



WRIGHT LINDSEY JENNINGS

200 West Capitol Avenue, Suite 2300 Little Rock, AR 72201-3699 Main 501.371.0808 Fax 501.376.9442 wlj.com

Erika Gee
ATTORNEY

Direct: 501.212.1305 | egee@wlj.com

April 17, 2024

VIA Email: Jessica.Patterson@arkansas.gov

Confirmed by Hand Delivery

Ms. Jessica Patterson, Director
Office of State Procurement
Transformation and Shared Services
501 Woodlane, Suite 201
Little Rock, AR 72201

RE: Response from Primary Class, Inc. dba Odyssey to
Bid Protest by Kleo, Inc. dba ClassWallet
Solicitation Number S000000313
Online Platform for Education Freedom Accounts and Literacy
Tutoring Grants

Dear Ms. Patterson:

I write as counsel for Primary Class, Inc. dba Odyssey (“Odyssey”), in response to the bid protest for the referenced solicitation submitted by Kleo, Inc. dba ClassWallet (“ClassWallet”). The protest was filed on April 12, 2024 and this response has been submitted within five (5) calendar days.

I. Summary

ClassWallet submitted a protest to Solicitation Number S000000313 on Friday, April 12, 2024, stating a number of grounds to protest the announced anticipation to award the contract to Students First Technologies, Inc. (SFT). Odyssey has already submitted its own protest with regard to SFT and will not restate its arguments here. However, ClassWallet’s protest also raised spurious and misleading allegations against the second highest scorer, Odyssey, which we wish to take this opportunity to address.

II. Argument

A. ClassWallet's Allegations against Odyssey Have No Merit

First, ClassWallet's protest asserts that Odyssey's bid "contains several demonstrable falsehoods." See Exhibit 1, ClassWallet Protest, at p. 7. ClassWallet first argues that Odyssey falsely claimed that it has implemented Education Savings Accounts (ESAs) in three states when only one of the programs is actually an ESA.

In fact, as stated in its bid, Odyssey administers three State-sponsored programs in partnership with Departments of Education that disburse funds and facilitate marketplace purchases. Across Iowa, Idaho and Missouri, Odyssey administers over \$225,000,000 in funds for over 107,000 students on the Odyssey platform. Odyssey meets the minimum requirements under this solicitation with its experience with the Iowa program alone, where it has administered a state ESA for over one year and has launched applications for the second year of the program. This Odyssey-administered program provides more than 16,000 students with more than \$120 million in funding. The facts demonstrate that Odyssey's assertion of experience in a program similar in size and scope was accurate, in contrast to SFT's claim that its work as a vendor with very small non-profit projects qualified for the necessary experience for this solicitation.

Further, ClassWallet's assertion is misleading, as it solely relies upon ClassWallet's own self-serving definition of an ESA. In reality, the terms ESA/EFA/microgrant/supplemental ESA do not have clear definitions within the industry and are often used interchangeably across all programs. Notable case in point: in ClassWallet's own bid in this solicitation, it cites its experience running programs such as the Virginia Acceleration Learning Grant with the same language they are claiming is a "demonstrable falsehood" by Odyssey here. See Exhibit 1, ClassWallet Bid, at p. 15-16. Finally, the solicitation itself actually doesn't even use the term ESA; it uses the term Educational Freedom Accounts (EFA), which is defined by the Arkansas Department of Education as "an individual funding account that is managed by the Department of Education for the care of and in the name of a participating student." See Exhibit 2, Draft ADE Rules Governing the Educational Freedom Account Program, Rule 2.07; Solicitation at p. 1. Odyssey's response

regarding its experience¹ is also accurate with regard to the specific type of program that is defined in the solicitation, which ClassWallet does not dispute. In short, Odyssey's description of its experience was accurate and ClassWallet's claim otherwise is false and should be denied.

Next, ClassWallet disingenuously claims that Odyssey misrepresented its time to implement the Missouri ESA program by stating that it was launched in 76 days. In truth, as stated in its response, Odyssey launched all aspects of the Missouri program at the behest and direction of the Department of Elementary and Secondary Education (DESE) in the State of Missouri. Specifically, the Missouri contract was effective May 1, 2023, followed fairly quickly by a protest filed, interestingly enough, by ClassWallet. ClassWallet is actually the reason that the Missouri implementation was delayed, because as part of its protest it requested that implementation work be stopped while the protest was decided. This request was granted, effectively stalling Odyssey's work, but the protest was ultimately unsuccessful and Odyssey was officially awarded the project. Progress resumed with a kick off meeting with DESE on Thursday, July 6, 2023. Exactly 76 days after the kickoff meeting, on September 20, 2023, the Missouri Close the Gap program was launched with applications opening to all Missouri residents. In accordance with the agreed upon timeline set by DESE, the marketplace opened in January 2024. There is no truth to ClassWallet's claim and it should be rejected.

Finally, ClassWallet claims that Odyssey is "not a responsible offeror" for two additional reasons: findings in Iowa about alleged misrepresentations on experiences in Arizona and Idaho and an alleged retention of interest earnings for a period of time. However, both of these arguments are tired attempts to revisit allegations that have already been soundly rejected.

In Iowa, ClassWallet's bid partner Inspired Life protested Odyssey's selection as vendor for the program. See Exhibit 3, Iowa Administrative Tribunal Decision. The protest claimed that Odyssey has misrepresented its experiences in Arizona and Idaho and was therefore not a "Responsible Respondent." *Id.* After an extensive discovery and a full evidentiary hearing before a tribunal, Iowa rejected these

¹ Odyssey's bid stated that: "Our innovative technology has enabled us to process more than 193,000 applications and support approximately 103,000 students receiving more than \$225 million nationwide." See Odyssey Bid, at p. 9. In fact, Odyssey recently approved 8,253 students – more students than were enrolled in the Arkansas Education Freedom Account in its entire first year – in just the first 24 hours of the second-year launch of the Iowa Students First program.

arguments and affirmed that Odyssey was a Responsible Respondent qualified to perform the services under the contract. *Id.* The Iowa ESA launched a month later to record applications, approvals and enrollment. Today, Odyssey is still the vendor for the Iowa ESA and it has become the third largest program in the country.

ClassWallet ends its parade of misrepresentations with the insinuation that Odyssey wrongfully retained interest earnings that belonged to the State of Idaho. This is a wholesale misrepresentation of the circumstances. In fact, after initiation of the Idaho program as it was originally designed, the parties realized that the original account structure created a significant tax liability for Odyssey that had not been previously anticipated. In response, Odyssey and the state agreed to restructure the manner in which funds were held and interest was earned to eliminate the requirement for Odyssey to pay taxes on interest that it did not own. See Exhibit 4, Idaho Amendment. This was not a dispute with the state and no interest earnings were spent or retained by Odyssey. ClassWallet's allegations here are deceptively and disingenuously false and should be rejected.

B. ClassWallet Is Not a Responsible Vendor

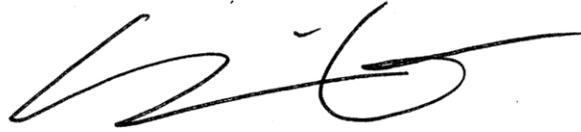
In stark contrast to Odyssey's history, ClassWallet has a demonstrated history of problems with its performance in Virginia, Arizona, Oklahoma and Idaho, has been sued twice by state partners and has also been responsible for a significant breach of customer data. See Exhibit 5, News Articles. There are also material misrepresentations and errors in its response to the solicitation. In the event that ClassWallet is announced in a future anticipation to award this or a related solicitation, Odyssey hereby reserves the right to protest all of the above and any additional matters which may be identified with regard to ClassWallet.

III. Conclusion

In conclusion, Odyssey submits that ClassWallet's protest with regard to Odyssey's bid on the referenced solicitation is manifestly inaccurate and should be rejected, that the SFT bid should be disqualified and that Odyssey should be awarded the contract.

Respectfully yours,

WRIGHT, LINDSEY & JENNINGS LLP

A handwritten signature in black ink, appearing to read 'Erika Gee', with a long horizontal flourish extending to the right.

Erika Gee

Encl.

Cc w/ encl:

Michael Shannon, Counsel for ClassWallet
mshannon@qgtlaw.com

Confirmed by U.S. Mail to:
111 Center St, Suite 1900
Little Rock AR 72201

Mark Duran, Co-Founder/CEO, Student First Technologies
mark@studentfirsttech.com

Confirmed by U.S. Mail to:
SID3CAR CO dba Student First Technologies
304 W. Kirkwood Ave., Suite 101
Bloomington, IN 47404

Exhibit 1



CLASSWALLET

REDACTED

Requested Documents:

Following please find the requested documents, in this order:

- Signed Proposal Signature Page
- Proposed Subcontractors Form
- Copy of Equal Opportunity Policy
- EO 98-04: Contract and Grant Disclosure Form
- Exceptions

PROPOSAL SIGNATURE PAGE

PROSPECTIVE CONTRACTOR'S INFORMATION				
Company:	Kleo, Inc d/b/a ClassWallet			
Address:	6100 Hollywood Blvd, Suite 409			
City:	Hollywood	State:	FL	Zip Code: 33024
Minority or Women-Owned Designation <small>See the <i>Minority and Women-Owned Business</i> section of the Solicitation.</small>	<input checked="" type="checkbox"/> Not Applicable		AR Certification #: _____	
PROSPECTIVE CONTRACTOR CONTACT INFORMATION				
<i>Provide contact information to be used for Solicitation related matters.</i>				
Contact Person:	Bruce Smith	Title:	State Director, Government	
Phone:	913-645-4890	Alternate Phone:		
Email:	bsmith@classwallet.com			
CONFIRMATION OF REDACTED COPY				
<input checked="" type="checkbox"/> YES, a redacted copy of submission documents is enclosed. <input type="checkbox"/> NO, a redacted copy of submission documents is <u>not</u> enclosed. I understand a full copy of non-redacted submission documents will be released if requested. If a redacted copy of the submission documents is not provided with Prospective Contractor's response packet, and neither box is checked, a copy of the non-redacted documents, except for financial data (other than pricing), will be released in response to any request made under the Arkansas Freedom of Information Act (FOIA). See the <i>Proprietary Information</i> section of the Solicitation.				
REQUIRED CERTIFICATIONS				
By signing and submitting a response to this Solicitation, Prospective Contractor represents, warrants, and certifies that they are not a Scrutinized Company and they do not currently and shall not for the aggregate term of a resultant contract:				
<input type="checkbox"/> Boycott Israel. <input type="checkbox"/> Knowingly employ or contract with illegal immigrants. <input type="checkbox"/> Boycott Energy, Fossil Fuel, Firearms, or Ammunition Industries. <input type="checkbox"/> Employ a Scrutinized Company as a contractor.				
Prospective Contractor further represents, warrants, and certifies that it shall not become a Scrutinized Company during the aggregate term of a contract resulting from this solicitation.				

