



November 7, 2019

SENT VIA CERTIFIED U.S. MAIL AND ELECTRONIC MAIL

Superintendent Kathy Hoffman
Arizona Department of Education
1535 W. Jefferson St.
Phoenix, AZ 85004
adeinbox@azed.gov

Re: Funding for Empowerment Scholarship Accounts (E.S.A.)

Superintendent Hoffman:

We have been contacted by numerous families participating in the Empowerment Scholarship Account program, who have not been paid funds due to them with regard to the second quarter of the fiscal year.

As you know, A.R.S. § 15-2403(F) requires the Department to “make *quarterly* transfers of the amount calculated pursuant to section 15-2402, subsection C to the treasurer for deposit into the empowerment scholarship account of each qualified student.” This has not been done.

The Department contracted to release the funds for the second quarter between the dates of October 15 and October 30. The Department has failed to release these funds to at least 126 separate families, and is therefore currently in violation of its contractual obligations to these families. This failure to comply is affecting children who will not be able to acquire the educational services that they are entitled to receive.

In addition the failure to timely fund these accounts is also a violation Arizona statute, A.R.S. § 15-763 which requires that “[a]ll children with disabilities... receive special education programming commensurate with their abilities and needs.... Special education services shall be provided at no cost to the parents of children with disabilities.”

Not only do these unwarranted delays violate state law, they also violate federal law with regard to services for children who fall into an identified category of special need. 20 U.S.C. § 1412(a)(1)(A) requires that:

“A free and appropriate public education [be made] available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.”

Superintendent Hoffman

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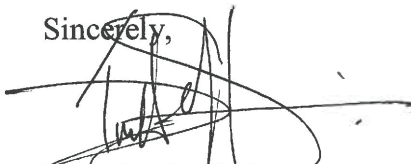
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The Department's failure to timely provide funds is also a violation of 34 C.F.R. § 300.154(1), which makes the State responsible to pay for any services necessary to fund the educational objectives of a child with special needs due to a disability that falls within the acceptable categories of need identified by the Education of Individuals with Disabilities Act. All payments must be timely made even during the pendency of a dispute.

Pursuant to 20 U.S.C. § 1403, the State of Arizona and its officers have no immunity from suit for a violation of the Education of Individuals with Disabilities Act.

In order to avoid costly and time-consuming litigation, we ask that the Department fulfill its contractual and legal obligations and provide the funds necessary for, and contractually guaranteed for, the educational expenses and special education services for these students.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy Sandefur', is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Timothy Sandefur
Vice President for Litigation
Scharf-Norton Center for Constitutional Litigation

cc: Karla Escobar, ESA Director - esa@azed.gov

Karen Hartman-Tellez, Esq., Arizona Attorney General's Office – [REDACTED]