; and 4) not have applied for (and will not apply for) and received a loan under the Paycheck Protection Program after December 27, 2020. If a non-public school met these general criteria, the non-public school was then required to apply to the OSDE. At a minimum, the application was required to include the number and percentage of students from low-income families enrolled in

¹ The purpose of the EANS program is to provide services or assistance to eligible non-public schools to address educational disruptions caused by the COVID-19 emergency. The EANS program was first made available to states under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (the "CRRSA Act"). The ARP Act extended the EANS program authorized under the CRRSA Act. Under both laws, the Governor of each State applies for the EANS funds, but the State Educational Agency (OSDE) administers the program. See the ARP Act, at Section 2002; see also United States Department of Education, Frequently Asked Questions, at <https://oese.ed.gov/files/2021/09/Final-EANS-FAQ-Update-9.17.21.pdf>.

the non-public school in the 2019-20 school year (i.e., as of Oct. 1, 2020)², the impact of the COVID-19 emergency on the school as well as assurances of program compliance and that the information submitted for participation was accurate.³

On October 13, 2021, the School submitted its application and agreement (the “Application and Agreement”) to the OSDE, attesting that it met the criteria for eligibility to participate in the EANS program. See School Application and Agreement, attached as Exhibit “A.” As an initial matter, the OSDE is unable to verify the School’s status as a non-profit with the Internal Revenue Service. As such, the OSDE respectfully requests the School information to substantiate its favorable status with the IRS at the time of submitting the Application and Agreement. Information available for submission should include the 2020 or 2021 990 returns filed by the School. With its submission, the School provided assurances and certifications, including the following:

“I acknowledge and certify that I have read and understand the authorizations, limitations and requirements of participation in the EANS II program as set forth in the American Rescue Plan Act of 2021 (ARP) and as established by the Oklahoma State Department of Education (OSDE). Further, if participating in the EANS II program, I acknowledge and agree to comply with the requirements and conditions of participating in the EANS II program.

...

Further, I certify to the best of my knowledge and belief, all of the information in this application is true and correct. I further understand that knowingly making a false statement or misrepresentation on this application, as well as noncompliance with the terms and conditions of the EANS II program, may subject me to penalties under applicable State and Federal laws, whether administrative, civil or criminal and may disqualify the nonpublic institution from participation in the EANS II program.”

² Though the School was not accredited by the State Board of Education as of October 1, 2020, at the time of applying for participation in the EANS program, the School met this accreditation requirement.

³ Section 2002(a) of the ARP Act requires the OSDE to only provide services or assistance to eligible non-public schools that *enroll a significant percentage of students from low-income families* and is most impacted by the COVID-19 emergency. See the ARP Act, at Section 2002; see also United States Department of Education, Frequently Asked Questions, at <https://oese.ed.gov/files/2021/09/Final-EANS-FAQ-Update-9.17.21.pdf>. For a school to qualify as “enrolling a significant percentage of students from low-income families” Oklahoma established that at least 40% of students enrolled would meet this threshold. See Oklahoma’s Application, attached as Exhibit “B.” To be counted as a student from a low-income family for purposes of the ARP EANS program, a student must be aged five (5) through seventeen (17) from a family whose income does not exceed 185 percent of the 2020 federal poverty threshold. Sources of poverty data included data on student eligibility for free or reduced-price lunch under the Richard B. Russell National School Lunch Act and data from the E-rate program administered by the Federal Communications Commission. *Id.*

In the Application and Agreement, the School represented that on Oct. 1, 2020, forty (40) students were enrolled and thirty-five (35) qualified as low-income. *See* Application and Agreement, attached as Exhibit “A;”; *see also* E-mail dated November 16, 2021, attached as Exhibit “C.” However, the School subsequently revised these numbers by certifying to the OSDE that the numbers should have reflected a total enrollment of one hundred fifty-seven (157) students, one hundred fifty-one (151) of whom qualified as low-income. *See* E-mails dated November 27 and 30, 2021, attached as Exhibit “D.” Relying on this representation, the OSDE allocated the School \$1,002,589.16 to be used for services and assistance under the EANS program. However, the OSDE now has reason to believe that the enrollment and low-income information provided was false. Whereas the School represented an enrollment of more than one hundred fifty (150) on Oct. 1, 2020, one year later the School had purportedly lost more than 400% of its enrolled students. That is, on Oct. 1, 2021, the School had forty (40) students enrolled. Through a verified headcount on May 9, 2022, only thirty-five (35) students were present.⁴ As such, the OSDE questioned the severity of the apparent decline in student enrollment and sought to substantiate the School’s representation of the enrollment and low-income counts from Oct. 1, 2020.

On May 9 and May 11, 2022, OSDE staff visited the School to obtain the student enrollment and low-income supporting documentation. In response to OSDE’s request for verification of the claimed enrollment information, the School provided the OSDE with information to demonstrate an enrollment of approximately forty (40) students. Later, the School advised this information was incorrect and provided information consisting of attendance sheets from the Summer Food Service Program administered by a now-terminated organization (Impact Athletics) and a Hope Center. Notwithstanding that neither this terminated organization nor the Hope Center were recognized *School* sites so as to be included for possible EANS allocation determinations, the information provided did not evidence *enrollment* records.⁵ Rather, this information appeared to reflect students coming-and-going to unrelated entities feeding sites. Upon the School’s request, the OSDE afforded additional time to provide enrollment and income

⁴ Recently, the school requested the OSDE provide services to the School through hiring an additional twenty (20) staff positions. Pursuant to federal regulations, all uses of federal funds (including EANS) must be for goods and services that are “reasonable and necessary.” In reviewing the request, the OSDE questioned the appropriateness of hiring an *additional* twenty employees while the School has a current enrollment of thirty-five students. Moreover the OSDE questioned the request because of the high concentration of money for *staff salaries and not for direct student services*, the funds were for individuals who were not certified to teach (required in the OSDE’s contract with a third-party vendor) and identified a staffing position for one individual who is on the U.S. Department of Agriculture’s National Disqualified List (NDL) for failure to meet the requirements of the Child and Adult Care Food Program (CACFP).

⁵ The School’s Director also questioned the OSDE’s authority to request the information, citing the Family Educational Rights and Privacy Act (FERPA). As previously discussed with you, like all schools so accredited, the School must provide appropriate records so the OSDE may fulfill its accreditation function. This disclosure to the state education agency of student records that may contain personally identifiable information (PII) is specifically authorized by federal law under the FERPA at 34 C.F.R. § 99.31(a)(3)(iv).

verification records – the actual records, not a spreadsheet of an informal summary at locations outside of the School’s accredited site. On May 24, 2022, the School provided the OSDE with three additional spreadsheets. Two were informal summaries of student *attendance*⁶ and a third purportedly evidenced the manner through which the School determined if a student was low-income. With respect to the latter, the spreadsheet properties show that the document was created on Feb. 1, 2021 – well after the pertinent Oct. 1, 2020, date for EANS eligibility verifications. Further, the School advised the OSDE that during the Fall of 2020 – the time at which the verified low-income student enrollment information was to be provided – the School had waived tuition and income thresholds. As such, the income-verification records were said to be unavailable. This is most unfortunate, but the OSDE has afforded more than reasonable time and opportunities for the School to substantiate the representations to the OSDE. At this time, considering the inability or unwillingness of the School to provide enrollment and low-income records for students, the OSDE remains unable to verify student counts reported. Moreover, in light of the information reflected herein, the OSDE believes the information certified for purposes of the EANS allocation was false and a misrepresentation. As Oklahoma’s state education agency responsible for the administration of the ARP EANS services to nonpublic schools, the OSDE is discontinuing EANS services to Infinity Generation.

These inaccuracies and inconsistencies are troubling alone, but unfortunately are part of a demonstrated pattern of disregard for requirements in federal laws by some at the School. As a principal and chief administrative officer, the School’s Director of Operations and Founder previously led a program (Impact Athletics) that has been terminated by the OSDE under its administration of the National School Lunch Act and programs corresponding thereunder. *See* Order dated May 10, 2021, and Demand, dated June 9, 2022, attached as Exhibit “E.” Specifically, it was determined in 2020 that this program failed to maintain adequate records and the program lacked supporting documentation for the claims submitted. As a result, the OSDE assessed – and an administrative law judge affirmed – an overclaim to the program totaling approximately \$600,000.

As you know, Infinity Generation Preparatory Academy has been accredited by the Oklahoma State Board of Education since Aug. 26, 2021. As an accredited private school, the School must comply with all applicable laws and regulations, including accreditation standards set by the State Board of Education. Based on the foregoing actions and conduct, which do not comport with the requirements for continued school accreditation, the OSDE intends to recommend that the State Board revoke the School’s Accreditation. At this time, due to the misrepresentations and false statements provided it is anticipated that this matter will be presented to the State Board at its **July 28, 2022**, meeting. This meeting is scheduled to commence at **9:30 a.m., at the Oliver Hodge Building, 2500 North Lincoln Boulevard, Room 1-20 (first floor)**,

⁶ Contained within this information was an identification of the child’s last public school attended. Upon OSDE’s review of this information, a sampling of the individuals on the list revealed that each of these students was enrolled at an Oklahoma public school on October 1, 2020, the day of the purported enrollment at the School.

Oklahoma City, Oklahoma 73105. While not provided in Oklahoma law or administrative regulation, the OSDE will provide the School with the same process afforded to a public school prior to the possible loss of accreditation. Oklahoma Administrative Code 210:1-5-5 (providing an opportunity to be heard before loss of accreditation status); 70 O.S. § 7-101 (providing fifteen (15) days advance notice before the possible closure of a school district). As such, I respectfully request that you advise as to whether the School requests to appear at an upcoming meeting of the State Board of Education, to occur no later than July 13, 2022. Should the School not choose to request an opportunity to address the State Board of Education, revocation of the School's accreditation with the State Board may proceed without delay.⁷

Please do not hesitate to contact me if you have any questions or would like to further discuss these matters.