An official authorized to bind the Prospective Contractor to a resultant contract **shall** sign below. The signature below signifies agreement that any exception that conflicts with a Requirement of this Solicitation may cause the Prospective Contractor's proposal to be rejected.

Authorized Signature: *Jamie Rosenberg* Title: Chief Executive Officer

Printed/Typed Name: Jamie Rosenberg Date: February 21, 2024

PROPOSED SUBCONTRACTORS FORM

Prospective Contractors **shall** complete the form for all subcontractors the Prospective Contractor proposes to use under a resulting contract (*Services Contract (SRV-1) Fillable Form* section 14). If the Prospective Contractor does not intend to use subcontractor(s), Prospective Contractor should indicate so by checking the appropriate box.

Prospective Contractors should not include additional information relating to subcontractors on this form or as an attachment to this form.

Prospective Contractor proposes to use the following subcontractor(s) under a resulting contract:

SUBCONTRACTOR'S COMPANY NAME	STREET ADDRESS	CITY, STATE, ZIP
Nelnet Business Solutions, Inc. d/b/a FACTS Management	121 South 13th Street, Suite 101	Lincoln, NE, 68508

Prospective Contractor does not propose to use subcontractors under a resulting contract.



Equal Employment Opportunity

ClassWallet believes that all persons are entitled to equal employment opportunity and does not discriminate against its employees or applicants because of such individual's race, color, religion, sex (including gender), sexual orientation, national origin, ancestry, age, marital status, disability, veteran status, genetic information, or any other basis prohibited by federal, state or local law. Equal employment opportunity will be extended to all persons in all aspects of the ClassWallet-employee relationship, including recruitment, employment, training, promotion, transfer, corrective action, working conditions, compensation, employee benefits, layoff, and termination.

CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM

Failure to complete all of the following information may result in a delay in obtaining a contract, lease, purchase agreement, or grant award with any Arkansas State Agency.

SUBCONTRACTOR: _____ SUBCONTRACTOR NAME: _____

Yes No

TAXPAYER ID NAME: Kleo, Inc d/b/a ClassWallet IS THIS FOR:
 Goods? Services? Both?

YOUR LAST NAME: Smith FIRST NAME: Bruce M.I.:

ADDRESS: 6100 Hollywood Blvd, Suite 409

CITY: Hollywood STATE: FL ZIP CODE: 33024 COUNTRY: U.S.

AS A CONDITION OF OBTAINING, EXTENDING, AMENDING, OR RENEWING A CONTRACT, LEASE, PURCHASE AGREEMENT, OR GRANT AWARD WITH ANY ARKANSAS STATE AGENCY, THE FOLLOWING INFORMATION MUST BE DISCLOSED:

FOR INDIVIDUALS *

Indicate below if: you, your spouse or the brother, sister, parent, or child of you or your spouse is a current or former: member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee:

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/ commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and how are they related to you? <small>[i.e., Jane Q. Public, spouse, John Q. Public, Jr., child, etc.]</small>	
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Relation
General Assembly							
Constitutional Officer							
State Board or Commission Member							
State Employee							

None of the above applies

FOR AN ENTITY (BUSINESS) *

Indicate below if any of the following persons, current or former, hold any position of control or hold any ownership interest of 10% or greater in the entity: member of the General Assembly, Constitutional Officer, State Board or Commission Member, State Employee, or the spouse, brother, sister, parent, or child of a member of the General Assembly, Constitutional Officer, State Board or Commission Member, or State Employee. Position of control means the power to direct the purchasing policies or influence the management of the entity.

Position Held	Mark (√)		Name of Position of Job Held <small>[senator, representative, name of board/commission, data entry, etc.]</small>	For How Long?		What is the person(s) name and what is his/her % of ownership interest and/or what is his/her position of control?		
	Current	Former		From MM/YY	To MM/YY	Person's Name(s)	Ownership Interest (%)	Position of Control
General Assembly								
Constitutional Officer								
State Board or Commission Member								
State Employee								

None of the above applies

Contract and Grant Disclosure and Certification Form

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the agency.

As an additional condition of obtaining, extending, amending, or renewing a contract with a state agency I agree as follows:

1. Prior to entering into any agreement with any subcontractor, prior or subsequent to the contract date, I will require the subcontractor to complete a **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM**. Subcontractor shall mean any person or entity with whom I enter an agreement whereby I assign or otherwise delegate to the person or entity, for consideration, all, or any part, of the performance required of me under the terms of my contract with the state agency.

2. I will include the following language as a part of any agreement with a subcontractor:

Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that Order, shall be a material breach of the terms of this subcontract. The party who fails to make the required disclosure or who violates any rule, regulation, or policy shall be subject to all legal remedies available to the contractor.

3. No later than ten (10) days after entering into any agreement with a subcontractor, whether prior or subsequent to the contract date, I will mail a copy of the **CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION FORM** completed by the subcontractor and a statement containing the dollar amount of the subcontract to the state agency.

I certify under penalty of perjury, to the best of my knowledge and belief, all of the above information is true and correct and that I agree to the subcontractor disclosure conditions stated herein.

Signature Jamie Rosenberg Title Chief Executive Officer Date 02/21/2024

Vendor Contact Person Bruce Smith Title State Director, Government Phone No. 913-645-4890

Agency use only

Agency Number _____ Agency Name _____ Agency Contact Person _____ Contact Phone No. _____ Contract or Grant No. _____

RECOMMENDED OPTIONS FORM

Prospective Contractor proposes the following optional recommended services under a resulting contract:

<p>Item #1 Description:</p>	<p>Expanding Curated Options for Families - Ecommerce Marketplace Integration and Dedicated Vendor Management Services <u>Ecommerce Marketplace integration equals positive family impact.</u> The current AR EFA program uses Staples for technology and The Toggery for school uniforms. In addition to these vendors, ADE may expand to additional Ecommerce vendors from a total of 94 educational retailers to maximize choice for families: including Scholastic, Really Good Stuff, Lakeshore Learning, and School Specialty. <i>Developing a marketplace of this sophistication and magnitude takes years</i> - all to offer an array of choices, optimize funding, ensure top-notch service, and deliver goods promptly. ClassWallet can also curate retailer catalogs for the State; in fact, ADE recently requested that Staples only offer laptops and tablets under \$1,000 to help increase efficiency and program adherence. In addition, Arkansas and ClassWallet worked to specifically integrate The Toggery. ClassWallet delivers immense value to families and effectively fulfills the requirements. ClassWallet will collaborate with the State if additional EFA and LTG vendors are desired.</p> <div style="text-align: right; margin-top: 20px;">  </div> <p>Dedicated Vendor Management The expansive offering and delivery of reputable educational services and goods is only possible through long-term trusted partnerships, integrated technology, and a dedicated ClassWallet Vendor Management team that carefully monitors the interaction and success of our integrated vendors. The team primarily focuses on building strong relationships and monitoring key performance indicators with our vendors to safeguard and support family choice and experience but also fully inform the State with metrics such as:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr style="background-color: #4a86e8; color: white;"> <th style="width: 25%;">Key Performance Indicators*</th> <th style="width: 50%;">Description</th> <th style="width: 25%;">Positive Impact to Family</th> </tr> </thead> <tbody> <tr> <td>Vendor Lead Time</td> <td>Vendor lead time is the time it takes for a vendor to ship an order once it is received (i.e., once the order is approved through ClassWallet). ClassWallet tracks the number of days it takes for the family to receive the good(s).</td> <td>Quality and timely delivery of goods.</td> </tr> <tr> <td>Pricing and Competitiveness</td> <td>ClassWallet evaluates the prices that vendors charge for products and services to ensure families are receiving good value. We believe families should be charged a fair market value for the quality of the goods and services they purchase.</td> <td>Enables family purchasing power and efficient use of their funds.</td> </tr> <tr> <td>Customer Service</td> <td>ClassWallet tracks and scores how well vendors manage concerns brought to them by your programs' users.</td> <td>Family satisfaction.</td> </tr> </tbody> </table>	Key Performance Indicators*	Description	Positive Impact to Family	Vendor Lead Time	Vendor lead time is the time it takes for a vendor to ship an order once it is received (i.e., once the order is approved through ClassWallet). ClassWallet tracks the number of days it takes for the family to receive the good(s).	Quality and timely delivery of goods.	Pricing and Competitiveness	ClassWallet evaluates the prices that vendors charge for products and services to ensure families are receiving good value. We believe families should be charged a fair market value for the quality of the goods and services they purchase.	Enables family purchasing power and efficient use of their funds.	Customer Service	ClassWallet tracks and scores how well vendors manage concerns brought to them by your programs' users.	Family satisfaction.
Key Performance Indicators*	Description	Positive Impact to Family											
Vendor Lead Time	Vendor lead time is the time it takes for a vendor to ship an order once it is received (i.e., once the order is approved through ClassWallet). ClassWallet tracks the number of days it takes for the family to receive the good(s).	Quality and timely delivery of goods.											
Pricing and Competitiveness	ClassWallet evaluates the prices that vendors charge for products and services to ensure families are receiving good value. We believe families should be charged a fair market value for the quality of the goods and services they purchase.	Enables family purchasing power and efficient use of their funds.											
Customer Service	ClassWallet tracks and scores how well vendors manage concerns brought to them by your programs' users.	Family satisfaction.											

