



WASHINGTON OFFICE • 1730 RHODE ISLAND AVENUE NW • WASHINGTON DC 20036

202-835-0414 • FAX: 202-835-0424

Agudath  
Israel  
of America  
אגודת ישראל באמריקה

Rabbi Abba Cohen  
Vice President for Government Affairs  
Washington Director and Counsel

April 26, 2021

Office of Elementary and Secondary Education  
U.S. Department of Education  
Washington, D.C. 20202

***Re: ARP EANS Implementation***

Dear Sir/Madam:

I submit these comments on behalf of Agudath Israel of America in response to the U.S. Department of Education's "Notice Inviting Applications and Announcing Allocations; Invitation for Comment," as set forth in its announcement letter of April 12, 2021. Agudath Israel is a national Jewish organization and, for over a half century, it has served as the government liaison for the interests of the hundreds of elementary and secondary Orthodox Jewish schools affiliated with the National Society for Hebrew Day Schools. We were pleased to be among a small group of non-public school advocates who played a leading role in the development and passage of the provisions that are the subject of these comments.

We direct our comments to the "new" requirement, contained in the March 2021 American Rescue Plan: that the Emergency Assistance for Non-Public Schools program (EANS II) "provide services or assistance to non-public schools that enroll a significant percentage of low-income students and are most impacted by the [COVID-19] emergency." It is Agudath Israel's contention that the language in EANS II does not represent a "new" requirement, nor is it advisable as a matter of sound public policy to treat it as such.

**EANS I vs. EANS II** – The Coronavirus Response and Relief Supplemental Appropriations Act, passed in December 2020, established the original Emergency Assistance for Non-Public Schools program (EANS I). In it, Congress emphasized that low-income children were the central focus of the statute and that they were to be the primary targets of the assistance provided. Indeed, EANS I states that State Education Agencies (SEA) were to "prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by the qualifying emergency." (Section 312(d)(1)(3)(C). To this end, the statute's provisions on allotments and application requirements similarly point to the issue of non-public school students' income status. State implementation of EANS I has been impressive, as SEAs have worked expeditiously to set up a process that is intended to accomplish the twin goals of delivering services to non-public schools and to make low-income students the focus of the assistance.



EANS II's use of the words "significant percentage" in no way adds or detracts from that goal or requirement. This legislative shorthand simply reiterates the objective that had been established under EANS I, where the emphasis on low-income students was strongly emphasized and was to be clearly manifest in the program's framework. Simply put: EANS II is a continuation of EANS I and the statute's intent is to inform states to utilize the targeted policies and procedures already in place.

**"New" EANS II Would Be Bad Policy** -- In addition to the matter of legislative interpretation, the Department must also consider the question of whether its reading of the law represents sound public policy. In this case, it does not. As noted above, the states have worked assiduously to fulfil their legislative mandate of setting up an application and implementation framework for EANS I, and did so on a very short timeline. They have also informed their non-public schools about this new and unique program and its required procedures. While every quickly-devised process has kinks that need to be worked out, SEAs have been largely successful in establishing and streamlining a process that has efficiently put non-public school beneficiaries on the road to receiving this much-needed emergency aid. We have heard from administrators in our Jewish schools how pleased and impressed they were at how soon EANS I was up and running, without much of the red-tape typically associated with a new, very large and complex program.

If the Department were to add new and different requirements to EANS II, this notable benefit would be grievously undermined. Establishing what is essentially the same program, but with different requirements and administered along different lines, is a recipe for confusion, error and failure. All states have applied for EANS I and dozens have already initiated the application process with their non-public schools. It has been reported to us from many of our school administrators that both they and their SEAs are content with how things are working and would be greatly chagrined if requirements were to change. This is not the time for a newly designed program, with burdensome rules for both the states and non-public schools. Now is the time for the Department to better ensure the success of an emergency program by continuing and streamlining current procedures.

**The Question of "Significant Percentage"** – The Department seeks comment as to how "significant percentage" ought to be quantified. It speaks of the possibility of using "data," "poverty thresholds," and "definitions" to achieve this goal. We strongly advise against this approach. As noted above, the "significant percentage" language was not intended to introduce a new quantifiable standard but to simply continue stressing the importance of making clear to the states that the low-income status of students is an integral part of the program, as it was under EANS I. Moreover, similar to the reasoning we present above, interpreting this term to mean that the Department should establish a "single number or percentage" against which poverty will be judged will only frustrate the program and undermine its success.