Sincerely,



Brad Clark
General Counsel

⁷ On October 28, 2021, the State Board of Education approved Infinity Generation Preparatory Academy as a participating private school for the Lindsey Nicole Henry (LNH) Scholarship Program pursuant to Oklahoma statute 70 O.S. § 13-101.2. Continued status as an LNH participating school is dependent on fulfilling the necessary eligibility criteria, including private school accreditation through the State Board or through the Oklahoma Private School Accreditation Consortium (OPSAC). Whereas the aforementioned statute provides the State Superintendent with the authority to issue a notice of non-compliance and take action to suspend the participation of the private school for failure to comply with provisions of this law, the State Superintendent is not taking such action here. However, should the State Board determine that the School's accreditation is to be revoked, please consider this as notice that the School's continued eligibility to participate in the LNH Scholarship Program will be at-risk.



JOY HOFMEISTER
STATE SUPERINTENDENT of PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT of EDUCATION

Emergency Assistance to Nonpublic Schools (EANS II) Program Consultation Application & Agreement

**School Year 2021-2022
Due Date Friday October 15, 2021**

Contact Information:
Naomi Ward
Ombudsman Program Specialist
(405)-522-3218
Naomi.Ward@sde.ok.gov

***Please submit packet to Naomi Ward at Naomi.Ward@sde.ok.gov, email subject line: EANS II**



EMERGENCY ASSISTANCE TO NONPUBLIC SCHOOLS PROGRAM II

Purpose

Under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), Pub. L. No. 116-260 (December 27, 2020), Congress first authorized the Emergency Assistance to Non-Public Schools (EANS) program as part of the Governor's Emergency Education Relief (GEER II) Fund to provide emergency services or assistance to non-public schools in the wake of the Coronavirus Disease 2019 (COVID-19). The American Rescue Plan Act of 2021 (ARP Act), Pub. L. No. 117-2 (March 11, 2021), authorized a second round of funding (ARP EANS) to provide services or assistance to non-public schools. With two exceptions, the requirements of ARP EANS are the same as those in section 312(d) of the CRRSA Act. The two exceptions are: (1) a State educational agency (SEA) may only provide services or assistance under ARP EANS to non-public schools that enroll a significant percentage of students from low-income families¹ and are most impacted by the novel Coronavirus Disease 2019 (COVID-19) emergency and; (2) an SEA may not use ARP EANS funds to provide reimbursements to any non-public school for costs the school incurred to address the impact of COVID-19 emergency.²

Under section 2002(a) of the ARP Act, services or assistance to non-public schools under the ARP EANS program are limited to "non-public schools that enroll a significant percentage of [students from low-income families] and are most impacted by the [COVID-19] emergency." To clarify this and other requirements, the Department issued final requirements for the ARP EANS program on July 9, 2021.

The final requirements require a Governor, in his or her application for ARP EANS funds, to identify the significant poverty percentage and the factors demonstrating the impact of the COVID-19 emergency the State will use, after approval by the Secretary, to determine which non-public schools are eligible to receive services or assistance. In addition to meeting the definition of a non-public school in section 316(6) of the CRRSA Act and the eligibility requirement in section 312(d)(9) of the CRRSA Act, a non-public school must meet or exceed the State's significant poverty percentage and be most impacted by the COVID-19 emergency.

Funding

Congress appropriated \$2,750,000,000 for the ARP EANS program. The U.S. Department of Education (Department) will award funds to a Governor with an approved application based on the State's relative share of children aged 5 through 17 who are from a family at or below 185 percent of the poverty level and who are enrolled in a non-public school. The amount each State is eligible to receive is indicated in the allocation table in Appendix D.

By accepting an ARP EANS award from the Department, a Governor automatically designates the SEA to administer the ARP EANS program. An SEA will be the payee or fiscal agent in the Department's grants management system (G5) for purposes of accessing Federal funds.

¹ Under these final requirements, "students from low-income families" has the same meaning as "low-income students" under section 2002(a) of the ARP Act. "Students from low-income families" is a term used in section 312(d) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021.

² Reimbursement to a non-public school for costs the school incurred to address the impact of COVID-19 was a previously authorized service under section 312(d)(4)(M) of the CRRSA Act.

SEA Identification of Non-Public Schools to be Served

Under section 2002(a) of the ARP Act, services or assistance to non-public schools under the ARP EANS program are limited to “non-public schools that enroll a significant percentage of [students from low-income families] and are most impacted by the [COVID-19] emergency.” To clarify this and other requirements, the Department issued final requirements for the ARP EANS program on July 9, 2021.

The final requirements require a Governor, in his or her application for ARP EANS funds, to identify the significant poverty percentage and the factors demonstrating the impact of the COVID-19 emergency the State will use, after approval by the Secretary, to determine which non-public schools are eligible to receive services or assistance. In addition to meeting the definition of a non-public school in section 316(6) of the CRRSA Act and the eligibility requirement in section 312(d)(9) of the CRRSA Act, a non-public school must meet or exceed the State’s significant poverty percentage and be most impacted by the COVID-19 emergency.

A non-public school enrolls a significant percentage of students from low-income families if the percentage of students from low-income families enrolled in such school meets or exceeds--

- 40 percent

A non-public school is most impacted by the COVID-19 emergency based on one or more of the following factors:

- Data on the academic impact of lost instructional time³ and the social, emotional, and mental health impacts on students attending the non-public school attributable to the disruption of instruction caused by the COVID-19 emergency

Determining Low-Income Counts

To be counted as a student from a low-income family for purposes of the ARP EANS program, a student must be aged 5 through 17 from a family whose income does not exceed 185 percent of the 2020 Federal poverty threshold. To obtain a count of students from low-income families enrolled in a non-public school, an SEA may use one or more of the following sources of data, provided the poverty threshold is consistent across sources:

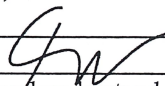
- Data on student eligibility for free or reduced-price lunch under the Richard B. Russell National School Lunch Act (43 U.S.C. 1751 et seq.).
- Data from the E-rate program administered by the Federal Communications Commission (47 CFR 54.500, 54.505(b)).
- Data from a different source, such as scholarship or financial assistance data.
- Proportionality Data: the number of students enrolled in a nonpublic school who reside in a Title I attendance area multiplied by the percentage of public school students in that same attendance area who are from low-income families. If the nonpublic school has students who reside in more than one Title I school attendance area, multiple calculations would be necessary.

Fiscal Assurances

Allowable expenditures must be consistent with cost principals in the Uniform Guidance, 2 CFR Part 200, including that a cost be necessary and reasonable for performance of the federal award.

³ We note that section 312(d)(4)(L) of the CRRSA Act specifically authorizes the use of EANS funds to address “learning loss,” which the final requirements refer to as the “academic impact of lost instructional time.”

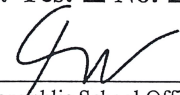
PART A: Contact Information

Name of Nonpublic School: Infinity Generation Generals (IGG) Preparatory School
Local Educational Agency (LEA) Name: *District the nonpublic school is located IGG site #55 P082 000
Nonpublic School District/County Code: *If the nonpublic school are not yet registered with the Oklahoma State Department of Education, please contact Naomi Ward at Naomi.Ward@sde.ok.gov see State Department of Education Accreditation Letter
Mailing Address (Street Number and Name, City, State, Zip Code): P.O. Box 17433, Oklahoma City, OK 73117
Authorized Representative Email Address: info@iggokc.org
Authorized Representative (Print Name): Gina Darby
Authorized Representative (Signature): 
I acknowledge and certify that I have read and understand the authorizations, limitations and requirements of participation in the EANS II program as set forth in the American Rescue Plan Act of 2021 (ARP) and as established by the Oklahoma State Department of Education (OSDE). Further, if participating in the EANS II program, I acknowledge and agree to comply with the requirements and conditions of participating in the EANS II program.
Further, I acknowledge and agree that timely and meaningful information regarding the EANS II program has been provided and I, on behalf of the nonpublic school identified above, if participating in the EANS II program, will continue to engage and cooperate in the timely and meaningful consultation regarding the program.
I certify and represent that I am authorized to submit this Application and Agreement as a representative of the nonpublic school identified herein. Further, I certify to the best of my knowledge and belief, all of the information in this application is true and correct. I further understand that knowingly making a false statement or misrepresentation on this application, as well as noncompliance with the terms and conditions of the EANS II program, may subject me to penalties under applicable State and Federal laws, whether administrative, civil or criminal and may disqualify the nonpublic institution from participation in the EANS II program.

Do you intend to participate in the EANS II program funds? Yes: ☒ No: ☐

Gina Darby

Nonpublic School Official (Print Name)


Nonpublic School Official (Signature)

10/13/2021

Date

(405) 615-4799 (c) 601-3055 (o)

Nonpublic School Phone Number

PART B: Nonpublic School Eligibility

By **checking each box** below, I affirm that the following is true and correct regarding the nonpublic school.

- ☒ The applicant hereby certifies that he/she has read, understood and will comply with the assurances that will apply to any subsequent application amendments of all federal programs in which the LEA participates.
- ☒ The nonpublic school requesting services or assistance is a non-profit school.
- ☒ The nonpublic school requesting services or assistance existed and operated prior to March 13, 2020.
- ☒ The nonpublic school requesting services or assistance did not and will not apply for and receive a loan under the Small Business Administration's Paycheck Protection Program (PPP) (15 U.S.C. 636(a)(37)) that is made on or after December 27, 2020.
- ☐ Applicant hereby certifies that he/she has read, understood and will comply with the assurances that will apply to any subsequent application amendments of all federal programs in which the Local Educational Agency participates.

PART C: Nonpublic School Data

Section 2002 of the American Rescue Plan Act Emergency Assistance to Nonpublic Schools (ARP EANS) requires a State Educational Agency to prioritize services or assistance to nonpublic schools that enroll low-income students and are most impacted by COVID-19. Accordingly, the State requests that the school provide the data described below. Such data must not include personally-identifiable information about students or their families.

