



HENRY McMASTER
GOVERNOR

February 19, 2021

The Honorable Molly Spearman
State Superintendent of Education
1429 Senate Street
Columbia, South Carolina 29201

Dear Superintendent Spearman:

I write to thank you for your willingness to administer the recently established federal Emergency Assistance to Non-Public Schools (“EANS”) Program. Your significant assistance in this regard is noted and most appreciated. For your records, enclosed please find an executed copy of the corresponding Certification and Agreement, as well as the U.S. Department of Education’s (“Department”) recent grant award notification.

As you know, in late December, Congress passed, and President Trump signed into law, the Coronavirus Response and Relief Supplemental Appropriations (“CRRSA”) Act as part of the Consolidated Appropriations Act of 2021. Among other things, the CRRSA Act appropriated another \$81.88 billion to the Education Stabilization Fund, including over \$4 billion in additional allocations to the Governor’s Emergency Education Relief (“GEER”) Fund. The GEER Funds provided by the CRRSA Act are a supplement to the GEER Funds previously allocated by the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act.

In providing these new emergency funds, Congress established the EANS Program as part of the GEER Fund and specifically set aside \$2.75 billion in additional federal funds “in order to provide services or assistance to non-public schools.” CRRSA Act § 312(d)(1)(A). Under section 312(d)(1)(B) of the CRRSA Act, Congress directed the Secretary of Education to award funds to Governors for the EANS Program based on their State’s proportional share of children aged 5 through 17 who are at or below 185% of the poverty level and are enrolled in non-public schools in the State. According to the Department, South Carolina’s allocation of federal funding for the EANS Program is \$39,981,327. These funds must be used for the purpose of providing services or assistance to eligible non-public schools to address the impact that the 2019 Novel Coronavirus (“COVID-19”) has had, and continues to have, on non-public school students and teachers in the State.

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By accepting an EANS award from the Department, a Governor automatically designates the State Educational Agency (“SEA”) to administer the EANS Program. As indicated by the Certification and Agreement, my office previously consulted with your staff and confirmed that the South Carolina Department of Education (“SCDE”), as the designated SEA, agreed to administer the EANS Program in accordance with the CRRSA Act. I recognize that SCDE is already tasked with administering other federal programs and funds, so I sincerely appreciate your willingness to undertake this additional effort.

As you will recall, the South Carolina Supreme Court recently held that my planned allocation of \$32 million in GEER Funds in connection with the SAFE Grants Program constituted “the use of public funds for the direct benefit of private educational institutions within the meaning of, and prohibited by, Article XI, Section 4 of the South Carolina Constitution.” *Adams v. McMaster*, 432 S.C. 225, 244, 851 S.E.2d 703, 713 (2020). Although I continue to maintain that the Court’s ruling overlooked or misapprehended several critical points, I must respect its ruling. Nevertheless, I do not believe that the Court’s holding in *Adams* would prevent the State from participating in the EANS Program. In reaching its decision in *Adams*, the Court concluded that there was “no clear congressional intent in the education provisions of the CARES Act to allow the Governor to allocate the GEER funds” for purposes of the SAFE Grants Program. *Id.* at 243, 851 S.E.2d at 712. By contrast, here, Congress passed, and the President signed, the CRRSA Act, which expressly and specifically appropriated, authorized, and directed the expenditure of GEER Funds “in order to provide services or assistance to non-public schools.” CRRSA Act § 312(d)(1)(A). Accordingly, I believe that the CRRSA Act, which became law after the Court’s decision in *Adams*, represents a subsequent and intervening legislative enactment, with clear congressional intent, which fundamentally alters the legal and factual bases underlying the *Adams* decision. It is my understanding that SCDE engaged outside counsel and received confirmation regarding the allowability of funds awarded under the EANS Program. Should SCDE have any further questions or need any additional clarification or guidance during the course of administering the EANS Program, I would encourage SCDE to confer with the Attorney General regarding the same.

Thank you for your continued leadership and dedication to the State of South Carolina. As always, if I can ever be of service or assistance regarding this matter or otherwise, please do not hesitate to call.

Yours very truly,



Henry McMaster

Enclosures