	<table border="1" data-bbox="386 111 1505 205"> <tr> <td data-bbox="386 111 602 205">Order Accuracy</td> <td data-bbox="602 111 1209 205">ClassWallet evaluates vendor performance in delivering complete and accurate orders.</td> <td data-bbox="1209 111 1505 205">Meeting expectations of the families.</td> </tr> </table> <p data-bbox="781 212 1505 237" style="text-align: right;">*These are a subset of ClassWallet measurements available.</p> <p data-bbox="386 275 1505 411">Yet another feature is that ClassWallet's accomplished vendor management team is equipped to help States create a customized service provider network that includes diverse and locally-owned businesses to ensure that all areas of the State are represented. Affording the State and families maximum choices for the success of their program.</p>	Order Accuracy	ClassWallet evaluates vendor performance in delivering complete and accurate orders.	Meeting expectations of the families.
Order Accuracy	ClassWallet evaluates vendor performance in delivering complete and accurate orders.	Meeting expectations of the families.		
How Will This Add Value?	<p data-bbox="386 443 1505 541">Offering and expanding a curated, integrated, and mature Ecommerce Marketplace brings incredible value to families and ultimately meets the needs of their students by providing diverse options of educational resources, quality service, and timely delivery of goods.</p> <p data-bbox="386 583 1505 682">ClassWallet's dedicated vendor management team invests daily in the performance of the Ecommerce Marketplace vendors to ensure they provide the most value - an essential service to meeting the needs of Arkansas families and their students.</p> <p data-bbox="386 724 1505 856">The State can establish a customized network of diverse and Arkansas-owned businesses to ensure that all areas of the State are represented to maximize choices for families. Upon registration, families can identify vendors nearby with geolocation tools and easy-to-use keyword searches.</p>			
Schedule Impact:	<p data-bbox="386 892 1505 1024"><u>Positive:</u> The State simply selects which Ecommerce Marketplace vendors they choose to be approved for Arkansas families, along with any curation request to limit choices to only those that meet program rules. ClassWallet's Vendor Management Services team will handle the rest, including onboarding any new vendors.</p>			
Cost Details:	<p data-bbox="386 1060 1505 1125"><u>Included.</u> As has been the practice during year one, the State can simply notify the ClassWallet program team of which vendors and products to add as choices for families.</p>			

Item #2 Description:	<p data-bbox="386 1192 1505 1749">Turn-on the new ClassWallet Business Intelligence Engine. ClassWallet continues to accelerate our investment in business intelligence (BI). Specifically, ClassWallet has been migrating its reporting capabilities to Amazon QuickSight to provide an industry-leading business intelligence-powered reporting engine with virtually unlimited business analytics and reporting capabilities. As the ESA program scales to universal availability, having BI-powered data reporting and analytics is going to be mission-critical for scalable success. ClassWallet partners with Amazon QuickSight to give the State unified BI reporting at hyperscale and supports the ADE's varying analytic needs from the same source of truth through modern interactive dashboards, paginated reports, embedded analytics, and natural language queries. It is a platform that is designed to be truly the best-in-class reporting engine to enable the State to deliver insights to all stakeholders – auditors, State Board of Education, etc. - when, where, and how they need them. The State can leverage modern, interactive dashboards, obtain powerful insights on all aspects of the EFA program, obtain scheduled, formatted reports, and make forward-looking decisions with machine learning insights. Other organizations that use QuickSight for reporting include: Classworks, ConexEd, NFL, Siemens, Volvo, and thousands of others.</p> <p data-bbox="386 1755 1505 1820">Ultimately, the ability to review actionable data will enable the State to make data-driven decisions and changes to ensure the State's rapidly growing program success.</p>
-----------------------------	---

<p>How Will This Add Value?</p>	<p>The State currently accesses real-time data to conduct and meet essential compliance, auditing, and reporting needs. In addition, diverse reporting options enable Arkansas staff to effectively organize and share data, track the use of funds by schools and families, and empower the monitoring of all activity for compliance.</p> <p>By turning on the ClassWallet Business Intelligence Engine, the state will be well prepared to support the EFA and LTG programs as they expand and grow. This powerful tool will provide the business insights necessary to make quick, accurate, and ongoing data-driven decisions.</p>
<p>Schedule Impact:</p>	<p><u>Positive.</u> The State is already proficient in ClassWallet’s Real-time Reporting. Turning on the ClassWallet Business Intelligence Engine will have no impact on current schedules and should reduce the effort for ADE staff in pulling, organizing data, and making decisions.</p>
<p>Cost Details:</p>	<p><u>Included.</u> If the State opts to turn-on the ClassWallet Business Intelligence Engine, we will collaborate to establish a convenient time for training of your team.</p>

<p>Item #3 Description:</p>	<p>Annual Data Review to Maintain Superior Customer Care ClassWallet recommends an annual data review of Customer Care metrics. The data review may take place in Little Rock or at a ClassWallet location and will be led by a ClassWallet Client Success Manager and supported by the Customer Care manager responsible for Arkansas. The goals of the meeting are to review survey data and feedback to maintain excellent ratings and identify areas for improvement; ClassWallet is in a perpetual state of continuous improvement which continues to drive award-winning customer support.</p> <p>Arkansas families have rated the Customer Care team very highly during the first year of implementation, and together we will maintain and build upon these successes.</p> <div data-bbox="386 1100 1507 1524" style="background-color: #0056b3; color: white; padding: 10px; text-align: center;"> <p>Arkansas Users Love ClassWallet:</p> <p><i>“This is a very clear, user-friendly, and simple system. Great for busy parents!”</i></p> <p><i>“ClassWallet has superb customer service. Always responds quickly with easy-to-understand directions! I wish all services ran like ClassWallet!”</i></p> <p><i>“Superior service. Knowledgeable and friendly. Great experience.”</i></p> <p><i>“What I like best about ClassWallet is that it offers a pre-approval process for administrators. We also save time and resources with this online monitoring and approval module. We do not have to worry about receiving receipts for purchases after the fact because all details are accessible online.”</i></p> </div> <p>Investing time to review metrics and data in detail will allow our teams to collaborate and to continue to provide the highest level of satisfaction for families, vendors, and your staff.</p>
<p>How Will This Add Value?</p>	<p>The State is provided with metrics and actionable data to evolve with program needs based on the extensive measurements provided by ClassWallet Customer Care. The data can provide leading indicators to proactively anticipate or execute adjustments for the program success.</p>
<p>Schedule Impact:</p>	<p><u>Optimal.</u> As the program scales, it is important that together we can proactively address and predict the needs of EFA participants, resulting in the ability to proactively adjust like adding and/or training staff before or as they are needed to continue excellent service.</p>
<p>Cost Details:</p>	<p><u>Included.</u> The State may select the timing and location.</p>

<p>Item #4 Description:</p>	<p>Validation Services ClassWallet has a team dedicated to supporting states with two distinct services:</p> <ol style="list-style-type: none"> 1) Review and validate purchase requests based on State-determined program rules and requirements submitted by families, and/or 2) Accept applications from vendors (service providers and schools), review and approve or reject based on State-determined program rules and requirements.
<p>How Will This Add Value?</p>	<p>The team’s capabilities have expanded to help save States significant time while applying consistent, transparent, and conformant program rules.</p> <p><u>Reduce the Peak-Season Staffing Burden and Demand on the State.</u> This service is beneficial during the peak activities for applications and spending, for example, the AR quarterly fund disbursement windows. As it is difficult for States to staff for these brief peak periods, ClassWallet’s team provides on-demand services that can scale and execute timely responses to program participants.</p> <p><u>Consistent, Transparent, and Conformant Rule Application.</u> The ClassWallet team is experienced and collaborates closely with the department to establish a clear decision matrix that adheres to the EFA and LTG program guidelines. This can be for the Service Provider (or Vendor), applications, and/or the expenditures of the families and students (two separate options). The State can convey these protocols, monitor effectively, and continue to be engaged with escalated or complex program decisions to ensure continued program confirmation with either stakeholder group, while the ClassWallet Validations team can manage the bulk of the work.</p>
<p>Schedule Impact:</p>	<p><u>Optimal:</u> These services are scalable and can ensure the State can provide timely decisions and responses to all critical stakeholders of the program (State, Families, and Service Providers) consistently and sustainably.</p>
<p>Cost Details:</p>	<p>\$6,900 per month per resource for each service *</p> <p>*The State can select either or both services.</p>