1. Enrollment and Low-Income Data

- A. Total student enrollment October 1, 2020 (Ages 5-17)
40
- B. Number of students from low-income families enrolled during October 1, 2020 (Ages 5-17) 35

Low-income family collection methods may include one of the following:

- (1) Free and reduced lunch data;
 - (2) Data from the E-rate program; or,
 - (3) Data from a different source, such as scholarship or financial assistance data.
- This number is from the following data source(s): 3

- C. Percentage of total students in the school who are students from low-income families:
80.5 %

D. Did the nonpublic school receive a loan guaranteed under the PPP *before* December 27, 2020?

☐ Yes

☒ No

E. If answered “YES” to the above question, please respond to the following:

i. What was the total amount of the PPP loan? \$ _____

ii. Do you assure that any funds received under the EANS program will be for services or assistance not already funded by the PPP loan?

☐ Yes

☐ No

2. Impact of COVID-19 Please identify, describe and quantify the impact of COVID-19 on the school, including but not limited to; (1) data on the academic impact of lost instructional time and the social, emotional, or mental health impacts attributable to the disruption of instruction caused by the COVID-19 emergency; or (2) the economic impact of the COVID-19 emergency on the community or communities served by the nonpublic school.

Note: Under section 2002 of the ARP EANS program, the OSDE will prioritize services or assistance to nonpublic schools that enroll a significant percentage of low-income student and are most impacted by the qualifying emergency. If additional space is needed, please attach or enclose the narrative when submitting the Application and Agreement.

We served over 200 students mostly virtual and some in class. We fed over thousands of students in our community. COVID-19 made a significant impact on Infinity Generation Preparatory School (IGG) in that we had to respond to our community which was early on in denial and then in crisis. Despite the pandemic, the parents/guardians of IGG still had to work in frontline and other service careers. We worked diligently with community leaders to ensure education could move forward. The staff at IGG devised a safety plan; parents were not allowed in the building and the staff met the parents at the door during drop off. When students arrived they were required to wear a mask, have temperatures checked, and to be sprayed with a safe disinfectant. Our adherence to the protocol left us mostly unaffected as a staff. As area schools closed for safety and students started attending school virtually, IGG became available to those students as well. IGG was able to hire additional staff to accommodate those students and to lift the burden off of working parents. IGG was still able to operate full time and provide instructional time to the students on a normal schedule. Field trips and extracurricular activities did cease; however, the staff was able to create activities throughout the day if students became overwhelmed or experienced any emotional or mental disruptions. As we did then, we continue to look for methods to ensure the physical and emotional health of students who have worried about their future or lost relatives and mentors to COVID-19.

PART D: Allowable Services or Assistance

A nonpublic school may receive services or assistance under the ARP EANS program to address educational disruptions resulting from the COVID-19 emergency for:

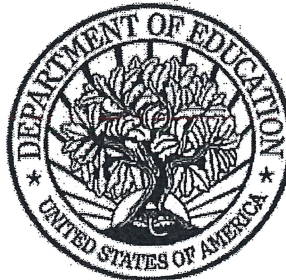
- A. supplies to sanitize, disinfect, and clean school facilities;
- B. personal protective equipment (PPE);
- C. improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school;
- D. training and professional development for staff on sanitation, the use of PPE, and minimizing the spread of infectious diseases;
- E. physical barriers to facilitate social distancing;
- F. other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention (CDC) for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff during the COVID-19 emergency;
- G. expanding capacity to administer coronavirus testing to effectively monitor and suppress coronavirus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff at the non-public school;
- H. educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;
- I. redeveloping instructional plans, including curriculum development, for remote learning, hybrid learning, or to address learning loss;
- J. leasing of sites or spaces to ensure safe social distancing to implement public health protocols, including guidelines and recommendations from the CDC;
- K. reasonable transportation costs; and
- L. initiating and maintaining education and support services or assistance for remote learning, hybrid learning, or to address learning loss.

U.S. Department of Education

Application for Funding

Emergency Assistance to Non-Public Schools (EANS) Program under the American Rescue Plan Act of 2021 (ARP Act)

CFDA Number: 84.425V



OMB Number: 1810-0741
Expiration Date: Jan. 31, 2022

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The OMB control number for this information collection is 1810-0741. The time required to complete this information collection is estimated to average 2 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4537. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: EANS@ed.gov.



PROGRAM BACKGROUND INFORMATION

Purpose

Under the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), Pub. L. No. 116-260 (December 27, 2020), Congress first authorized the Emergency Assistance to Non-Public Schools (EANS) program as part of the Governor's Emergency Education Relief (GEER II) Fund to provide emergency services or assistance to non-public schools in the wake of the Coronavirus Disease 2019 (COVID-19). The American Rescue Plan Act of 2021 (ARP Act), Pub. L. No. 117-2 (March 11, 2021), authorized a second round of funding (ARP EANS) to provide services or assistance to non-public schools. With two exceptions, the requirements of ARP EANS are the same as those in section 312(d) of the CRRSA Act. The two exceptions are; (1) a State educational agency (SEA) may only provide services or assistance under ARP EANS to non-public schools that enroll a significant percentage of students from low-income families¹ and are most impacted by the novel Coronavirus Disease 2019 (COVID-19) emergency and (2) an SEA may not use ARP EANS funds to provide reimbursements to any non-public school for costs the school incurred to address the impact of COVID-19 emergency.²

Eligibility

The Governor in each of the 50 States and the Commonwealth of Puerto Rico, as well as the Mayor of the District of Columbia, is eligible to apply.

Funding

Congress appropriated \$2,750,000,000 for the ARP EANS program. The U.S. Department of Education (Department) will award funds to a Governor with an approved application based on the State's relative share of children aged 5 through 17 who are from a family at or below 185 percent of the poverty level and who are enrolled in a non-public school. The amount each State is eligible to receive is indicated in the allocation table in Appendix D.

By accepting an ARP EANS award from the Department, a Governor automatically designates the SEA to administer the ARP EANS program. An SEA will be the payee or fiscal agent in the Department's grants management system (G5) for purposes of accessing Federal funds.

Timeline

A Governor must apply for funding under the ARP EANS program by September 9, 2021. The Department intends to make an award to a Governor within 15 days of receiving an approvable application. An SEA, as the agency designated to administer the ARP EANS program, must make an application available to non-public schools no later than 30 days after receipt of the funds and approve or deny an application from a non-public school no later than 30 days after receiving it. The SEA must, to the extent practicable, obligate all funds for services or assistance to non-public schools in the State in an expedited and timely manner, but not later than six months after receiving the funds. (An SEA is considered to have received ARP EANS funds on the date the Department makes the grant award to the Governor.) An SEA that complies with its responsibilities under the

¹ Under these final requirements, "students from low-income families" has the same meaning as "low-income students" under section 2002(a) of the ARP Act. "Students from low-income families" is a term used in section 312(d) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021.

² Reimbursement to a non-public school for costs the school incurred to address the impact of COVID-19 was a previously authorized service under section 312(d)(4)(M) of the CRRSA Act.

ARP EANS program but has unobligated funds remaining six months after receiving those funds must return them to the Governor for any authorized use under the GBER II Fund. Before the SEA returns ARP EANS funds to the Governor, it should notify the Department.

Types of Services or Assistance

A non-public school may receive services or assistance under the ARP EANS program to address educational disruptions resulting from the COVID-19 emergency for:

- A. supplies to sanitize, disinfect, and clean school facilities;
- B. personal protective equipment (PPE);
- C. improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school;
- D. training and professional development for staff on sanitation, the use of PPE, and minimizing the spread of infectious diseases;
- E. physical barriers to facilitate social distancing;
- F. other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention (CDC) for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff during the COVID-19 emergency;
- G. expanding capacity to administer coronavirus testing to effectively monitor and suppress coronavirus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff at the non-public school;
- H. educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;
- I. redeveloping instructional plans, including curriculum development, for remote learning, hybrid learning, or to address learning loss;
- J. leasing of sites or spaces to ensure safe social distancing to implement public health protocols, including guidelines and recommendations from the CDC;
- K. reasonable transportation costs; and
- L. initiating and maintaining education and support services or assistance for remote learning, hybrid learning, or to address learning loss.

As noted above, pursuant to ARP EANS statutory requirements and unlike the EANS program authorized under section 312(d) of the CRRSA Act, an SEA may not use ARP EANS funds to provide reimbursements to any non-public school.

SEA Identification of Non-Public Schools to be Served

Under section 2002(a) of the ARP Act, services or assistance to non-public schools under the ARP EANS program are limited to "non-public schools that enroll a significant percentage of [students from low-income families] and are most impacted by the [COVID-19] emergency." To clarify this and other requirements, the Department issued final requirements for the ARP EANS program on July 9, 2021.

The final requirements require a Governor, in his or her application for ARP EANS funds, to identify the significant poverty percentage and the factors demonstrating the impact of the COVID-19 emergency the State will use, after approval by the Secretary, to determine which non-public schools are eligible to receive services or assistance. In addition to meeting the definition of a non-

public school in section 316(6) of the CRRSA Act and the eligibility requirement in section 312(d)(9) of the CRRSA Act, a non-public school must meet or exceed the State's significant poverty percentage and be most impacted by the COVID-19 emergency.

A non-public school enrolls a significant percentage of students from low-income families if the percentage of students from low-income families enrolled in such school meets or exceeds--

- 40 percent; or
- An alternate significant percentage approved by the Secretary in the State's application that is based on circumstances in the State, which may be—
 - The State's average percentage of students from low-income families in public and non-public schools;
 - The average percentage of students from low-income families in non-public schools in the State that, for example, applied for or participated in the EANS program authorized by the CRRSA Act; or
 - Other factors that the State demonstrates support an alternate significant poverty percentage.

A non-public school is most impacted by the COVID-19 emergency based on one or more of the following factors:

- The number of COVID-19 infections per capita in the community or communities served by the non-public school;
- The number of COVID-19-related deaths per capita in the community or communities served by the non-public school;
- Data on the academic impact of lost instructional time³ and the social, emotional, and mental health impacts on students attending the non-public school attributable to the disruption of instruction caused by the COVID-19 emergency; or
- The economic impact of the COVID-19 emergency on the community or communities served by the non-public school.

