



April 26, 2021

U.S. Department of Education
Office of Elementary and Secondary Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Public Comment, Invitation to Comment on ARP EANS Implementation

To Whom It May Concern:

The Association of Christian Schools International (ACSI) offers the following public comment in response to the U.S. Department of Education's (USDE) April 12, 2021 Invitation to Comment. ACSI is the largest worldwide Protestant school association with approximately 2500 member schools in the United States alone. We would like to affirm public comment on behalf of the non-public school community by the Council for American Private Education (CAPE) of which ACSI is a member.

We warmly appreciate that Congress passed, and President Biden signed into law, in March 2021, a second round of funding for the Emergency Assistance to Non-Public Schools (EANS) program as part of the American Rescue Plan Act (ARP). EANS was initially created in December 2020 in a prior COVID relief package to ensure **all schools** were eligible for assistance. We appreciate that the intended goal of ARP's EANS II is to continue the vital impact of EANS I and allow the states to build on the implementation work they have already begun.

Indeed, Senate Majority Leader Chuck Schumer (D-New York) – the primary architect of inserting the second round of EANS funding into the ARP – has stated: “The bottom line is that this pandemic has hurt **every school and every schoolkid**, and we should do all we can to help **each and every one of them** confront and overcome the COVID crisis, both public and private.”¹

All states, and the District of Columbia and Puerto Rico, have applied for EANS I, and dozens have begun the application process with non-public schools. **In order to build on EANS I efficiently and seamlessly with the additional ARP EANS II funding, the USDE should guide states to carry on with policies and procedures currently in place to the extent their policies align with ARP.** The limit on reimbursements to non-public schools is the notable and explicit change in ARP. This can be easily implemented by eliminating the reimbursement section on the non-public schools' application for ARP's EANS II.

This approach aligns with the ARP EANS II language. By definition, the reconciliation process through which the ARP was legislated is a budget procedure in which no significant policy changes may be made. Congress decided to eliminate the reimbursement process specified in subsection (b). They did not address dozens of other provisions enacted in the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act which created EANS I; therefore, it is reasonable to conclude that they are meant to remain in place and govern the new round of funding. Congress did briefly address school eligibility in ARP EANS, but the language simply restates the goal stated in EANS I.

¹ <https://jewishinsider.com/2021/03/senate-relief-bill-covid-nonprofits/>

This path benefits State Education Agencies (SEAs). SEAs across the country have worked quickly and efficiently, as required by law, to apply for EANS, design applications for non-public schools and inform non-public schools about the program. With low administrative fees allowed for EANS and the additional work required for renewed funding for Elementary and Secondary School Emergency Relief (ESSER) program II and III, states need to be able to streamline these processes as much as possible. Requiring SEAs to design and implement a completely new ARP EANS II program is burdensome for the SEA and causes confusion for non-public school leaders. Changes should be limited to updates on the non-public schools' application for ARP EANS II regarding reimbursements and not the program design.

The non-public school community supports language that prioritizes low-income students and schools most impacted by COVID. That requirement is already in place in EANS I and should remain the same for the ARP EANS process and application. **Funding to the states from USDE is exclusively allocated based on the count of low-income students.** Additionally, the low-income count is also utilized within the non-public schools EANS I application to the states. Adding conflicting policy and procedures for two nearly identical programs will create confusion and mixed messages. Worse, it will delay the help that the students and schools need now and thus undermine the very purpose of the statute.

The implementation of ARP EANS II should prioritize:

- 1) Maximizing participation of non-public schools,
- 2) State discretion, and,
- 3) Alignment with EANS I implementation, particularly continued use of the USDE EANS I application template with limited amendments.

With those three priorities as context, below are our specific responses to the three areas on which the Department is seeking comments.

1. Identifying non-public schools that enroll a significant percentage of low-income students.

States should be given discretion to decide these factors and the federal government should not establish an absolute, "one size fits all" criterion. An array of options should be suggested to states, but not mandated or limited. There is not one perfect way of determining low-income student enrollment in non-public schools and most data collection is voluntary and subjective. Because this data collection is not centralized process, nor is it a government mandated process, the data are not consistent from school to school and will lead to undercounting many low-income students. A single data point must not be used to deem a non-public school ineligible to participate in a massive federal emergency relief program.