INFORMATION FOR EVALUATION - EXPERIENCE

Claim of Expertise:	ClassWallet: Proven Success and Positioned to Scale with AR EFA & LTG Program
Documented Performance:	<p>Arkansas and ClassWallet successfully partnered to launch the EFA and LTG programs. This partnership came together in a matter of weeks before the EFA program was set to launch! The undertaking was possible because of the effective collaboration between ADE leadership and staff, the Parthenon colleagues, and the ClassWallet team of experts. This team you know stands ready to serve <i>and accelerate</i> Arkansas LEARNS into the future! Key successes include:</p> <p>SUCCESSFUL EFA LAUNCH, FOLLOWED BY THE LTG LAUNCH. The EFA launch was completed in less than three weeks from the green light provided by ADE.</p> <ul style="list-style-type: none"> ■ 1:1 training for the State, ongoing live training webinars with Q&A opportunities to families, and service providers, available in English, Spanish and an accessibility support view. Additional support is provided via Knowledge Base articles, FAQs, videos, and an Arkansas-customized user guide. ■ Custom program messaging tailored and targeted to the life cycle of the program including welcome emails, quarterly payment schedule alerts, balance alerts, and available training and support reminders. ■ The LTG launched in January with over 21,000 initial recipients notified of their eligibility. <p>MAXIMIZING ENGAGEMENT AND UTILIZATION OF FUNDS. There are over 5,500 Arkansas EFA users onboarded with access to over 100 State-approved educational service providers, plus Staples and The Toggery. Over \$27.25 million was successfully distributed, and \$22.65 million of those funds have been spent. This level of fund usage (83%) by first year families is a tremendous success, beating all other ClassWallet-partner states in their first year. ADE, Parthenon and ClassWallet have supported over 15,000 Arkansas EFA transactions. ClassWallet is prepared to scale to support the anticipated expansive volume in the upcoming years.</p> <p>AWARD-WINNING SUPPORT. ClassWallet’s world-class customer support team has successfully served Arkansas families and service providers. Users love the work we have accomplished together. Arkansas metrics demonstrate:</p> <p style="text-align: center;">Customer Satisfaction Score (CSAT) = 90.63% Average-speed-to-answer = 23 seconds Agent Satisfaction Score = 97.78% Average Case Resolution Time = 4.22 hours</p> <p>Every Arkansas metric <i>positively exceeds</i> ClassWallet’s organizational target metrics which is a compliment to the ADE, Parthenon, and ClassWallet collaboration. Arkansas-specific voices are available in the “Recommendations Section.” In affirmation, we proudly support all users by aligning with Web Content Accessibility Guidelines (WCAG) 2.1 Guidelines.</p> <p>New! ClassWallet’s Customer Care Team has been awarded the J.D. Power & Associates Award, proving ClassWallet’s investment and commitment to providing world-class support.</p>

Claim of Expertise:	ClassWallet is the Industry Expert and Leader for EFA/ESA & Microgrant Implementation
Documented Performance:	<p>Founded in 2014, ClassWallet has been used across 38 States, 300 school districts, 15,000 schools, 850,000 users, \$3.25 billion in transactions, and impacted over 6 million children. Our solution is mature, secure, and ready for the scale and experience Arkansas needs at this inflection point of growth. No other technology vendor has the history or breadth of EFA/ESA experience. Since 2018, ClassWallet has been, or was recently selected as, the technology partner for eight EFA/ESA programs. Arizona, Arkansas, Indiana, Missouri, New Hampshire, and North Carolina currently use ClassWallet. South Carolina and Utah’s ESA programs will launch with ClassWallet later this year. They have been launched through the effective collaboration between the dedicated ClassWallet team and State leaders and administrators. Our team brings Arkansas partnership strength and knowledge, customizable technology, best-</p>

in-class support, and expertise with scaling programs. Additional diverse partnership successes include:

Agency	Year Initiated	Funding Recipients	Total Funds Managed
Arizona State Treasurer Office	2019	Students	\$800MM
Arkansas Department of Education	2021	Non-public schools	\$22MM
Arkansas Department of Education (DESE)	2023	Students	\$54.5M
Florida Department of Education	2021	Non-public schools	\$430MM
Georgia Department of Early Care and Learning	2022	Early childcare providers, Educators	\$81MM
Georgia Department of Education	2021	Non-public schools, Students	\$124MM
Georgia Department of Health	2021	Non-public schools	\$7MM
Indiana Department of Education	2021	Non-public schools	\$142MM
Indiana Department of Treasury	2022	Students	\$1.2MM
Massachusetts Department of Elementary and Secondary Education	2021	Non-public schools	\$47MM
Michigan Department of Education	2021	Non-public schools	\$156MM
Minnesota Department of Education	2021	Non-public schools	\$41MM
Missouri Office of the State Treasurer	2022	Students	\$7.9MM
Missouri Department of Elementary and Secondary Education	2022	Non-public schools	\$42MM
New Hampshire Children's Scholarship Fund	2021	Students	\$22MM
Nevada Department of Education	2022	Non-public schools	\$18MM
North Carolina State Education Assistance Authority	2018	Students	\$32MM
South Carolina Department of Education	2021	Non-public schools	\$53MM
South Carolina Department of Education	2023	Non-public schools	\$180M
Texas Education Agency/Texas Region 10 ESC	2020	Students	\$252MM
Texas Region 10 ESC	2022	Non-public schools	\$116MM
Utah State Board of Education	2023	Educators	\$9.5M
Virginia Department of Education	2023	Students	\$60MM
Washington Office of Superintendent of Public Instruction	2022	Non-public schools	\$4MM

Claim of Expertise: ClassWallet has Best-in-Class Data Security & Infrastructure

Documented Performance:

The state anticipates investing over one hundred million dollars in public funds annually for these programs. ClassWallet's secure and dependable solution is ready.

NIST Compliance via third-party validation, not Self-Attestation. Company practice and policy align with the highest NIST security-protocol standards, proven by the successful completion of a State NIST Audit (Michigan) and undergoing a second (Arizona).

Best-in-Class Standards & Security. ClassWallet has additional mission-critical certifications and adherences including: AICPA SOC 1 Type II and SOC 2 Type II. Unique in the EFA/ESA space, ClassWallet employs a full-time Chief Security Officer to ensure compliance.

Deep Expertise & Optimal Availability. Seasoned industry experts lead security and operations teams to ensure information system uptime, data integrity and availability, and business continuity. Up-time in 2023 was 99.95% availability.

Sophisticated Monitoring & Methodologies. Highly agile, mature, and best-in-class monitoring systems and backup practices ensure data is protected and restorable. We use state-of-the-art Amazon AWS infrastructure, including a tested and trained Disaster Recovery Plan to prepare for unforeseen or unexpected threats.

Claim of Expertise: ClassWallet Brings Deep Application Knowledge, Experience, and Capabilities

Documented Performance:

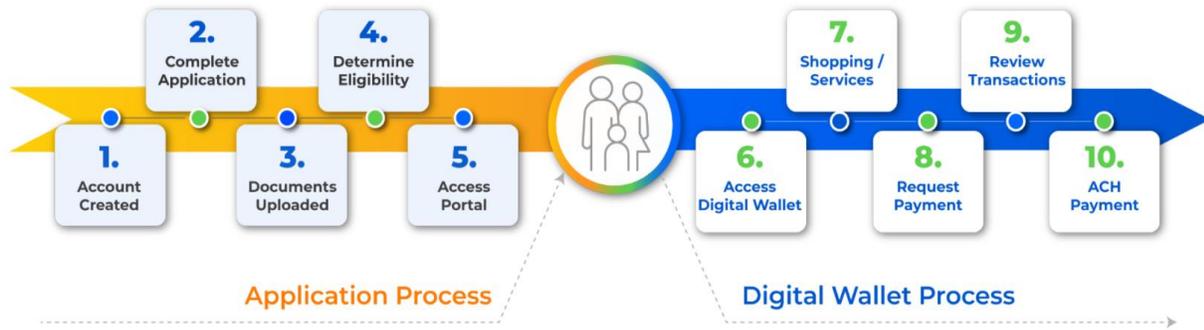
ClassWallet has supported multiple programs with application solutions. Our application technology is powered by FACTS Management ("FACTS"), which currently serves over 18,000 students at 71 private and faith-based schools in Arkansas now. In addition, FACTS' partnership has been proven with four of ClassWallet's State-supported programs: NH, MO, SC, and VA. The application is simple, secure, customizable, and supported by a robust and experienced team to support manual documentation review and verification to maximize access and opportunity for prospective participants.

INFORMATION FOR EVALUATION – SOLUTION

The Arkansas Education Freedom Account (EFA) and Literacy Tutoring Grant (LTG) program is at an inflection point of great growth. **With a successful year-one launch, ClassWallet is best positioned to continue support of Arkansas staff, families, and service providers with *program acceleration* through our user-friendly, secure, and battle-tested solution.** ClassWallet affirms that we meet or exceed the requirements requested in the proposal and stand ready with your current, dedicated team, including **Manuela Peralta, Julius Bridges, Scot Calvert, Sarah Raybon, and Bruce Smith**. We ask that the State of Arkansas consider the strong foundation built with ClassWallet for the EFA and LTG, but also through nearly three years of partnership and multiple programs effectively added and served in Arkansas.

Arkansas & ClassWallet By The Numbers	Total	EFA Year 1	LTG Year 1	EANS I	EANS II	Health & Safety
Total Funds Distributed	\$54.58M+	\$27.25M	Successfully Launched 1/22/24	\$17.9M	\$5.97M	\$3.46M
Total Transaction Count	18K+	15k+		2,890	270+	200+
Total Users	5.5k+	Over 5,500		53	32	50
Total Vendors	570+	100+		140	332	Reimbursement Only

Proven End-to-End Solution. From application to digital wallet, ClassWallet delivers a simple and secure end-to-end solution. It is specifically designed to reduce the burden on the State’s program administrators while delivering a user-friendly experience for the family, schools, and educational service providers to exchange educational services and goods - *in real-time*.



- Streamlined Application Qualification Process.** As the current provider to over 60+ organizations and 18,000 students in private and faith-based schools *in Arkansas*, many families are already familiar with the application qualification technology *powered by FACTS*. FACTS has designed, launched, and managed hundreds of unique tax credit and private scholarship programs since 1993 and successfully partnered with ClassWallet on *multiple* ESA and microgrant programs across the country. The user-friendly application process enables easy user account creation, application completion (including alternative submission methods), credible review, and verification process, **all to maximize access and completion for prospective participants**. The application is available in both English and Spanish and can be customized and branded with the name and logo of the EFA program, resulting in streamlined and effective end-to-end outcomes. Families are supported each step of the way with a multi-tiered bilingual Customer Care team of application specialists. In addition, the FACTS application system continues to have family-centric features with training and support integrated into the application steps. It is designed to support users of all needs through alignment to reputable WCAG 2.2 standards. The State will have an experienced FACTS scholarship specialist team issuing qualification decisions (that are applied on behalf of and at the direction of the State). FACTS will also work with the State’s API configuration needs as outlined in the RFP. The solution implementation and execution are proven and ready for Arkansas.