In addition to using one or more of these factors, an SEA may use other factors included in the State's approved application to determine that a non-public school is most impacted by the COVID-19 emergency.

Following the Secretary's approval of a State's application for EANS funding under the ARP Act, an SEA must publish on its website, on or before the date it makes applications for EANS services or assistance under the ARP Act available to non-public schools, the State's approved (1) minimum percentage to determine whether a non-public school enrolls a significant percentage of students from low-income families, (2) source(s) of poverty data to be used to determine counts of low-income families in a non-public school, and (3) factors to determine whether a non-public school is most impacted by the COVID-19 emergency.

Determining Low-Income Counts

To be counted as a student from a low-income family for purposes of the ARP EANS program, a student must be aged 5 through 17 from a family whose income does not exceed 185 percent of the

³ We note that section 312(d)(4)(L) of the CRRSA Act specifically authorizes the use of EANS funds to address "learning loss," which the final requirements refer to as the "academic impact of lost instructional time."

2020 Federal poverty threshold. To obtain a count of students from low-income families enrolled in a non-public school, an SEA may use one or more of the following sources of data, provided the poverty threshold is consistent across sources:

- Data on student eligibility for free or reduced-price lunch under the Richard B. Russell National School Lunch Act (43 U.S.C. 1751 *et seq.*).
- Data from the E-rate program administered by the Federal Communications Commission (47 CFR 54.500, 54.505(b)).
- Data from a different source, such as scholarship or financial assistance data.
- Data from a survey developed by the SEA.

APPLICATION INSTRUCTIONS

GENERAL INSTRUCTIONS

To receive the State's allocation under the ARP EANS program, a Governor must submit a complete application, in PDF, by email, to the U.S. Department of Education (Department) at EANS@ed.gov no later than September 9, 2021. A complete application package must include the documents listed below. Please note that Parts A, C, and D require the signature of the Governor or an authorized representative in the Office of the Governor and the signature of the Chief State School Officer or an authorized representative of the SEA:

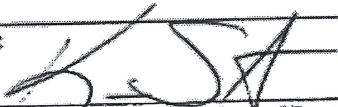

- A completed application cover sheet (*Part A*)
- Application requirements (*Part B*)
- Programmatic, fiscal, and reporting assurances (*Part C*)
- Other assurances and certifications (*Part D*)

APPENDICES

Appendix A – ARP Act EANS Requirements
Appendix B – CRRSA Act EANS Requirements
Appendix C – Final Requirements
Appendix D – State Allocation Data

ARP EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM

PART A: APPLICATION COVER SHEET (CFDA No. 84.425V)

DUNS Number Office of the Governor: 809916190	DUNS Number State Educational Agency (SEA): 809929649
<p>Contact Information for Governor's Office</p> <p>Legal Name (e.g., Office of the Governor, State's Executive Office): Oklahoma State Governor's Office</p> <p>Governor's Name/Authorized Representative's Name and Title: Governor J. Kevin Stitt</p> <p>Address (Street Number and Name, City, State, Zip Code+4): 2300 N Lincoln Blvd # 212 Oklahoma City, OK 73105</p> <p>Telephone: 405-521-2342</p> <p>Email:</p>	<p>Contact Information for SEA</p> <p>Legal Name (e.g., [State] Office of Public Instruction): Oklahoma State Department of Education</p> <p>Chief State School Officer's Name/SEA Authorized Representative's Name and Title: Superintendent Joy Hofmeister</p> <p>Address (Street Number and Name, City, State, Zip Code+4): 2500 North Lincoln Boulevard Oklahoma City, Oklahoma 73105</p> <p>Telephone: 405-521-3301</p> <p>Email: Joy.Hofmeister@sde.ok.gov</p>
SEA Financial Institution Name: (b) (4)	Last 4-Digits of Account Number: (b) (4)
<p>To the best of my knowledge and belief, all of the information in this application is true and correct; I acknowledge and agree that the failure to comply with all Assurances and Certifications in this Agreement and all relevant statutory and regulatory requirements may result in liability under the False Claims Act, 31 U.S.C. § 3729 <i>et seq.</i>; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; 18 U.S.C. § 1001, as appropriate; and other enforcement actions.</p>	
<p>Governor or Authorized Representative of the Governor in the Office of the Governor (Typed Name): Governor J. Kevin Stitt</p>	
Signature: 	Date: September 9, 2021
<p>Chief State School Officer or Authorized Representative of the SEA (Typed Name): State Superintendent Joy Hofmeister</p>	
Signature: 	Date: September 9, 2021
<p>Digitally signed by Joy Hofmeister Date: 2021.09.09 12:48:57 -05'00'</p>	

ARP EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM

PART B: APPLICATION REQUIREMENTS

1. Identify the threshold the State will use to determine if a non-public school enrolls a significant percentage of students from low-income families that meets or exceeds (check one of the following).

☒ 40 percent; or

- ☐ An alternate significant percentage, contingent on approval by the Secretary, that is based on circumstances in the State, which may be--
- (1) The State's average percentage of students from low-income families in public and non-public schools;
 - (2) The average percentage of students from low-income families in non-public schools in the State that, for example, applied for or participated in the EANS program as authorized by the CRRSA Act; or
 - (3) Other factors that the State demonstrates support an alternative significant poverty percentage.

2. If you selected an alternate significant percentage, please respond to the following:

A. What alternate significant percentage are you proposing?
Click here to enter percentage.

B. What is the basis for the proposed alternate significant percentage (check and enter text for one or more of the following)?

☐ The State's average percentage of students from low-income families in public and non-public schools. *If selected, please identify the average percentage and provide an explanation of how these data justify the proposed alternate significant percentage.*
Click here to enter text.

☐ The average percentage of students from low-income families in non-public schools in the State that, for example, applied for or participated in the EANS program as authorized by the CRRSA Act. *If selected, please identify the average percentage and provide an explanation of how these data justify the proposed alternate significant percentage.*
Click here to enter text.

☐ Other factors that the State demonstrates support an alternate significant poverty percentage. *If selected, please identify the measure(s) and associated data and explain how these data support the proposed alternate significant percentage.*
Click here to enter text.

3. Identify the factor or factors the State will use to determine which non-public schools are most impacted by the COVID-19 emergency (check one or more of the following).

- ☐ The number of COVID-19 infections per capita in the community or communities served by the non-public school.
- ☐ The number of COVID-19 related deaths per capita in the community or communities served by the non-public school.
- ☒ Data on the academic impact of lost instructional time and the social, emotional, and mental health impacts on students attending the non-public school attributable to the disruption of instruction caused by the COVID-19 emergency.
- ☐ The economic impact of the COVID-19 emergency on the community or communities served by the non-public school.

4. Identify any additional factors the State will use to determine which non-public schools are most impacted by the COVID-19 emergency.
[Click here to enter text.](#)

5. Identify the source(s) of poverty data the State will use to determine counts of students from low-income families⁴ in non-public schools, provided that the poverty threshold is consistent across sources (check one or more of the following).

- ☒ Data on student eligibility for free or reduced-price lunch under the Richard B. Russell National School Lunch Act (43 U.S.C. 1751 et seq.).
- ☒ Data from the E-rate program administered by the Federal Communications Commission (47 CFR 54.500, 54.505(b)).
- ☒ Data from a different source, such as scholarship or financial assistance data.
- ☐ Data from a survey developed by the SEA.

⁴ To be counted as a student from a low-income family for the purposes of the ARP EANS program, a student must be aged 5 through 17 from a family whose income does not exceed 185 percent of the 2020 Federal poverty level.

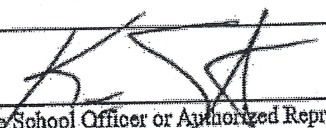

ARP EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM

PART C: PROGRAMMATIC, FISCAL, AND REPORTING ASSURANCES

The Governor or his/her authorized representative assures the following:

- Funds will be used to provide services or assistance to non-public schools to address educational disruptions resulting from the COVID-19 emergency consistent with Section 2002 of the American Rescue Plan Act of 2021 (ARP Act), applicable provisions of Section 312(d) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), and all other applicable requirements. Consistent with Section 2002(b) of the ARP Act, funds may not be used to provide reimbursements to any non-public school.
- By accepting an ARP EANS award from the Department, the Governor designates the State educational agency (SEA) to administer the ARP EANS program and to draw down funds from the Department's Grants Management System (G5). The SEA will distribute information about the ARP EANS program to non-public schools and make an application easily available no later than 30 days after receipt of the ARP EANS funds, which is also the same time as the Governor receives the grant award. The SEA will process each non-public school application promptly but no later than 30 days after the SEA receives the application from a non-public school.
- The SEA will ensure that services or assistance are provided only to eligible non-public schools that enroll a significant percentage of students from low-income families and are most impacted by the COVID-19 emergency, consistent with the final requirements. To be eligible, a non-public school must--
 - be a non-public school that meets the definition of a non-public school in section 316(6) of the CRRSA Act and the eligibility requirement in section 312(d)(9) of the CRRSA Act;
 - submit an application that meets the requirements under Section 312(d)(3)(B) of the CRRSA Act; and
 - request allowable services or assistance consistent with Section 312(d)(4) of the CRRSA Act and Section 2002(b) of the ARP Act.
- The SEA will, to the extent practicable, obligate all ARP EANS funds in an expedited and timely manner, but not later than six months after receiving the funds.
- The SEA will ensure the control of funds for the services or assistance provided to a non-public school, and title to materials, equipment, and property purchased with ARP EANS funds will be in a public agency and a public agency will administer such funds, services, assistance, materials, equipment, and property.
- The SEA will ensure that all services or assistance provided under the ARP EANS program, including materials, equipment, and any other items, will be secular, neutral, and non-ideological.
- The SEA will not use ARP EANS funds to provide direct or indirect financial assistance to scholarship-granting organizations or related entities for elementary or secondary education or to provide or support vouchers, tuition tax credit programs, education savings accounts, scholarships, scholarship programs, or tuition-assistance programs for elementary or secondary education, except for students who receive or received such assistance under the Governor's Emergency Education Relief (GEER 1) Fund under the Coronavirus Aid, Relief, and Economic Security (CARES) Act for the 2020-2021 school year, and only for the same assistance provided such students.

