

Communication sent to CRRSA EANS Grantees on 9.28.21:

Dear EANS Colleagues:

The Department is reaching out regarding the 6-month obligation deadline in the Emergency Assistance to Non-Public Schools (EANS) program. As you know, section 312(d)(6) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act) requires that a State educational agency (SEA) that “complies with [section 312(d)(2) of the CRRSA Act] but has unobligated funds remaining 6 months after receiving [EANS funds] shall return such remaining unobligated funds to the Governor.”

As noted in [EANS FAQ B-11](#) updated on September 17, 2021, the regulations at [34 C.F.R. § 76.707](#) govern when an obligation of Federal funds by an SEA occurs. Specifically, for services or assistance provided through a contract, the obligation is made on the date that the SEA makes a binding written commitment to obtain the services, work, or products. For reimbursement provided directly by the SEA, an obligation is made when the reimbursement occurs. Please note that an SEA has not obligated EANS funds merely by entering into an agreement with a non-public school or approving a non-public school’s application.

The 6-month timeframe has recently expired in all 50 States and the District of Columbia. To ensure that your State has properly obligated its EANS funds, we ask that you examine the scenarios below. These scenarios are illustrative, but not exhaustive. If you have questions as to whether your State has obligated EANS funds in a timely manner under one these scenarios or otherwise, please respond to this email.

1. SEA provided services or assistance directly and has fully obligated all EANS funds. The SEA provided allowable services or assistance directly to each non-public school as requested in its approved application and fully obligated all of the EANS funds it received within the 6-month timeframe.
2. SEA provided services or assistance directly and has obligated EANS funds consistent with each non-public school’s approved application; the SEA has unobligated funds remaining. The SEA has provided allowable services or assistance directly to each non-public school as requested in its approved application within the 6-month timeframe. In doing so, however, the SEA did not obligate all of the EANS funds it received. Assuming the SEA fully complied with section 312(d)(2) of the CRRSA Act and still has unobligated funds, it should notify the Department that it has unobligated funds before returning the funds to the Governor.
3. SEA contracted with a public agency to provide services or assistance. The SEA entered into a binding written agreement (e.g., a contract) with a public agency such as an educational service agency (ESA) to provide some or all services or assistance that each non-public school requested in its approved application and executed the agreement within the 6-month timeframe. Upon executing the agreement, the SEA obligated the full amount of EANS funds necessary to meet the terms and conditions of the agreement. If the SEA has EANS funds not obligated through the agreement, the SEA would treat those funds like funds under scenario #2 above.
4. SEA contracted with a private entity to provide services or assistance. The SEA contracted with a private entity(ies) to provide some or all services or assistance that each non-public school requested in its approved application and executed the contract within the 6-month timeframe. Upon executing the contract, the SEA obligated the full amount of EANS funds necessary to meet the terms and conditions of the contract. If the SEA has EANS funds not

obligated through the contract, the SEA would treat those funds like funds under scenario #2 above.

In contracting with a private entity, the SEA must ensure that it maintains control of the EANS funds and administers such funds, services, assistance, materials, equipment, and property. Accordingly, the SEA must ensure that it determines the allowability of all costs, including that they are reasonable and necessary for purposes of providing EANS services or assistance and are allowable under section 312(d)(4) of the CRRSA Act.

If an SEA contracted with either a public or private entity to implement the EANS program, the entity may provide services or assistance with those funds to non-public schools throughout the period of availability of the funds—i.e., September 30, 2023. To avoid lapsing unused EANS funds, the SEA, as part of its ongoing control and oversight, should include periodic checks to ensure that services or assistance are being provided commensurate with the availability of the funds and, if necessary, take action to de-obligate unused funds and return them to the Governor.

Assuming your State obligated some or all of its funds in accordance with one of these scenarios, please reply to this email and copy your State mailbox [State.oese@ed.gov] to confirm that CRRSA EANS funds have been obligated in a manner consistent with 34 C.F.R. § 76.707. If your State has unobligated CRRSA EANS funds to return to the Governor for uses under the Governor’s Emergency Education Relief Fund, please let us know the estimated amount.

It is possible that an SEA did not fully comply with section 312(d)(2) of the CRRSA Act within the 6-month timeframe and thus may not yet return unobligated EANS funds to the Governor. This may be the case for several reasons:

1. An SEA was unable to complete its procurement process. If an SEA has approved applications from non-public schools within the statutory timeline, but has not fully obligated the funds to provide services or assistance within the six-month timeline because of its procurement requirements, it has not timely obligated EANS funds. As stated in [EANS FAQ B-10](#), the SEA should continue with its procurement process and provide the services or assistance it approved in the non-public schools’ applications, consistent with a plan and timeline developed with the Department, before determining the amount of unobligated funds to return to the Governor.
2. An SEA limited the allowable services or assistance available to a non-public school. An SEA may have restricted the activities that are allowable under section 312(d)(4) of the CRRSA Act. For example, an SEA may have allowed only reimbursements, may have prohibited reimbursements, or may have made only certain services or assistance available. As stated in [EANS FAQ D-5](#), an SEA may not restrict a non-public school’s ability to request any authorized services or assistance. Under this scenario, an SEA should contact its participating non-public schools to determine if they have unmet needs for the services or assistance that were restricted. Based on the results of that effort and consistent with a plan and timeline developed with the Department, the SEA may then determine the amount of unobligated funds to return to the Governor.
3. An SEA limited the amount of funds available to provide services or assistance. In an effort to estimate the amount of services or assistance available to individual non-public schools, an SEA might have provided all eligible non-public schools in the State with an “allocation” based on, for example, the number of students enrolled in each school, before any schools actually applied. To the extent that not all eligible non-public schools submitted an EANS

application or requested services or assistance for the full amount of their “allocation”, the SEA would be left with funds for unrequested services or assistance. An upfront estimate, if not revisited, impermissibly limits the access to funds by those schools that do apply. In other words, as stated in [EANS FAQ B-16](#), an SEA may not limit services or assistance to non-public schools based on the initial planning data before it knows the actual extent of interest from non-public schools in the State. Under this scenario, an SEA should contact its participating non-public schools to determine if they have unmet needs resulting from COVID-19 that could be addressed with additional allowable services or assistance. Based on the results of that effort and consistent with a plan and timeline developed with the Department, the SEA may then determine the amount of unobligated funds to return to the Governor.

An SEA that finds itself in one of these circumstances should reply to this email and copy its State mailbox [State.oese@ed.gov]. We will work with the SEA to agree on a plan and timeline moving forward for how the SEA can comply with section 312(d)(2) of the CRRSA Act. States in compliance with the CRRSA Act requirements consistent with this memo may return unobligated EANS funds to the Governor. These States should also communicate with their program officers (via the State mailbox), as noted above.