- Proven Digital Wallet Process.** ClassWallet provides the leading purchasing and reimbursement platform for public funds. Our patented digital wallet is simple, secure, and effective in ensuring that *the funds get to the right families and are used for their intended purpose*. ClassWallet has disbursed over \$3.25 billion in education funding and the

platform is tailored to meet the financial needs of an EFA and grant administration, yet remains highly configurable and scalable. Overall, it has and will effectively serve each stakeholder of the AR EFA, LTG, and additional programs.

<p>The State</p>	<p>Provided mature technology to administer the program efficiently with minimal required resources, real-time insights, robust and expansive reporting capabilities, and maximum control to ensure that funds are used for their intended purpose while virtually eliminating the risk of fraud, waste, or abuse. The State can assign dependable and appropriate levels of access via user roles and permissions. In addition, the State is supported by a team of seasoned EFA experts prepared to implement, train, and orchestrate the overall success of the program; a strategic project plan aligned to the prior successful launch has been created. ClassWallet invests in innovation, including business intelligence-powered automation, to automate and minimize the workload of program administrators. ClassWalletBI™ technology enhancements include: 1) enabling the State to configure rules generating automated feedback on purchase compliance and 2) receipt scanning utilizing Optical Character Recognition (“OCR”), which converts an image (e.g., receipts, invoices) to machine-readable text format that assists with supporting expense categorization and transaction compliance for program adherence. In addition, ClassWallet has additional cutting-edge business analytics tools that can help visualize and offer essential program monitoring and progress analytics enabling the State to make data-driven decisions for the program. As the EFA program scales to universal availability, having expert support, proven technology, and BI-powered data reporting/analytics are mission-critical for the EFA and LTG success.</p>
<p>Families</p>	<p>In serving over 850,000 families and educators nationally, the #1 response we hear is “ClassWallet is easy to use.” The patented digital wallet technology is designed to offer a highly secure experience for families and is engineered to protect their data privacy - critical to expansive participation and millions of dollars in public funds. Upon program eligibility, families will follow a simple account creation process to quickly access, use, and monitor their funds in a Digital Wallet <i>in real-time</i> using any modern device (computer, tablet, smartphone). Arkansas will continue to benefit from usability features such as: English and Spanish languages, uniform experience for all being aligned to WCAG 2.1 standards, eliminating paper receipts, and providing real-time views, all while offering a comprehensive network of service providers and over 90 top education retailers nationwide. The state will maximize the impact of the funds while securely and efficiently sending <i>State-approved</i> ACH payments to the vendors. This accomplishes the top Arkansas objectives with a solution that “promotes accountability and strong fiscal stewardship of public funds.” In Arkansas, there are currently over 11,000 digital wallet users showing some of the highest levels of experience satisfaction (see experience section).</p>
<p>Education Service Providers</p>	<p>We make it simple for schools and service providers to securely and efficiently receive payments. There are over 570+ Arkansas-approved and integrated providers already benefiting from ClassWallet technology. It is not uncommon for large or universal programs to have thousands of providers to maximize choice and support. ClassWallet has scaled to these levels for other state customers, and is prepared for Arkansas’ growth. On top of receiving best-in-class training and support, service providers can integrate and promote their services and securely receive payments. With our refined onboarding experience, most approved education service providers and schools can be onboarded within a day or two. Our system ensures that ACH payments to vendors and schools are processed within 48 hours of authorization by ADE. ClassWallet has on boarded and served over 12,500 schools and service providers across the nation and also offers a comprehensive Ecommerce Marketplace with over 90 top-rated education retailers available for State selection to augment and maximize choice for Arkansas families.</p>

Maximum Support to All Stakeholders. The Customer Care team is available via phone, chat, and email and will be equipped with robust Arkansas program training resources to optimize the family and educational service provider experience. Customer Care is available by phone, email, and chat Monday-Friday, 7:00am - 7:00pm CST (digital wallet and application) and Saturday 9:00am - 3:00pm CST (digital wallet only). Key Performance Indicators (KPIs) are available for the State to monitor.

Industry-Leading Data Security. We are NIST compliant, aligning with the highest standards of data security in the industry. ClassWallet is the only ESA technology partner to have passed a state NIST audit (Michigan) and is currently working through a second state NIST audit (Arizona). ClassWallet’s solution is also SOC 1 Type II and SOC 2 Type II certified through a third party, not “self-attestation.”

INFORMATION FOR EVALUATION – RISK

Risk Description:	<p>New families, schools, and vendors will be unfamiliar with the existing ClassWallet platform.</p>
Solution:	<p>Through the first year of the EFA program, ClassWallet support and training has proven very effective. ClassWallet will continue to leverage and enhance the on-demand training, custom communication, and high-performing customer service to each critical stakeholder, ensuring all parties engaged with the programs are well-informed and comfortable on what to do.</p>
Documented Performance:	<ul style="list-style-type: none"> ■ Ongoing weekly work sessions with ADE and Parthenon, and now the new ADE staff, are conducted to proactively anticipate any support needs and outreach methods in real-time including: State platform demos, administrator training, customized invoice calculator, affidavit and quarterly invoice submission reminders (for several months into the program), and even engaged service providers with new collaborative communication strategies to best support family success. ■ ClassWallet’s technology will continue to be configured for the program for optimal experience and support, including messaging, FAQs, on-demand videos, and customer care at a click for the families. The State can monitor and manage activities <i>in real-time</i> from its dashboard. ■ Customized support resources including: customized welcome emails to families as well as schools, invoice submission reminders, affidavit reminders, training guides, comprehensive knowledge base articles, and all wrapped around by live webinars, including Q&A opportunities designed <i>for each stakeholder group</i>. ADE will direct ClassWallet regarding the ongoing training needs and timing of such, particularly for families who are new to the EFA. AR families have appreciated the step-by-step process instructions and live support with Q&A. Also, FAQs and Customer Care topics were strategically prepared to be addressed in the webinars to maximize the time of attendees. ■ Customer Care metrics across Arkansas <i>exceed every ClassWallet target metric</i>: <ul style="list-style-type: none"> # Customer Satisfaction Score (CSAT) = 90.63% # Average-speed-to-answer = 23 seconds # Agent Satisfaction Score = 97.78% # Average Case Resolution Time = 4.22 hours
Risk Description:	<p>ADE staff may be overly burdened when seasonal and periodic peaks in activity could slow down vendor application and/or transaction (expenditure) approval times, such as during the peak application window or quarterly fund disbursements windows. Slow approval times can lead to family and vendor dissatisfaction, as well as undo stress on ADE staff.</p>
Solution:	<p>ClassWallet’s optional Validation Services team can act as an ADE staff multiplier with vendor and transaction review and approvals for the State. The team will apply consistent and transparent decisions based on the State’s guidelines in real-time. Any complex or unusual transactions will be escalated to the State staff for a final determination. This optional offering increases the speed and efficiency of decisions while eliminating the need for last minute training for temporary employees from other departments. With this approach, the State can save significant time and expenses while applying consistent, transparent, and conformant program rules.</p>
Documented Performance:	<p>ClassWallet has been built to scale and introduced the Validations Team two years ago. Since then, the team has supported diverse state programs with over 500,000 transaction decisions totaling over \$131 million. In addition, they have assisted with vendor (e.g., schools, educational service providers) application decisions totaling over 5,000.</p>

Risk Description:	Long-term Financial Stability of the prime Contractor is paramount with hundreds of millions of dollars in public funds being handled. It is critical for the State to select a vendor that exhibits financial strength so as not to introduce the risk of failure or service disruption for the families being positively impacted by this program.
Solution:	It is recommended that the State consider requiring all contractors to provide documentation of financial stability and/or strength, such as audited financials from nationally recognized firms. Financial strength and protection are critical to supporting a State committing hundreds of millions in public funds for years into the future.
Documented Performance:	Formed in 2014, ClassWallet has been consistently profitable and audited by RSM, one of the world's most respected and largest auditing firms. ClassWallet can produce audited financial statement(s) for the State. In addition, ClassWallet proactively employs robust financial risk protection measures such as adequate insurance, reputable and monitored financial partnerships, and additional strategies to protect significant amounts of public funds.

Official Solicitation Price Sheet

S000000313 **ONLINE PLATFORM FOR EFAS AND LTGS**

Prospective Contractor Name: Kleo Inc. d/b/a ClassWallet

TABLE 1: TOTAL SEVEN-YEAR COST (to be used in determining Cost Points)

Description	All-Inclusive Estimated Seven-Year Grand Total
Online Platform for EFAs and LTGs	\$ 18,584,500.00

TABLE 2: COST BREAKDOWN

Item	Description	Year 1 Annual Cost 2024 - 2025	Year 2 Annual Cost 2025 - 2026	Year 3 Annual Cost 2026 - 2027	Year 4 Annual Cost 2027 - 2028	Year 5 Annual Cost 2028 - 2029	Year 6 Annual Cost 2029 - 2030	Year 7 Annual Cost 2030 - 2031	Total Cost
1	Implementation Fee	\$ 250,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 250,000.00
2	Testing Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	Data Migration/Conversion Fee	\$ 12,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,000.00
4	Maintenance and Support Fee	\$ 275,000.00	\$ 275,000.00	\$ 275,000.00	\$ 275,000.00	\$ 275,000.00	\$ 275,000.00	\$ 275,000.00	\$ 1,925,000.00
5	Training Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Annual Licensing Fee EFAs (14,000 participants)	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00	\$ 735,000.00
7	Annual Licensing Fee LTGs (17,000 participants)	\$ 127,500.00	\$ 127,500.00	\$ 127,500.00	\$ 127,500.00	\$ 127,500.00	\$ 127,500.00	\$ 127,500.00	\$ 892,500.00
8									\$ -
9									\$ -
10									\$ -
11									\$ -
12									\$ -
13									\$ -
14									\$ -
15									\$ -
16									\$ -
SUB-TOTAL									\$ 3,814,500.00

TABLE 3: PERCENTAGE-BASED COST

Item	Description	Scholarship Funding	Whole Percentage Number per Transaction, Processing, Convenience Fees, etc.	Total Cost
17	EFAs	\$ 97,000,000	2.00%	\$ 1,940,000.00
18	LTGs	\$ 8,500,000	2.00%	\$ 170,000.00
SUB-TOTAL				\$ 14,770,000.00

* This Percentage-Based Cost is charged to the vendors, only when a payment is made, as a transaction processing fee.