- The Governor will comply with all reporting requirements at such time and in such manner and containing such information as the Secretary may reasonably require, (See also 2 CFR 200.328-200.329).
- The SEA and any entity providing services of assistance under the ARP BANS program will cooperate with any examination of records by making records available for inspection, production, and examination, and authorized individuals available for interview and examination, upon the request of (i) the Department and/or its Inspector General; or (i) any other Federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.
- The Governor will return to the Secretary any funds received under the ARP BANS program that the Governor does not award or obligate within one year of receiving such funds.
- The Governor has consulted with the SEA on the application, particularly the assurances herein.



Governor or Authorized Representative of the Governor in the Office of the Governor (Typed Name):	
Signature: 	Date: September 9, 2021
Chief State School Officer or Authorized Representative of the SEA (Typed Name): State Superintendent Joy Hofmeister	
Signature:  Digitally signed by Joy Hofmeister Date: 2021.09.09 12:53:58 -05'00'	Date: September 9, 2021

ARP EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS PROGRAM

PART D: OTHER ASSURANCES AND CERTIFICATIONS

The Governor or his/her authorized representative assures or certifies the following:

- The State will comply with all applicable assurances in OMB Standard Forms 424B and D (Assurances for Non-Construction and Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders, and regulations.
- With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; and the State will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR part 82, Appendix B).
- The State and other entities will comply with the provisions of all applicable acts, regulations, and assurances; the provisions of the Education Department General Administrative Regulations in 34 CFR parts 76, 77, 81, 82, 84, 86, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Governor or Authorized Representative of the Governor in the Office of the Governor (Typed Name):	
Signature: 	Date: September 9, 2021
Chief State School Officer or Authorized Representative of the SEA (Typed Name): State Superintendent Joy Hofmeister	
Signature:  Digitally signed by Joy Hofmeister Date: 2021.09.09 13:12:59 -05'00'	Date: September 9, 2021

Appendix A: Section 2002 of the American Rescue Plan Act of 2021

SEC. 2002. EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS.

(a) **IN GENERAL.**—In addition to amounts otherwise available through the Emergency Assistance to Non-Public Schools Program, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$2,750,000,000, to remain available through September 30, 2023, for making allocations to Governors under the Emergency Assistance to Non-Public Schools Program to provide services or assistance to non-public schools that enroll a significant percentage of low-income students and are most impacted by the qualifying emergency.

(b) **LIMITATIONS.**—Funds provided under subsection (a) shall not be used to provide reimbursements to any non-public school.

Appendix B: Relevant Excerpts from Title III of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act)

Section 312(d) EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS. —

(1) PROGRAM AUTHORIZED. —

(A) **IN GENERAL.**—With funds reserved under subsection (a)(2), the Secretary shall allot the amount described in subparagraph (B) to the Governor of each State with an approved application under paragraph (2) in order to provide services or assistance to non-public schools under this subsection. The Governor shall designate the State educational agency to administer the program authorized under this subsection.

(B) **AMOUNT OF ALLOTMENT.**—An allotment for a State under subparagraph (A) shall be in the amount that bears the same relationship to the total amount of the funds reserved under subsection (a)(2) as the number of children aged 5 through 17 at or below 185 percent of poverty who are enrolled in non-public schools in the State (as determined by the Secretary on the basis of the best available data) bears to the total number of all such children in all States.

(2) APPLICATIONS FROM STATES. —

(A) **APPLICATION REQUEST AND REVIEW.**—The Secretary shall—

- (i) issue a notice inviting applications for funds reserved under subsection (a)(2) not later than 30 days after the date of enactment of this Act; and
- (ii) approve or deny an application not later than 15 days after the receipt of the application.

(B) **ASSURANCE.**—The Governor of each State, in consultation with their respective State educational agency, shall include in the application submitted under this paragraph an assurance that the State educational agency will —

- (i) distribute information about the program to non-public schools and make the information and the application easily available;
- (ii) process all applications submitted promptly, in accordance with subparagraph (3)(A)(ii);
- (iii) in providing services or assistance to non-public schools, ensure that services or assistance is provided to any non-public school that
 - (I) is a non-public school described in paragraph (3)(C);
 - (II) submits an application that meets the requirements of paragraph (3)(B); and
 - (III) requests services or assistance allowable under paragraph (4);
- (iv) to the extent practicable, obligate all funds provided under subsection (a)(2) for services or assistance to non-public schools in the State in an expedited and timely manner; and
- (v) obligate funds to provide services or assistance to non-public schools in the State not later than 6 months after receiving such funds under subsection (a)(2).

(3) APPLICATIONS FOR SERVICES OR ASSISTANCE.

(A) **APPLICATION REQUEST AND REVIEW.**—A State educational agency receiving funds from the Governor under this subsection shall—

- (i) make the application for services or assistance described in subparagraph (B) available to non-public schools by not later than 30 days after the receipt of such funds; and
- (ii) approve or deny an application not later than 30 days after the receipt of the application.

(B) **APPLICATION REQUIREMENTS.**—Each non-public school desiring services or assistance under this subsection shall submit an application to the State educational agency at such time, in such manner, and accompanied by such information as the

State educational agency may reasonably require to ensure expedited and timely provision of services or assistance to the non-public school, which shall include--

- (i) the number and percentage of students from low-income families enrolled by such non-public school in the 2019-2020 school year;
- (ii) a description of the emergency services authorized under paragraph (4) that such non-public school requests to be provided by the State educational agency; and
- (iii) whether the non-public school requesting services or assistance under this subsection received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) that was made before the date of enactment of this Act and the amount of any such loan received.

(4) TYPES OF SERVICES OR ASSISTANCE.—A non-public school receiving services or assistance under this subsection shall use such services or assistance to address educational disruptions resulting from the qualifying emergency for--

- (A) supplies to sanitize, disinfect, and clean school facilities;
- (B) personal protective equipment;
- (C) improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school;
- (D) training and professional development for staff on sanitation, the use of personal protective equipment, and minimizing the spread of infectious diseases;
- (E) physical barriers to facilitate social distancing;
- (F) other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff during the qualifying emergency;
- (G) expanding capacity to administer coronavirus testing to effectively monitor and suppress coronavirus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff at the non-public school;
- (H) educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;
- (I) redeveloping instructional plans, including curriculum development, for remote learning, hybrid learning, or to address learning loss;
- (J) leasing of sites or spaces to ensure safe social distancing to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention;
- (K) reasonable transportation costs; [or]
- (L) initiating and maintaining education and support services or assistance for remote learning, hybrid learning, or to address learning loss.⁵

(5) ADMINISTRATION.—A State educational agency receiving funds under this subsection may reserve not more than the greater of \$200,000 or one-half of 1 percent of such funds to administer the services and assistance provided under this subsection to non-public schools.

(6) REALLOCATION.—Notwithstanding paragraph (1)(A), each State educational agency receiving funds under this subsection that complies with paragraph (2) but has unobligated funds remaining 6 months after receiving funds under this subsection shall return such

⁵ The Department has omitted the provision in section 312(d)(4)(M) of the CRSSA Act that authorizes reimbursement to non-public schools because the ARP Act does not permit reimbursement.

remaining unobligated funds to the Governor, to use for any use authorized under subsection(c).

(7) PUBLIC CONTROL OF FUNDS. —

(A) IN GENERAL.—The control of funds for the services or assistance provided to a non-public school under this subsection, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, services, assistance, materials, equipment, and property.

(B) PROVISION OF SERVICES OR ASSISTANCE.—

(i) PROVIDER.—The provision of services or assistance to a non-public school under this subsection shall be provided --

(I) by employees of a public agency; or

(II) through contract by such public agency with an individual, association, agency, or organization.

(ii) REQUIREMENT.—In the provision of services or assistance described in clause (i), such employee, individual, association, agency, or organization shall be independent of the non-public school receiving such services or assistance, and such employment and contracts shall be under the control and supervision of such public agency described in subparagraph (A).

(8) SECULAR, NEUTRAL, AND NON-IDEOLOGICAL. — All services or assistance provided under this subsection, including providing equipment, materials, and any other items, shall be secular, neutral, and non-ideological.

(9) INTERACTION WITH PAYCHECK PROTECTION PROGRAM.—(A) IN GENERAL.—In order to be eligible to receive services or assistance under this subsection, a non-public school shall submit to the State an assurance, including any documentation required by the Secretary, that such non-public school did not, and will not, apply for and receive a loan under paragraphs (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)(37)) that is made on or after the date of enactment of this Act.

(B) ALLOWANCE.—A non-public school that received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) that was made before the date of enactment of this Act shall be eligible to receive services or assistance under this subsection.

Section 312 (e) RESTRICTIONS.—

(1) Funds provided under this section shall not be used --

(A) to provide direct or indirect financial assistance to scholarship granting organizations or related entities for elementary or secondary education; or

(B) to provide or support vouchers, tuition tax credit programs, education savings accounts, scholarships, scholarship programs, or tuition-assistance programs for elementary or secondary education.

(2) EXCEPTION.—Notwithstanding paragraph (1), a State may use funds provided under subsection (a)(1) to provide assistance prohibited under paragraph (1) only to students who receive or received such assistance with funds provided under section 18002(a) of division B of the CARES Act (20 U.S.C. 3401 note), for the 2020-2021 school year and only for the same assistance provided such students under such section.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be interpreted to apply any additional restrictions to funds provided in section 18002(a) of division B of the CARES Act (20 U.S.C. 3401 note).

Section 312 (I) REALLOCATION.—

Each Governor shall return to the Secretary any funds received under paragraph (1) or (2) of subsection (a) that the Governor does not award or obligate not later than 1 year after the date of receipt of such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b) for uses authorized under subsection (c).