Rather, many non-public schools serve low-income students and participate in a variety of public and private programs designed to provide tuition assistance and meet the academic and/or non-academic educational needs of those students. By virtue of participation in these means-tested programs, non-public schools demonstrate their commitment to serving low-income students even as data collection might be subjective or variable from year to year. Schools should be allowed as much latitude as possible to demonstrate there is significant number of low-income students in their student enrollment by identifying their participation in such means tested programs.

Programs that meet this criterion include, but should not be limited to:

- Every Student Succeeds Act, Title I Part A
- E-RATE
- National School Lunch Program

- Publicly funded scholarship programs
- Privately funded scholarship programs
- Publicly funded state and local programs that respond to the health, safety, and academic needs of students in non-public schools.

If the state must include a low-income enrollment count as a part of the application, then USDE should refer to the state discretion it provided in Appendix A of the EANS I application [template](#), referenced below:

Appendix A: Information for an SEA Regarding Calculating the Number of Students from Low-Income Families

The SEA has discretion to identify the data source(s) it will accept when calculating the number of students enrolled in a non-public school in school year 2019-2020 who are from low-income families. The SEA also has discretion in determining what it means for a family to have a low income (*i.e.*, the SEA sets a particular threshold, which could be a percentage of the Federal poverty level or another amount). The SEA should make such information readily available and ensure that the definition of “low-income” it uses is the same for all non-public schools. The SEA should select reliable source(s) of data that are least burdensome on non-public schools and families and may permit the use of multiple data sources.

To the extent non-public schools have the following readily available, possible data sources might include:

- *free or reduced-price lunch data,*
- *scholarship or financial assistance data,*
- *E-Rate data, or*
- *other relevant data, such as data that the non-public school has provided to the State for purposes of State or local programs.*

For non-public schools where such data are not readily available, and in order to avoid new or unnecessary data collections from non-public schools and families, the following are potential sources of estimates of the number of students from low-income families:

- *data imputing the number of students from low-income families based on the American Community Survey (ACS) or the Small Area Income and Poverty Estimates (SAIPE) program by the U.S. Census Bureau, or*
- *proportionality data: the number of students enrolled in a non-public school who reside in a Title I school attendance area multiplied by the percentage of public school students in that same attendance area who are from low-income families. If the non-public school has students who reside in more than one Title I school attendance area, multiple calculations would be necessary.*

2. Identifying non-public schools most impacted by the COVID-19 emergency.

The pandemic has impacted all non-public schools in one way or another and in different degrees, often severely. These impacts on non-public schools have varied drastically among and within the states, based on many factors, including the severity of the pandemic in their region, a school’s resources, and the demographics and resources of the community the school serves. Accordingly, impact should be measured by the whole of a school’s experience, not by a limited set of metrics. States should be given discretion to

decide how to weigh these impacts, and the federal government should not establish centralized criteria. An array of options should be suggested to states, but not mandated or limited.

The USDE suggested an ample list of factors in their EANS I application template and this open-ended approach is best for schools and state leaders in analyzing applications. From the USDE EANS I template:


The State may request any reasonable information from a non-public school to describe and/or quantify the impact of COVID-19 on the non-public school. Factors that an SEA might consider in determining non-public schools that are most impacted by COVID-19 include but are not limited to: (1) loss of tuition revenue; (2) decrease in enrollment; (3) lack of capacity to provide remote learning due to insufficient technological support, and (4) data documenting the extent of learning loss attributable to the educational disruptions caused by COVID-19.

3. Incorporating both of the above factors.

Properly construed, these two factors – service to low-income students and the significance of the impact of COVID on the school – can and should permit states to have broad discretion to decide how to weigh them together. The federal government should not establish a uniform method or formula. An array of options should be suggested to states, but not mandated or limited. It should be recommended that any school that demonstrates both of the above factors through the state designed process is eligible under for EANS II funds under ARP. States may then direct the funding to the private school student populations in need of help.

In conclusion, it is wise to keep in mind the three key principles noted at the outset above when answering questions about ARP EANS II implementation, namely, to maximize participation of non-public schools, to allow broad state discretion to meet localized need, and, to align EANS II with EANS I implementation, particularly the substantial use of the USDE EANS I application template with limited amendments. This will serve to meet the need of ensuring participation at the same time maintaining as light a burden on SEAs and limiting confusion among participating schools.

Thank you for your consideration,



P. George Tryfiates
Director for Government Affairs