Exhibit 2

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING THE EDUCATIONAL FREEDOM ACCOUNT
PROGRAM
October 1, 2023

1.00 Purpose

1.01 The purpose of these rules is to establish guidelines for the initial implementation and operation of the Educational Freedom Account (EFA), established to provide children in the State of Arkansas with educational options to achieve success in their education.

2.00 Definitions

2.01 “Account holder” means the parent of a participating student, or a participating student who has attained the age of majority, who signs the EFA agreement and is responsible for complying with all of the requirements of the EFA.

2.02 “Agreement” means a contract signed by an applicant outlining their contractual obligations as the account holder of an EFA and the acceptable uses of EFA funds.

2.03 “Applicant” means a prospective participating student or the prospective participating student’s parent, when he or she is applying to the EFA Program on behalf of the student.

2.04 “Department” means the Arkansas Department of Education.

2.05 “Division” means the Division of Elementary and Secondary Education.

2.06 “Education Service Provider” means a business, nonprofit organization, or other entity, not to include a nonpublic or public school, which offers educational materials or services that are qualifying expenses reimbursable by EFA funds pursuant to Ark. Code Ann. § 6-18- 2503(11)(A).

2.07 “EFA” means an individual funding account that is managed by the Department of Education for the care of and in the name of a participating student.

2.08 “EFA funds” means money from one or more EFAs.

2.09 “EFA Program” means the Educational Freedom Account Program established pursuant to Arkansas Code Annotated § 6-18-2501, et seq.

- 2.10 “Foster care” means the placement of a child by the Department of Human Services into custodial care by a group home, group facility, or a relative or nonrelated caregiver on a twenty-four-hour-a-day basis.
- 2.11 “Nationally Norm-Referenced Test” means a standardized test designed to compare and rank test takers in relation to one another as determined by comparing scores against the performance results of a statistically selected group of test takers, typically of the same age or grade level, who have already taken the exam.
- 2.12 “Norming studies” means a series of statistical methods applied to the raw data collected from standardized tests to determine the reliability and validity of the data in calculating the norm-referenced scores.
- 2.13 “Office” means the Office of School Choice, as established within the Department.
- 2.14 “Parent” means either:
- 2.08.1 A biological or adoptive parent;
 - 2.08.2 A legal guardian or custodian;
 - 2.08.3 A person standing in loco parentis to a participating student; or
 - 2.08.4 Another person with legal authority to act on behalf of a Participating Student.
- 2.15 “Participating school or service provider” means a school or other service provider that is approved by the Department to receive EFA funds.
- 2.16 “Participating student” means an eligible student for whom an EFA has been approved and established.
- 2.17 “Standard Application Form” means the form created by the Department to be used by applicants seeking to establish an EFA on behalf of a Participating Student.
- 2.18 “State Board” means the Arkansas State Board of Education.
- 2.19 “Student with a disability” means a student who has been:
- 2.19.1 Identified as having a disability consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 et seq. as it existed on January 1, 2023.

3.00 Student Eligibility

3.01 An individual who is a resident of the State of Arkansas and the parent of a student who is eligible to enroll in a public elementary or secondary school may apply on behalf of a prospective participating student, to participate in the EFA Program for the 2023-2024 school year if the prospective participating student is:

3.01.1 A student with a disability as defined by Section 2.19 of these Rules.

3.01.2 Considered homeless under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et seq., as it existed on January 1, 2023;

3.01.3 A student in foster care, as defined in Section 2.10 of these Rules, or has been in foster care and subsequently achieved permanency through adoption, reunification, or permanent guardianship;

3.01.4 A student who participated in the Succeed Scholarship Program, Ark. Code Ann. § 6-41-901 et seq., during the 2022-2023 school year;

3.01.5 A child of active-duty military personnel, as identified by Title 10 or Title 32 of the United States Code;

3.01.6 Is enrolling in kindergarten for the first time; or

3.01.7 A student who was enrolled in the previous school year in a:

3.01.7.a Public school that has a rating of “F” under Ark. Code Ann. §§ 6-15-2105 and 6-15-2106 and State Board of Education rules; or

3.01.7.b Public school district classified as in need of Level 5 — Intensive support under Ark. Code Ann. §§ 6-15-2913 or 6-15-2915.

4.00 Student Application

4.01 To apply to participate in the EFA Program, a parent shall fully complete the Standard Application Form available at the Department’s website and the Department’s offices at (4 Capitol Mall, Little Rock, AR 72201), beginning June 20, 2023, and ending August 1, 2023.

4.01.1 The Standard Application Form may be submitted by mailing the application via the United States Postal Service to the Department, submitting the application to the Department via email or submitting the application online at the Department’s website.

4.01.2 The Standard Application Form may only require the collection of such information and documentation as is necessary to establish the applicant's residency in the State of Arkansas and the applicant's eligibility pursuant to the criteria set in Section 3.01 of these Rules.

4.01.3 The Department may assist an applicant in completing the Standard Application Form as needed.

4.01.4 The Office of School Choice may determine eligibility of applications received after August 1, 2023, provided Program funds remain available. In such cases, account funding may be prorated to cover qualifying expenses for less than the full duration of the 2023-2024 school year.

4.02 The Office shall determine an applicant's eligibility to participate in the Program under Section 3.01 and notify the Applicant on a rolling basis as applications are received. The notification shall inform applicants how they may activate the account and the amount of EFA funding the Participating Student will receive. Priority for accepting student applications shall be made in the following manner:

4.02.1 The Office shall approve all student qualifying applications pursuant to Section 3.01.4 of these Rules.

4.02.2 The Office shall approve all other applications that meet one or more of the qualifying criteria in Section 3.01 of these Rules on a first-come, first-served basis.

4.02.3 The Office shall continue to approve student applications that meet the qualifying criteria set by Section 3.01 of these Rules for the 2023-2024 school year and successive school years, as funding remains available and the conditions for eligibility are met by the applicant pursuant to Section 6 of these Rules.

4.03 Once a completed Standard Application Form has been approved by the Office, the applicant shall complete the enrollment procedures set by the Department to become enrolled in the EFA Program, including execution of an Agreement to participate in the Program as outlined in Section 5 of these Rules.

5.00 Agreement and Funds Transfer

5.01 Upon notification by the Department that an EFA may be established, the applicant shall sign an Agreement outlining the applicant's contractual obligations as the account holder upon enrolling in the EFA Program, including the acceptable uses of EFA funds and expense reporting requirements. The Agreement may be executed with a wet or electronic signature. The Agreement shall remain in effect until one or more of the conditions for terminating eligibility are met under Section 6 of these Rules.

5.02 In the Agreement, the Department shall provide account holders with the following:

5.02.1 A written explanation of qualifying expenditures for EFA funds, as outlined in Ark. Code Ann. § 6-18-2503(11)(A);

5.02.2 A written explanation of the responsibilities of account holders, as outlined in Section 5.03 of these Rules;

5.02.3 The following written explanation: “Participation in the EFA is a parental placement under 20 U.S.C. § 1412, Individuals with Disabilities Education Act (IDEA) if a child with a disability is enrolled in a non-public school. Parental placement of children with disabilities in a private school constitutes a waiver of procedural rights to a Free and Appropriate Public Education (FAPE) in connection with their private school enrollment, in accordance with 34 C.F.R. 300.148(a) and pursuant to 34 C.F.R. 300.137(a), while participating in the EFA program”; and

5.02.4 A written explanation of the respective duties of the Department and, if applicable, of any vendor or other supplier the Department has contracted with to administer all or part of the Program.

5.03 In the Agreement, the account holder shall:

5.03.1 Agree not to enroll the participating student full-time in a public school while the student is participating in the EFA Program;

5.03.2 Acknowledge that upon enrolling in the EFA Program, the parent waives the participating student’s entitlement to a free appropriate public education, including special education and related services, from their public school district of residence, so long as the child remains in the EFA Program; and

5.03.3 Agree to use EFA Funds on behalf of the Participating Student strictly for qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A) during the 2023-2024 school year.

5.04 The Agreement shall:

5.04.1 Be submitted to the Department, along with all required information, before the first EFA payment is disbursed, pursuant to Section 5.05 of these Rules; and

5.04.2 Be signed by the account holder and a designee of the Department prior to becoming effective.

5.05 After the Agreement is fully executed by the account holder and the Department, the Department shall make four (4) equal payments in quarterly installments from the participating student's EFA to the participating school or service provider. Payments shall only be suspended at such time as one or more criteria to terminate the Agreement are met under Section 6 of these Rules.

5.06 The total allocation to each participating student's EFA for the 2023-2024 school year shall be \$6,672, unless either:

5.06.1 The total qualifying expenditures, as outlined in Ark. Code Ann. § 6-18-2503(11)(A), published by the participating school or service provider where a participating student is enrolled an amount equal to ninety percent (90%) of the prior year's statewide foundation funding allotted per student under § 6-20-2305. Any excess funds allocated to the private school shall be refunded to the Department.

5.06.2 The participating student is eligible under Section 3.01.4; in which case the allocation shall total the same amount awarded to the student as a Succeed Scholarship during the 2022-2023 school year.

5.07 The Department may withhold up to five percent (5%) of the funds allocated to each EFA for the purpose of the EFA Program administration.

6.00 Term of EFA Eligibility

6.01 For purposes of continuity of educational choice, a student who enrolls in the EFA Program shall remain eligible until the participating student meets one of the following criteria, whichever occurs first:

6.01.1 Enrolls full-time in a public school.

6.01.2 Graduates from high school. The student may continue in the EFA Program until such time as he or she receives a high school diploma or receives a passing score on all subtests of the General Educational Development (GED) test.