DEFINITIONS

SEC. 316. Except as otherwise provided in sections 311 through 316 of this title, as used in such sections—

- (1) the terms "elementary education" and "secondary education" have the meaning given such terms under State law;
- (2) the term "institution of higher education" has the meaning given such term in title I of the Higher Education Act of 1965;
- (3) the term "Secretary" means the Secretary of Education;
- (4) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;
- (5) the term "cost of attendance" has the meaning given such term in section 472 of the HEA.
- (6) the term "Non-public school" means a non-public elementary and secondary school that—
 - (A) is accredited, licensed, or otherwise operates in accordance with State law; and
 - (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;
- (7) the term "public school" means a public elementary or secondary school;
- (8) any other term used that is defined in section 8101 of the ESEA of 1965 shall have the meaning given the term in such section; and
- (9) the term "qualifying emergency" has the meaning given the term in section 3502(a)(4) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136).

Appendix C: Final Requirements

(a) In general. A State educational agency (SEA) must provide services or assistance under the Emergency Assistance to Non-Public Schools (EANS) program, as authorized by the American Rescue Plan Act of 2021 (ARP Act), in accordance with the requirements applicable to the EANS program under section 312(d) of division M of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), except that--

- (1) An SEA may provide such services or assistance only to an eligible non-public school that enrolls a significant percentage of students from low-income families and is most impacted by the COVID-19 emergency; and
- (2) An SEA may not use such funds to provide reimbursements to any non-public school.

(b) Determining non-public schools to be served.

(1) To provide services or assistance to a non-public school under paragraph (a), an SEA must determine, consistent with the State's approved application for EANS funding under the ARP Act, that the school--

- (i) Enrolls a significant percentage of students from low-income families in accordance with paragraphs (b)(2) and (c) of this section; and
- (ii) Is most impacted by the COVID-19 emergency in accordance with paragraph (b)(3) of this section.

(2) A non-public school enrolls a significant percentage of students from low-income families if the percentage of students from low-income families enrolled in such school meets or exceeds--

- (i) 40 percent; or
- (ii) An alternate significant percentage approved by the Secretary in the State's application for EANS funding under the ARP Act that is based on circumstances in the State, which may be--

- (A) The State's average percentage of students from low-income families in public and non-public schools;
- (B) The average percentage of students from low-income families in non-public schools in the State that, for example, applied for or participated in the EANS program as authorized by the CRRSA Act; or
- (C) Other factors that the State demonstrates support an alternate significant poverty percentage.

(3)(i) A non-public school is most impacted by the COVID-19 emergency based on one or more of the following factors--

- (A) The number of COVID-19 infections per capita in the community or communities served by the non-public school;
- (B) The number of COVID-19-related deaths per capita in the community or communities served by the non-public school;
- (C) Data on the academic impact of lost instructional time and the social, emotional, and mental health impacts on students attending the non-public school attributable to the disruption of instruction caused by the COVID-19 emergency; or
- (D) The economic impact of the COVID-19 emergency on the community or communities served by the non-public school.

(ii) In addition to using one or more of the factors identified in paragraph (b)(3)(i), an SEA may use other factors included in the State's approved application for EANS funding under the ARP Act to determine that a non-public school is most impacted by the COVID-19 emergency.

(4) An SEA must publish on its website, on or before the date it makes applications for EANS services or assistance under the ARP Act available to non-public schools, the State's approved--

- (i) Minimum percentage to determine whether a non-public school enrolls a significant percentage of students from low-income families;

- (ii) The source(s) of poverty data the State will use to determine counts of students from low-income families in a non-public school; and
- (iii) Factors to determine whether a non-public school is most impacted by the COVID-19 emergency.

(c) Determining low-income counts.

(1) To be counted as a student from a low-income family for purposes of this section, a student must be aged 5 through 17 from a family whose income does not exceed 185 percent of the 2020 Federal poverty level.

(2) To obtain a count of students from low-income families enrolled in a non-public school under paragraph (c)(1), an SEA may use one or more of the following sources of data, provided the poverty threshold is consistent across sources--

- (i) Data on student eligibility for free or reduced-price lunch under the Richard B. Russell National School Lunch Act (43 U.S.C. 1751 et seq.);
- (ii) Data from the E-rate program administered by the Federal Communications Commission (47 CFR 54.500, 54.505(b));
- (iii) Data from a different source, such as scholarship or financial assistance data; or
- (iv) Data from a survey developed by the SEA.

Appendix D: State Allocation Data

Section 2002 of the American Rescue Plan Act of 2021 (ARP Act) appropriated \$2,750,000,000 for a second round of allocations under the Emergency Assistance to Non-Public Schools (EANS) program authorized in section 312(d) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act). Section 312(d) of the CRRSA Act requires the Department to allocate EANS funds on the basis of each State's relative number of children aged 5 through 17 at or below 185 percent of poverty who are enrolled in non-public schools in the State. The Department used school enrollment and poverty data from the American Community Survey (ACS) 5-Year (2015-2019) Public Use Microdata Sample (PUMS) to determine the relative shares of such children in each State. Section 312(d)(5) of the CRRSA Act specifies that States receiving EANS funds may reserve not more than the greater of \$200,000 or one-half of 1 percent of such funds for administrative costs. The following table shows each State's ARP EANS allocation as well as the maximum reservation allowed for administration.

Note that while the EANS appropriation under the ARP Act is the same as under the CRRSA Act (\$2,750,000,000), the allocations below differ from the initial round of EANS allocations under the CRRSA Act. This is because the EANS allocations authorized under section 312(d) of the CRRSA Act were based on ACS PUMS private school enrollment and poverty data for the 2014-2018 5-year period. The ACS has since released updated school enrollment and poverty data for the 2015-2019 5-year period, and the Department determined that use of the updated data would be most consistent with the statutory requirements of the EANS program, which call for allocations to be based on the "best available data."

State Allocation Table

STATE	ARP EANS Allocations	Maximum for ARP EANS Administration ¹
TOTAL	2,750,000,000	17,022,858
ALABAMA	44,895,780	224,479
ALASKA	5,882,303	200,000
ARIZONA	54,444,547	272,223
ARKANSAS	22,903,129	200,000
CALIFORNIA	181,312,003	906,560
COLORADO	28,709,729	200,000
CONNECTICUT	15,956,897	200,000
DELAWARE	3,889,481	200,000
DISTRICT OF COLUMBIA	4,533,977	200,000
FLORIDA	221,188,900	1,105,945
GEORGIA	75,408,050	377,040
HAWAII	10,365,129	200,000
IDAHO	21,961,960	200,000
ILLINOIS	83,246,346	416,232
INDIANA	78,874,005	394,370

STATE	ARP EANS Allocations	Maximum for ARP EANS Administration ¹
IOWA	23,744,042	200,000
KANSAS	25,069,862	200,000
KENTUCKY	42,665,620	213,328
LOUISIANA	55,674,204	278,371
MAINE	12,327,260	200,000
MARYLAND	39,248,769	200,000
MASSACHUSETTS	24,826,386	200,000
MICHIGAN	86,894,397	434,472
MINNESOTA	40,488,656	202,443
MISSISSIPPI	30,461,120	200,000
MISSOURI	68,641,868	343,209
MONTANA	12,063,324	200,000
NEBRASKA	18,618,767	200,000
NEVADA	18,180,919	200,000
NEW HAMPSHIRE	6,698,664	200,000
NEW JERSEY	70,947,730	354,739
NEW MEXICO	17,425,938	200,000
NEW YORK	252,458,198	1,262,291
NORTH CAROLINA	82,951,720	414,759
NORTH DAKOTA	4,151,371	200,000
OHIO	155,190,488	775,952
OKLAHOMA	31,482,084	200,000
OREGON	28,355,768	200,000
PENNSYLVANIA	152,741,404	763,707
PUERTO RICO	104,193,482	520,967
RHODE ISLAND	6,209,666	200,000
SOUTH CAROLINA	40,560,267	202,801
SOUTH DAKOTA	7,609,142	200,000
TENNESSEE	73,683,257	368,416
TEXAS	152,146,013	760,730
UTAH	26,428,418	200,000
VERMONT	3,877,205	200,000
VIRGINIA	46,344,360	231,722
WASHINGTON	45,744,877	228,724
WEST VIRGINIA	9,763,599	200,000
WISCONSIN	73,875,583	369,378
WYOMING	4,683,336	200,000

¹ A State educational agency receiving funds under this subsection may reserve not more than the greater of \$200,000 or one half of 1 percent of such funds to administer the services or assistance provided under this subsection to non-public schools.

[EXTERNAL] LOW INCOME IGG.xlsx

Gina Darby <info@iggokc.org>

Tue 11/16/2021 2:08 PM

To: Naomi Ward <naomi.ward@sde.ok.gov>

📎 1 attachments (18 KB)

LOW INCOME IGG.xlsx;

Greetings again,

Please attached Excel Spreadsheet page two.

Please let me know if there's anything further needed and thanks for calling me today to better explain the process.

Blessings & More,

Gina Darby

Director of Operations

Oklahoma Youth Literacy Program/Infinity Generation Generals

P.O. Box 17433, OKC, OK 73117 (mailing)

3663 N. Lottie Ave., OKC, OK 73111 (office)

405.601.3055 (o)

405.615.4799 (c)

info@iggOKCorg

www.iggOKC.org

"Cultivating Minds For A Brighter Future."