It goes without saying that standards for "low income" can be manifest in various ways. The Department itself recognized this reality when it offered several possible data sources for the EANS I program's application template (e.g., Title I, School Lunch, E-Rate, etc.). In addition, many non-public schools serve populations of low-income students through means-tested,



school-based or private tuition assistance programs. Federal/state programs, as well as scholarships, all provide useful input of income levels and they can continue to be utilized here. There is no need to re-invent the wheel or require new data over that which is already available and being utilized.

Furthermore, while the existing programs are helpful indicators for these purposes, we do not believe that data collection should be limited to one, two, or any specific number of these methods. Each school is as unique as its population, and there is no single method of accurately determining “standards of low-income” in a definitive or conclusive manner. This is especially true where data is collected in a voluntary or subjective manner. For these reasons, the Department would be well advised to offer an array of options and avoid mandating a single, absolute criterion. The EANS II program would be best served by providing the states the discretion and flexibility to decide which data points to use and how.

Finally, as noted above, we do not believe that the Department should impose a “single number or percentage” in regard to the enumerated methods (noted above) for establishing what is to constitute “low-income.” Setting “cutoffs” that arbitrarily eliminate schools is neither fair nor productive, and ultimately results in inequities among similarly-situated schools. Such standards only instigate antagonism and uncertainty, and leave worthy and hard-pressed schools in the lurch and without relief. We recommend that rather than establishing low-income thresholds or proportions, the Department should give the appropriate discretion and flexibility to the states to determine whether a non-public school falls within the classification of “low-income” without necessarily being bound to specific numbers or metrics. Thus, if a non-public school can make the case that it serves low-income students through various means to the best of their ability – taking into account size, demographics, resources, etc. – or if it can show that specified data is incomplete or does not present a complete picture of its circumstances, then the state should have the discretion and flexibility to determine that it meets the “low-income” requirement nonetheless,

**“Most Impacted” by the COVID-19 Emergency** -- The Department’s query regarding what factors are “quantifiable and most relevant” to identifying non-public schools that are most impacted by the COVID-19 emergency is, at the same time, both easy and difficult to answer. The easy answer is “everything.” The difficult answer is “everything.”

The coronavirus is a human tragedy on the global and national scales. But it is a tragedy also for every individual community, school and family. A myriad of factors are relevant. And is there even one that is not? The examples that the Department suggests (e.g., lost learning, emotional and mental health impact, etc.) are all surely relevant. But is this list exhaustive? How do we even begin to quantify them? There are so many families with so many students in so many non-public schools, it is simply impossible to assess and evaluate the variables.

As we propose above, each school should be allowed to make its case on “most impacted” in a manner that it sees fit, without limitation, with all approaches and considerations on the table. This open-ended methodology is apparent in the Department’s own perspective and is reflected in its EANS I application template. Once again, we assert that the Department should

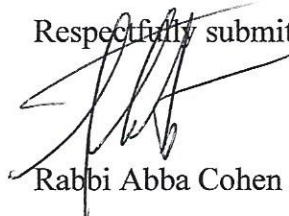
assume no role here in establishing standards and criteria or in declaring mandates. It is proper for the states to have this discretion and flexibility, and evaluate the plight of their non-public schools on the basis of the challenges they faced in their individualized circumstances, rather than on statistical formulas.

**Conclusion** – We appreciate the Department giving us the opportunity to offer these comments on an extraordinarily important and consequential program for non-public schools. There are several overriding themes that run throughout this document that we will summarize here:

- COVID-19 severely hit all schools in the United States – both public and private – and legislation over the past year has made it clear that all schools were to be provided with relief relating to health dangers and financial fallout;
- The goal of education legislation, especially in response to a national emergency that affects all schools, is to maximize benefits and participation, not to limit them.
- The new language in EANS II does not establish new requirements with new rules but rather represents a continuation of EANS I and should be implemented in the same fashion;
- Interpreting EANS II as imposing new limitations on non-public schools represents unsound public policy that would create confusion and undermine the program;
- The current sources of data to determine “low income” are more than adequate to fulfil the intent of the statute, without the need to establish a single (or limited number) of data points and without the need to establish specific thresholds, cutoffs or percentages;
- The factors that identify the “most impacted” non-public schools should be broad and open-ended and non-public schools should be allowed to present their unique challenges without having to adhere to a rigid set of measurements.
- The current EANS I application template offers appropriate guidance for several issues raised in the Department’s Notice, and they should continue to be used for EANS II.
- The Department should leave these matters within the flexible discretion of the states, without imposing mandates or uniform/absolute criteria

Thank you for considering our views,

Respectfully submitted,



Rabbi Abba Cohen

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