6.01.3 Reaches twenty-one (21) years of age. The student may complete the school year in which he or she reaches the age of twenty-one (21), provided the student shall not be enrolled in the EFA Program past June 30 after reaching twenty-one (21) years of age.

6.02 Regardless of meeting one or more of the criteria listed in the previous subsection, the Department may immediately and permanently remove any participating student from eligibility for a EFA if the account holder fails to comply with the terms of the Agreement in Section 5 of these Rules or any other applicable laws,

rules or procedures, or if the account holder is found to have substantially misspent EFA Funds. The account holder may appeal the Department's decision pursuant to the procedures outlined in Section 9 of these Rules.

6.03 The account holder may remove the participating student from enrollment in a participating school or service provider and place the student in a public school. The account holder shall complete the procedures for withdrawal from the EFA Program set by the Department.

7.00 Participating Schools and Service Providers

7.01 A private school shall notify the Department of its intent to participate as a participating school or service provider in the EFA Program. Pursuant to Ark. Code Ann. § 6-18-2507, the Office shall certify a private school as a Participating School or Service Provider if the private school is located in the State of Arkansas and:

7.01.1 Complies with one of the following:

7.01.1.a Meets accreditation requirements established by the State Board of Education, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the State Board; or

7.01.1.b Is an associate member of, or has applied for accreditation from, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association recognized by the State Board. A private school that is not fully accredited while participating in the EFA Program shall report annually to the State Board, or its designee, the school's progress towards accreditation.

7.01.2 Meets one or more of the following criteria:

7.01.2.a Has been in operation for at least one (1) school year;

7.01.2.b Provides a statement by a certified public accountant confirming that the school is insured and has sufficient capital or credit to operate in the upcoming school year; or

7.01.2.c Files with the Department a surety bond or letter of credit for the amount equal to the account funds needed by the school for any quarter.

7.01.3 Attests in writing to the following:

7.01.3.a The private school does not discriminate on any basis prohibited by the Civil Rights Act of 1964, 42 U.S.C. § 2000d, as it existed on January 1, 2023;

7.01.3.b All private school personnel who are allowed direct contact with participating students have cleared a background check and fingerprinting process;

7.01.3.b.1 Participating schools have until May 30, 2024, to comply with the fingerprinting requirement for all school employees.

7.01.3.c The private school does not employ any individual who may reasonably pose a risk to the appropriate use of EFA Program funds if disbursed;

7.01.3.d The private school only employs or contracts teachers who hold at least baccalaureate degrees or have equivalent documented experience, as determined by the Department;

7.01.3.e The private school holds valid occupancy of buildings as required by the relevant municipality in which the private school is located; and

7.01.3.f The private school operates according to its published disciplinary procedures that, at a minimum, outline the terms and conditions when a student may be expelled.

7.02 A private school will be ineligible to participate in the EFA Program if:

7.02.1 When approved under Section 7.01.1 of these Rules, the private school loses its accreditation status;

7.02.2 When approved under Section 7.01.2 of these Rules, the private school is ineligible or unable to continue the accreditation process, as determined by the accrediting association;

7.02.3 The private school violates the terms of Section 7.01.3 of these Rules;

7.02.4 The private school fails to adhere to the tenets of its published disciplinary procedures before expelling a Participating Student; or

7.02.5 The private school fails to comply with all applicable state laws and rules governing private schools, and with all applicable health and safety laws and rules.

- 7.03 A participating private school shall notify the Department within thirty (30) days after losing accreditation or taking any action rendering the school ineligible to participate in the EFA Program pursuant to Section 7.02 of these Rules. A private school may apply for reinstatement if it returns to compliance with Section 7.01 of these Rules.
- 7.03.1. The Department shall determine whether the private school is not in compliance with Section 7.01 of these rules. The Department shall issue a formal notice of its determination to the private school.
- 7.03.2 A private school applying for reinstatement under this section shall provide documentation to the Department of the private school's efforts to come back into compliance with Section 7.01 of these rules. The private school may request a hearing before the state board or may elect to waive its hearing and submit evidence to the Department.
- 7.03.3 Upon receipt of the evidence, the Department shall issue a decision on the private school's reinstatement in writing to the private school.
- 7.04 The Office's approval of a Participating School or Service Provider shall serve as statewide approval of such provider for purposes of the EFA Program. A listing of each participating school and service provider's name, the qualifying materials, services offered, and any relevant credentials shall be available on the Department's website, in a format easily accessible to the public.
- 7.04.1 Private schools who were approved under the Succeed Scholarship program outside of the State of Arkansas may continue to receive funds for participating Succeed Scholarship students for the remainder of the Participating Students' remaining eligibility.
- 7.05 Participating schools and service providers shall not refund, rebate, or share EFA funds directly with account holders. Funds shall only be refunded to the EFA of a participating student from which the expenditure was made.
- 7.06 The Department may suspend or terminate a participating school or service provider from participating in the EFA Program if the Department determines the school has failed to comply with the requirements of the Act or these Rules.
- 7.07 Nothing shall be construed to expand the regulatory authority of the Department to impose additional regulations on participating schools and service providers beyond those expressly set out in these Rules to enforce the requirements of the EFA Program.

7.07.1 A participating school or service provider shall not be required to alter its creed, practices, admissions policy, or curriculum to receive approval from the Department or to accept payments from an EFA.

8.00 Monitoring and Compliance

8.01 During the 2023-2024 school year, the Department shall:

8.01.1 Conduct or contract with an unaffiliated auditor to conduct a random audit of EFAs to ensure monies were used only for expenses that were approved or allowed at the time the expense was made.

8.01.2 Maintain a copy of the audit plan and all associated audit reports.

8.02 During the 2023-2024 school year, the Department shall conduct or contract with an unaffiliated auditor to conduct a random financial audit of participating schools and service providers. If selected, to satisfy the requirements of this subsection, a participating school or service provider shall submit to an auditor chosen by the Department, a financial audit of the entity conducted by a certified public accountant within six (6) months of the most recently completed fiscal year. The audit shall include a statement that the report is free of material misstatements and fairly represents the Participating School's or Service Provider's maximum total tuition and fees.

8.03 The Department shall establish or contract for the establishment of an anonymous online fraud reporting service and an anonymous telephone hotline for reporting fraud. Individuals may notify the Department of any alleged violation by an account holder or participating school or service provider of state laws, rules, or procedures relating to the EFA Program. The Department shall conduct an inquiry into any report of fraud or make a referral for an investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.
8.04 The Department shall forward to Arkansas Legislative Audit:

8.04.1 All audits conducted under this section that identify a potential misuse of EFA funds; and

8.04.2 Referrals of all cases involving fraud and/or substantial misuse of account funds for investigation to the Arkansas Attorney General or the Secretary of the Arkansas Department of the Inspector General.

9.00 Appeals Process

9.01 The following determinations can be appealed:

9.01.1 An applicant may appeal the Office's determination that the student is not eligible for the EFA Program.

- 9.01.2 An account holder may appeal an official determination that the account holder has misspent EFA funds or the removal of the participating student from the EFA Program.
- 9.01.3 An applicant school may appeal the Office's determination that a private school is not qualified to be a participating school or service provider.
- 9.01.4 A participating school or service provider may appeal the Department's suspension or termination of the Participating School or Service Provider from the EFA Program.
- 9.02 All appeals shall be submitted on the appeal forms provided on the Department's website. If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.
- 9.03 Appeals shall follow the following two-step process:
- 9.03.1 Step one appeals shall be reviewed by the Department. Step one appeals must be submitted to the Department within fourteen (14) calendar days of the Department electronically sending the determination that is being appealed. The day that the Department sends the determination will not count as part of the foregoing fourteen (14) calendar days. The Secretary of Education or the Secretary's designee shall make a determination and issue an electronic notification to the appealing party within forty-five (45) calendar days of receiving the step one appeal.
- 9.03.2 If the Secretary of Education or the Secretary's designee denies the step one appeal, the appealing party may file a step two appeal. Step two appeals shall be reviewed by the State Board. Step two appeals must be submitted to the Department within thirty (30) calendar days of the Department electronically sending the step one determination. The day that the Department sends the step one determination will not count as part of the foregoing thirty (30) calendar days.
- 9.04 If the deadline to submit an appeal falls on a weekend or state holiday, the appeal shall be considered timely submitted if it is received by the next business day after the weekend or state holiday.
- 9.05 If an appeal is not timely submitted, the appeal shall be denied.
- 9.06 The State Board shall hear the appeal at its next scheduled meeting, so long as the appeal is received seven (7) calendar days before the meeting date.
- 9.07. Any appeal shall be held in an open hearing, and the decision of the State Board shall be in an open session.

9.08 The following procedures shall apply to State Board hearings for a step two appeal:

9.08.1 All persons wishing to testify before the State Board shall first be placed under oath by the Chairperson of the State Board.

9.08.2 The Department, and when appropriate, the Office, shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.

9.08.3 The appealing applicant, account holder, Participating School, or Service Provider shall have up to twenty (20) minutes to present its case to the State Board. The Chairperson of the State Board may allow additional time if necessary.

9.08.4 The State Board may pose questions to any party at any time during the hearing.

9.08.5 The State Board shall then discuss, deliberate, and vote upon the matter.

9.08.6 The State Board will grant or deny the appeal based upon the totality of evidence presented.

9.08.7 The State Board may announce its decision immediately after hearing all arguments and evidence or it may take the matter under advisement and announce its decision at a later date, provided that all discussions, deliberations, and votes upon the matter take place at a public hearing. The State Board shall provide a written decision to the applicant, account holder, Participating School, or Service Provider within fourteen (14) days of announcing its decision under this section.

10.00 Procurement and Contracting

10.01 In compliance with all state procurement laws and procedures, the Department retains the authority to contract with a vendor or other supplier for the purpose of administering all or parts of the Program, including but not limited to:

10.01.1 Implementing a system to collect and compile response data from the Standard Application Form.

10.01.2 Compiling the legislative report regarding the implementation of the Educational Freedom Account, to be submitted no later than September 30, 2024, pursuant to Ark. Code Ann. § 6-18-2510.