EANS II INFINITY GENERATION PREPARATORY SCHOOL SITE 55 P082-

000

STUDENT	STUDENT ADDRESS	FAMILY SIZE	QUALIFIED Y/N	GRADE LEVEL
STUDENT 1	1205 Karen Lane MWC, OK 73110	7	NQ	6TH
STUDENT 2	1205 Karen Lane MWC, OK 73110	7	NQ	6TH
STUDENT 3	1205 Karen Lane MWC, OK 73110	7	NQ	7TH
STUDENT 4	6001 SW 12TH ST APT 413 OKC, OK 73128	2	Q	1ST
STUDENT 5	7304 NW 101ST ST OKC, OK 73162	2	Q	3RD
STUDENT 6	1832 NE 54TH ST OKC, OK 73111	4	Q	KINDERGARTEN
STUDENT 7	2609 LAKESIDE DRIVE, THE VILLAGE OK 73120	4	Q	1ST
STUDENT 8	22 E 12TH ST, EDMOND, OK 73034	4	Q	2ND
STUDENT 9	22 E 12TH ST, EDMOND, OK 73034	4	Q	4TH
STUDENT 12	2711 SILVERTREE DRIVE, OKC, OK 73120	3	Q	KINDERGARTEN
STUDENT 11	2711 SILVERTREE DRIVE, OKC, OK 73120	3	Q	7TH
STUDENT 12	6929 S SOONER ROAD APT 10203 OKC, OK 10203	3	NQ	6TH
STUDENT 13	12701 N PENNSYLVANIA AVE APT 211	3	Q	4TH
STUDENT 14	5801 TERRY DRIVE OKC, OK 73111	4	Q	6TH
STUDENT 15	5801 TERRY DRIVE OKC, OK 73111	4	Q	4TH
STUDENT 16	15093 SCOTTS DALE LANE CHOCTAW, OK 73020	4	Q	PRE-K
STUDENT 17	1205 KAREN LANE MWC, OK 73110	2	Q	5TH
STUDENT 18	3816 HAILE STREET OKC, OK 73121	3	Q	3RD
STUDENT 19	2917 AMY WAY SPENCER, OK 73084	3	Q	KINDERGARTEN
STUDENT 20	2132 NE 19TH ST OKC, OK 73111	2	Q	4TH
STUDENT 21	1121 TALL OAKS DRIVE MWC, OK 73110	2	Q	1ST
STUDENT 22	1248 WINDEMER DR OKC, OK 73117	4	Q	KINDERGARTEN
STUDENT 23	2609 LAKESIDE DRIVE, THE VILLAGE OK 73120	4	Q	PRE-K
STUDENT 24	404 ABILENE AVE EDMOND, OK 73003	2	Q	3RD
STUDENT 25	1208 NE 41ST TERRACE OKC, OK 73111	2	Q	8TH
STUDENT 26	522 NW 94TH ST OKC, OK 73114	3	Q	5TH
STUDENT 27	735 NW 30TH ST APT 3 OKC, OK 73118	2	Q	1ST
STUDENT 28	5725 N EVEREST AVE OKC, OK 73111	5	Q	5TH
STUDENT 29	1308 PINEWOOD CT OKC, OK 73110	3	Q	5TH
STUDENT 30	341 NW 114TH ST OKC, OK 73114	4	Q	4TH
STUDENT 31	522 NW 94TH ST OKC, OK 73114	3	Q	3RD

STUDENT 32	15720 BENNETT DR EDMOND, OK 73013	4	Q	6TH
STUDENT 33	15720 BENNETT DR EDMOND, OK 73013	4	Q	3RD
STUDENT 34	1124 NE 15TH ST OKC, OK 73111	4	NQ	4TH
STUDENT 35	1162 NE 39TH OKC, OK 73111	4	Q	5TH
STUDENT 36	3822 SILVERTREE DR APT 4B MWC, OK 73110	3	Q	6TH
STUDENT 37	521 PEPERTREE LANE MWC, OK 73110	3	Q	2ND
STUDENT 38	1811 NE 32ND STREET OKC, OK 73111	3	Q	5TH
STUDENT 39	6581 SW 15TH OKC, OK 73128	2	Q	4TH
STUDENT 40	8902 NW 112TH OKC, OK 73120	3	Q	5TH

[EXTERNAL] Re: EANS II - ACTION REQUIRED

Gina Darby <info@iggokc.org>

Sat 11/27/2021 7:03 PM

To: Naomi Ward <naomi.ward@sde.ok.gov>

Hello again,

See below IGG's updated October 2020 numbers!

Blessings & More,

Gina Darby

Director of Operations

Oklahoma Youth Literacy Program/Infinity Generation Generals

P.O. Box 17433, OKC, OK 73117 (mailing)

3663 N. Lottie Ave., OKC, OK 73111 (office)

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www.iggOKC.org

"Cultivating Minds For A Brighter Future."

On Nov 23, 2021, at 9:38 AM, Naomi Ward <naomi.ward@sde.ok.gov> wrote:

d morning,

Due to several of the schools submitting data that did not align with the application that was submitted, we need confirmation of which numbers are correct. Please answer the questions below via email. All schools must submit their responses prior to us being able to proceed with the allocation calculations, so please submit as soon as possible.

October 2020 total student count (Ages 5-17): 157

October 2020 low-income student count (Ages 5-17): 6



Re: [EXTERNAL] Fwd: EANS II - ACTION REQUIRED

Gina Darby <info@iggokc.org>

Tue 11/30/2021 10:43 AM

To: Naomi Ward <naomi.ward@sde.ok.gov>

I wrote it wrong sorry!

157 students were enrolled and 151 were low income. Sorry for the confusion.

Gina Darby

Director of Operations

Oklahoma Youth Literacy Program/Infinity Generation Generals

P.O. Box 17433, OKC, OK 73117 (mailing)

3663 N. Lottie Ave., OKC, OK 73111 (office)

405.601.3055 (o)

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www.iggOKC.org

"Cultivating Minds For A Brighter Future."

On Nov 30, 2021, at 10:35 AM, Naomi Ward <naomi.ward@sde.ok.gov> wrote:

The numbers still indicate the following:

October 2020 total student count (Ages 5-17):

157

October 2020 low-income student count (Ages 5-17):

6

These numbers would not qualify your school.

Thank you,

**BEFORE THE OKLAHOMA STATE DEPARTMENT OF EDUCATION
STATE OF OKLAHOMA**

IN THE MATTER OF:

**Impact Athletics,
Appellant**

**APPEAL OF OVERCLAIM, and
DENIAL OF FEBRUARY 2021 CLAIM
Summer Food Service Program ("SFSP")**

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**FINAL ORDER AFFIRMING IN PART AND REMANDING IN PART THE
OVERCLAIM AND DENIAL OF THE FEBRUARY 2021 CLAIM**

The above matter came before the undersigned administrative review official for a review of documents and hearing on the appeal of Impact Athletics ("Impact" or Appellant"). Appellant seeks review of the Overclaim for October 2020 to January 2021, and the denial of the February 2021 claim for reimbursement in the Summer Food Service Program ("SFSP").

A hearing was held on May 3, 2021, at the offices of the Oklahoma State Department of Education Child Nutrition Program in Oklahoma City, Oklahoma. Milen Darby, Senior Administrator and Gina Darby, Authorized Representative and Site Monitor, appeared for Appellant. Appellant was represented by Attorney Hugh Robert of Sherwood, McCormick & Robert. Also appearing for Appellant was Katrinia Nelson, Site Supervisor. The Oklahoma State Department of Education Child Nutrition Program ("CNP") was represented by Brad Clark, General Counsel. Also appearing for CNP were Jennifer Weber,



Director of Operations; Kathy Kuck, Jenniffer Pryor, and Dee Huston, Administrative Coordinators.

Prior to the hearing both parties timely submitted extensive exhibits. All exhibits were admitted without objection. Judicial notice was taken of the federal and state regulations governing the SFSP, 7 CFR § 225, and OAC 210:10-3; Article II of the Oklahoma Administrative Procedures Act; the USDA SFSP Administration Guide, Sponsor Monitor's Guide, and the Food Buying Guide. Mr. Darby, Ms. Darby, Ms. Nelson, Ms. Weber, Ms. Pryor, Ms. Kuck and Ms Huston gave testimony.

BACKGROUND

Impact Athletics ("Appellant") has been a non-profit sponsoring organization participant in the SFSP for nine years. Appellant has three sites: Millwood Track Field, Kancacha Kids, and Douglas East Park. Meals are prepared at a central kitchen located at the Kancacha Kids site. Per the SFSP participation agreement, income from another entity, Oklahoma Youth Literacy Program, operated by Gina Darby, pays for food, supplies and SFSP staff payroll.

The overclaim was based on an administrative review conducted beginning February 4, 2021, with the exit conference held on March 29, 2021. The review was initially for the month of January 2021 but was expanded to include October 2020 to December 2020. Prior to the completion of the review, CNP also requested supporting documentation for a claim validation of the February 2021 claim submitted on March 1, 2021. An overclaim of \$726,269.82 was assessed for the months of October 2020-January 2021. CNP denied the February claim, finding that the severity of the recordkeeping errors

was such that CNP could not determine whether any meals claimed were reimbursable.

CNP gave Appellant notice by letter dated March 31, 2021 that Appellant could make necessary changes to the February claim and submit a revised claim for approval. The April 9 Notice of Serious Deficiency informed Appellant that a corrective action plan for the serious deficiencies was due on April 16, 2021. When no corrective action plan was submitted, approved, or implemented by that date, CNP terminated Impact Athletics SFSP participation agreement.

AREAS OF SERIOUS DEFICIENCY

The Notice issued to Appellant by letter dated April 9, 2021, indicated the following areas of serious deficiency.

- Non-compliance with the meal service time restriction set forth in 7 CFR § 225.16(c) in violation of 7 CFR § 225.11(c)(4)(ii).
- Failure to maintain adequate records - CFR § 225.11(c)(4)(ii)
- Service of a significant number of meals which did not include required quantities of all meal components – 7 CFR § 225.11(c)(4)(vi).

The meal-service time restriction deficiency was based on CNP's visits to two sites on two dates in February during and after the meal service times stated in the approved SFSP agreement. No meal service was occurring at those site visits. Appellant's February claim indicated that the sites operated twenty-five days out of the month, but CNPs' review of records indicated that Appellant did not operate on twenty-five days. Although Appellant had executed USDA authorized waivers of meal service times and parent/guardian meal pick-up, the meal

service did not occur as stated in the waivers or in Appellant's SFSP agreement.

