



**SENT VIA US MAIL**

Ms. Chelsea M. Clark  
Arizona Department of Education  
1535 West Jefferson Street  
Phoenix, Arizona 85007

Dear Ms. Clark,

We were recently contacted by several families who received letters from your office regarding their Empowerment Scholarship Accounts. These families, who reside within Navajo Nation, not far from the state border, send their children to Hilltop Christian School in Tse Bonito, New Mexico. Your letter stated that they were in violation of their ESA agreements because A.R.S. § 15-2401(6) only allows the expenditure of ESA funds on schools within the state borders of Arizona. The letters went on to demand that the parents pay the Department thousands of dollars for disallowed expenses and “returned payment fees.”

We believe that this is an erroneous interpretation of the law, and on behalf of these families, I am writing to ask that the Department reverse its conclusion, rescind its letters, re-open these parents’ ESA accounts, and allow their children to continue attending Hilltop.

While it is true that A.R.S. § 15-2401(6) defines “qualified school” as a school within the state borders of Arizona, another provision of the statute (A.R.S. §15-2402(B)(4)(d)) allows parents to use ESA funds to pay for “teaching services” provided by a “facility” or an “individual” who is accredited by a “state, regional, or national” organization. Hilltop’s teachers meet all requirements of New Mexico state law for operating and teaching in a private school and are certified by the Association of Christian Schools International, which is an approved national accreditation agency. Section 15-2402(B)(4)(d) contains no geographical limitation, but allows parents to obtain teaching services from facilities regardless of their location—in fact, it expressly contemplates the purchase of services from out-of-state facilities. While these parents may have labeled the expenses as “tuition” instead of “teaching services” when submitting their paperwork, this semantic label has no legal significance. They used their ESA funds for “teaching services” as they are entitled to do under the law—and as they’ve done for the past two years.

As you know, the ESA program exists to expand the options for parents and empower them to choose the best educational options for their children. The parents in question, all residents of Navajo Nation, have made a considered choice to send their children to the school they believe is best suited to their needs. Many of them have done so for several years. Their school happens to be about 3,000 feet

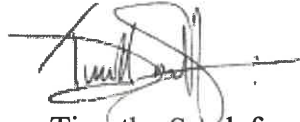
Ms. Chelsea M. Clark  
May 6, 2019  
Page 2 of 2

from the Arizona state line, and within the borders of Navajo Nation. These parents are obviously not engaged in any effort to defraud the state.

In our view, it would be contrary to state policy, and a profound injustice, to deprive these parents of the right to make educational choices for their children under these circumstances. Moreover, it would contradict the ESA statute. On their behalf, therefore, we ask that the Department rescind its letters and allow these parents to continue paying for “teaching services provided by” Hilltop Christian School.

Please let us know your decision by May 10, 2019. In the event that the Department chooses to continue disallowing these expenses, we will formally request an appeal of that determination at the Department’s earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Sandefur', with a horizontal line drawn through it.

Timothy Sandefur  
Vice President of Litigation  
Scharf-Norton Center for Constitutional Litigation  
at the Goldwater Institute

Cc: Carlyle Begay  
Bill Naas, Principal, Hilltop Christian Academy