The failure to maintain adequate records deficiency included errors in financial records and food production records. Types of financial recordkeeping errors included lack of supporting documentation for claimed expenses, claiming unallowable costs, paying staff not in the approved budget, and use of a co-mingled account without an accounting procedure to track only those expenses related to the SFSP.

Food production records errors included altered dates on food production records to indicate that food was purchased before it was served despite purchase receipts for the food items dated after the date on which the meals for that food was served. Incorrect CN labels were recorded on the menus or the required CN label was not provided. The food item reported on the menus as served was a different food item than that indicated in the purchase receipts for the food. Inventory records indicated leftover food when purchase receipts indicated that an insufficient quantity of food was purchased to serve the required quantity. Purchased food items that were included in expenditure records were not found on menus as served. CNP compiled spreadsheets demonstrating that the amount of food purchased per purchase receipts was significantly less than the quantity reported as served.

The errors in the food production records are the basis for CNP's finding of service of a significant number of meals which did not include required quantities of all meal components.

ISSUES ON APPEAL

Regarding the meal service time deficiency, Appellant claimed that there were waivers to serve meals at the time athletic events ended, rather than the time set forth in the SFSP participation agreement, and for parents to pick-up meals for their children at the

central kitchen. Appellant also claimed that per their SFSP agreements, meals that were served outdoors would not be served on some days due to inclement weather. Although the February 2021 online claim submission indicated that the sites *operated* for 25 days out of the month, the number of meals claimed did not include meals for days in which no meals were served.

Appellant attributes errors in recordkeeping to changes in regulations and procedures due to the Covid 19 pandemic, and miscalculations by CNP in verifying whether sufficient food quantities were purchased to serve the quantities required for the number of meals claimed. Appellant asserts that due to Covid 19, there were times when food quantities were low or there were limits on the amounts that could be purchased. Appellant relied on donations, and donation records indicated that sufficient food was available to serve the required quantities for the number of meals claimed. Appellant gave some examples of CNP's miscalculations regarding food quantities.

GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. CNP properly served Appellant with the Notice of Serious Deficiency and Denial of January 2021 Claim by letter dated March 21, 2021. Pursuant to 7 C.F.R § 225.13(b)(1), the notice included a detailed description of the grounds for denial of the claim, and the applicable deadlines and procedures for appeal and corrective action.
2. By email dated April 19, 2021, Appellant timely submitted a request for an appeal of the overclaim, and denial of the February claim.

3. Pursuant to 7 CFR § 225.13(b)(4), Appeal procedures, “to be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal.” Both parties timely submitted records on or before the due date.
4. The federal regulations provide that “Sponsors shall maintain accurate records justifying all meals claimed.” 7 CFR § 225.15(c)(1). Appellant’s SFSP Permanent Agreement sets forth Appellant’s record-keeping requirements. The agreement requires Appellant to “keep full and accurate records respecting its food service to serve as a basis for the claim reimbursement and for audit and review purposes.”¹ The Agreement sets forth the types of records Appellant must keep.
5. Section 224.12(a), governing disallowance or denial of a claim, provides as follows:
 - (a) The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable under this part, except as provided for in § 225.10(c). State agencies shall consider claims for reimbursement not properly payable if a sponsor's records do not support all meals claimed and include all costs associated with the Program sufficient to justify that reimbursements were spent only on allowable Child Nutrition Program costs.
6. USDA guidance states that the review official’s role in an appeal in which serious deficiencies were found is limited to: (1) assessing CNP's action regarding the denied claim; and (2) determining whether CNP and Appellant followed federal and state regulations, policies, and procedures governing the program. The administrative review official may not interpret or expand the meaning of federal regulations; validate serious deficiency findings; or verify whether corrective actions fully and permanently corrected

¹ CNP ex. Impact Athletics 3386.

program violations.²

FINDINGS OF FACT AND CONCLUSIONS OF LAW
RELATED TO THE MEALTIME SERVICE RESTRICTION
DEFICIENCY

7. The parties dispute whether Appellant's method of service for meals at the Millwood Track Field and Douglas East Park were in accordance with the waivers Appellant executed.
8. Appellant asserts that the FY 21 COVID-19 Meal Service Time Flexibility Waiver authorized service of meals "later than 5:30 p," rather than 3:30 to 5:30 pm as indicated in the SFSP Agreement. The SFSP participants were served after athletic practice, and practice was not always over at 5:30 p.m.
9. Appellant also asserts that the FY 21 COVID-19 Parent/Guardian Pick-up Waiver, as well as an email communication with CNP staff, authorizes a parent/guardian of students who would normally obtain their two meals at the two sites to pick up meals at the central kitchen location instead of at the Millwood and Douglas East sites.
10. Appellant's interpretation of the waivers is contrary to CNP's interpretation. USDA guidance for the role of the appeal hearing official prohibits the hearing official from interpreting federal regulations, policies, and procedures.
11. CNP's determination that the waivers were not sufficient to authorize Appellant's method of service at the Douglas East Park and the Millwood Track was consistent with CNP's duties and responsibilities as set forth in the regulations, policies, and procedures

² USDA CACFP Memo 02-2015, Role and Requirement of Administrative Review Officials (Nov. 21, 2014). U.S. Dept. of Agriculture Food and Nutrition Service, Serious Deficiency, Suspension, & Appeals for State Agencies and Sponsoring Organizations Handbook, Part 12(A), p. 84.

governing the program.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
RELATED TO FAILURE TO
MAINTAIN ADEQUATE RECORDS

12. Most of the testimony and argument at the hearing focused on issues with food purchasing and food production records.
13. CNP staff created spreadsheets for the months of January and February comparing the quantity of food for which there were purchase records with the quantity reported as served. Those spreadsheets indicated that there were a large number food items for which the quantity purchased was significantly less than the quantity necessary to serve the quantity reported as served.
14. To refute this claim, Appellant offered evidence showing that for some of the food items, CNP miscalculated the number of servings in the amount of food purchased as shown by the purchase records. For example, per Appellant, the bagels purchased counted as four servings per bagel rather than just one serving. Appellant claimed that CNP calculated one bagel as one serving. When Appellant served sandwiches, CNP calculated that two slices of bread were required for a reimbursable meal, but insufficient quantities of bread was purchased. Appellant offered evidence showing that one half a sandwich (one slice of bread) met the required serving quantity, thus enough bread was purchased.
15. Appellant also offered evidence that for some meals, two different types of food were served to satisfy the required quantity of the meal component. For example, rather than serving just bread or noodles, Appellant satisfied the grain component by serving half in noodles and half in bread. Appellant claims that CNP did not consider this allowable

method when calculating whether sufficient noodles or sufficient bread was purchased.

16. These examples demonstrate that CNP may have miscalculated whether enough food was purchased for certain food items.

17. This issue is remanded for CNP's reconsideration of its calculations regarding the number of servings for the food items for which there were valid records of purchase and/or valid acceptable records of inventory or donation.

18. The scope of the remand does not include reconsideration of milk quantities derived from recycled milk. Testimony and exhibits presented at the hearing indicated that Appellant's quantity of milk available for service was based on recycling pints of milk that were offered but not accepted during the non-congregate "grab and go" type of meal service provided by Appellant. CNP testified that while recycling declined milk is allowable for congregate meal settings, it is not allowable for non-congregate meals.

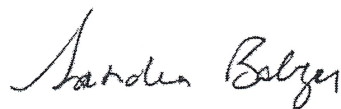
FINDINGS OF FACT AND CONCLUSIONS OF LAW
RELATED TO SERVICE OF A SIGNIFICANT NUMBER OF
MEALS WHICH DID NOT INCLUDE REQUIRED
QUANTITIES OF ALL MEAL COMPONENTS

19. CNP's determination that a significant number of meals did not include required quantities of all meal components was partly based on its review of food purchasing records and its calculations of the quantity of food available to be served. The result of CNP's recalculations may affect its determination as to whether there was a significant number of meals claimed which did not include required quantities of all meal components.

DECISION

For the reasons described above, the undersigned administrative review official finds that CNP's overclaim for October 2020 through January 2021, and denial of Appellant's February 2021 claim is AFFIRMED. The matter is remanded for recalculation of the number of servings per the food items for which there were valid records of purchase and/or valid acceptable records of inventory or donation. Should the recalculation result in a finding that some disallowed meals were reimbursable, CNP is directed to adjust the overclaim and denied claim accordingly.

DATED THIS 10th ^{DAY} OF May, 2021.



SANDRA BALZER
Administrative Review Official

Transmitted via electronic mail to:

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kancacha@yahoo.com

Gina Darby
kancacha@yahoo.com

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OKLAHOMA STATE DEPARTMENT *of* EDUCATION
OFFICE *of* CHILD NUTRITION PROGRAMS

June 9, 2022

Impact Athletics
Milen Darby, Administrator
Gina Darby, Assistant Director
PO Box 17433
Oklahoma City, OK 73117

7021 0350 0000 2117 6665 *G*

7021 0350 0000 2117 6672 *M*

7021 0350 0000 2117 6689 *H*

FIRST DEMAND LETTER

Re: 55-N008 - Demand of Summer Food Service Program Assessment

Dear Mr. Darby & Ms. Darby:

Our records indicate that Impact Athletics owes the United States Department of Agriculture a total assessment of \$595,957.89 for fiscal year 2021. Promptly remit a money order or cashier's check in this amount by July 11, 2022, to the Oklahoma State Department of Education, at the following address:

Attn: Jennifer Weber
State Department of Education
Child Nutrition Programs, Room 310
2500 North Lincoln Boulevard
Oklahoma City, OK 73105-4599

Failure to remit this amount will result in further action taken against your institution. If you have questions, please contact our office at 405-521-3327.

Sincerely,

Jennifer Weber, Executive Director
Child Nutrition Programs

kdr

c: Kathy Kuck, CNP Administrative Coordinator
Institution File
Hugh Robert, Appellant Attorney
OSDE Office of Legal Services
RaeKesha Kelley, USDA