11.00 Program Evaluation

- 11.01 Pursuant to Ark. Code Ann. § 6-18-2509(a)(1), participating schools and service providers shall administer the following to all participating students who are enrolled on a full- time basis during the 2023-2024 school year:
- 11.01.1 An examination identified by the State Board that is required for students attending public schools; or
- 11.01.2 A nationally norm-referenced test that measures, at minimum, achievement in literacy and mathematics and provides information that compares the performance of students against the performance of a sample of students from across the country. The Department shall provisionally approve a test for use in the 2023-2024 school year if the participating school or service provider administered the test to students during one or more of the previous three (3) school years.
- 11.02 A participating student who is determined by a participating school or service provider to need an exemption to standardized testing due to the nature of the student’s disability, pursuant to Ark. Code Ann. § 6-18-2509(a)(2), is not subject to the requirement of Section 11.01.
- 11.02.1 The participating school or service provider in which a student is enrolled full-time, or otherwise the parent of a participating student, shall allow an exempt participating student to take an alternate assessment approved by the State Board or prepare a portfolio that provides information on the participating student's progress to his or her parent.
- 11.03 Each participating school or service provider that enrolls one (1) or more participating students shall provide the following information to the Department no later than June 30, 2024, and each June 30 thereafter on an annual basis:
- 11.03.1 A list of participating students who have taken an examination or norm-referenced test pursuant to Section 11.01 of these Rules, and the achievement results for each student; and
- 11.03.2 A list of participating students who are exempt from standardized testing due to the nature of the student’s disability, pursuant to Section 11.02 of these Rules, and the alternate assessment results or summary of portfolio information provided for each student.
- 11.03.3 If the school is a high school, the number of Participating Students who graduated from high school in a given year and the number of AP tests taken by Participating Students.
- 11.04 The Department shall approve the use of a nationally norm-referenced test for participating students, if it meets the following criteria:

- 11.04.1 The assessment has norming studies that show dates of the studies, definition of the populations sampled, the procedure used to draw the samples, sample sizes, participation rates, and any weighting or smoothing procedure used to make the sample data better represent the population. Norming studies must have been conducted within the last ten (10) years, with five (5) years being preferable;
- 11.04.2 The assessment is internally consistent and reliable and must be reported for content sub-domains (e.g., mathematics, reading) at a minimum score of 0.80, and that reliability data be reported for each grade level;
- 11.04.3 For any open-ended, constructed-response items, rater agreement information (e.g., exact rater agreement rates, intraclass correlations, or kappa coefficients) is reported;
- 11.04.4. The standard error of measurement and conditional standard error of measurement (at various test score levels) are reported;
- 11.04.5 The test developer includes a clear description of the construct to be measured, the purpose of the test, intended interpretation of the scores/other test results, and intended test-taking population;
- 11.04.6 Documentation includes conceptual, empirical, and theoretical evidence that the test meets its intended purposes and support the intended interpretations of test results for the intended populations; and
- 11.04.7 Documentation includes evidence that each test is aligned with rigorous content standards and serves as an adequate measure of K-12 student achievement in core academic areas.
- 11.05 The Department shall administer a survey to account holders to assess their satisfaction with the Department's administration of the EFA Program and their experience with participating schools and service providers. The survey shall collect no more than one (1) response from each account holder, beginning no later than February 1, 2024, and ending no sooner than March 31, 2024.

SUMMARY OF NEW RULES

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING THE EDUCATIONAL FREEDOM ACCOUNTS PROGRAM

These new rules incorporate the provisions of Act 237 Of 2023, which establish a public fund to allow parents to direct payments to participating private schools or service providers that are approved by the department for qualifying expenses. The rules establish a process by which parents and schools can apply to participate in the program, including eligibility criteria for each. The rules also establish processes for financial monitoring and compliance, as well as a program evaluation. The rules require that participating students and parents meet eligibility criteria and sign an agreement to not misuse funds. The rules require that participating schools and service providers meet accreditation requirements, be financially sound and employ qualified individuals.

POST-PUBLIC COMMENT

Exhibit 3

FINDINGS OF FACT

The issue in this case is whether DAS erred in issuing a Notice of Intent to Award (“Notice”) to Odyssey instead of Inspired Life concerning the Department of Education’s (“DOE”) procurement of an Education Savings Account (“ESA”) administrator. The ESA administrator’s responsibilities include determining eligibility for parents or guardians to receive funds for qualified expenses such as nonpublic school tuition, textbooks, tutoring, and online learning, administering the deposit of such funds into ESAs for the use of qualified expenses, recovering payments improperly awarded, closing ESAs upon a student’s graduating high school or reaching 20 years of age, and transferring any remaining funds to DOE for deposit into the general fund of the state. (DOE and DAS will be referred to collectively as the “Agency.”) ESAs are a relatively new product. As a result, there are only a few companies who can create and administer ESA programs. Nicholson Testimony Tr. 39.

A. The RFP

On January 24, 2023, a Request for Proposal (the “RFP”) was issued by DAS on behalf of DOE. The RFP is entitled Education Savings Account Administration and states as its objectives the following:

- Phased in eligibility for parents and guardians of every Iowa resident pupil to receive funds into an ESA for qualified expenses equal to regular program state cost per pupil for the same school budget year.
- Allow for the resident pupils to use that ESA for educational expenses such as nonpublic school tuition, textbooks, tutoring, and online learning.
- Recover program payments and amounts improperly awarded or paid, withdraw funds and close the pupil’s ESA.
- Withdraw funds and close ESA, upon graduation from high school, or reaching 20 years of age, whichever comes first.
- Transfer all remaining funds to Department of Education for deposit into the general fund of the state.

Ex. A at 3.

Section 2 of the RFP provides guidelines for the administration of the RFP. Section 2.12 provides a number of circumstances in which the Agency “may reject outright and not evaluate a Proposal” submitted by a respondent, or the entity submitting a proposal in response to the RFP. Such circumstances include:

2.12.5 The Respondent fails to include information necessary to substantiate that it will be able to meet a specification of the RFP as provided in Section 4 of the RFP.

2.12.11 The Respondent provides misleading or inaccurate responses.

2.12.13 There is insufficient evidence (including evidence submitted by the Respondent and evidence obtained by the Agency from other sources) to satisfy the Agency that the Respondent is a Responsible Respondent.

Id. at 5-6. “Responsible Respondent” is defined as follows:

“Responsible Respondent” means a Respondent that has the capability in all material respects to perform the scope of work and specifications of the Contract. In determining whether Respondent is a Responsible Respondent, the Agency may consider various factors including, but not limited to, the Respondent’s competence and qualifications to provide the goods or services requested, the Respondent’s integrity and reliability, the past performance of the Respondent and the best interest of the Agency and the State.

Id. at 3. In addition, the RFP allows the Agency to waive or permit cure of any nonmaterial variances in a respondent’s proposal if it determined that it is “in the State’s best interest to do so.” *Id.* at 6.

The RFP also articulates certain technical and related requirements for submissions. The RFP requires respondents to “indicate either **“yes”** or **“no”** to each [mandatory] specification in their proposals” and “provide an explanation as to how the specification is met.” *Id.* at 16.

Section 5 of the RFP sets forth evaluation procedures. Section 5 provides that the Agency will award a contract to the respondent whose “Responsive Proposal” it believes will provide the greatest value to the State. A “Responsive Proposal” is defined as a proposal that complies with the “material provisions of” the RFP and contains the following:

- “Answer “Yes” to all parts of Section 4 and include supportive materials as required to demonstrate the Respondent will be able to comply with the Mandatory Specifications in that section and
- Obtain the minimum score for the Technical Proposal. If a Technical Proposal does not meet the minimum score, it will be rejected and the Respondent’s Cost Proposal will not be evaluated.

Id. at 3, 20.

Besides providing certain requirements, the RFP articulates a fairly straightforward submission and evaluation process. Under the RFP, proposals were due on February 14, 2023. *Id.* at 1. Submissions were required to have separate costs and technical proposals. *Id.* at 20. Once submitted, the DAS issuing officer, Karl Wendt, whose role was to assist the Agency in the RFP process, checked-in the proposals by doing a high-level review to ensure the basic components required by the RFP were present. The proposals that survived this preliminary review were then forwarded to the evaluation committee.

B. Evaluation of Proposals

The evaluation committee reviewed and evaluated the proposals. The committee was composed of six individuals, including the Chief Operating Officer from the Governor’s Office, the Director of Iowa Department of Management and Revenue, the Chief Information Officer for the State, the Chief Information Security Officer for the State, the Deputy Director and Chief Operating Officer from the Department of Education, and the Chief Financial Officer from the Iowa Department of Education. Ex. 10.

Under the RFP, the evaluation committee was tasked with “conduct[ing] a comprehensive, fair, and impartial evaluation of the Technical Proposals received in response to [the] RFP.” Ex. A at

20. This was to be done by first evaluating and scoring the technical component of each proposal, with the RFP stating:

All technical proposals will be evaluated to determine if they comply with the Mandatory Specifications. The evaluation committee will fully evaluate and score all Responsive Proposals submitted by Responsible Respondents[.]

Id. The total number of points available was 1,000, with 700 points available for the technical portion of the bid. Ex. E at 359, 361. Each required technical category was assigned a specific number of points and the minimum technical score required was 420. *Id.*

After the evaluation committee finished with the technical scoring, the RFP required the “cost proposals [to] be opened and scored.” Ex. A at 20. The RFP provided that there were 300 points available for the cost proposal, and it was to be assigned utilizing discretion free formulas that first calculates the maximum cost points available based on a respondent’s technical score and second reaches a final score by multiplying the possible points by the number generated from dividing the lowest cost proposal by the cost proposal being evaluated. *Id.*

The scores of the technical and costs proposals are then combined. The RFP provides that “the evaluation committee will recommend an award based on the result of their evaluation to the Agency or to such other person or entity that must approve the recommendation.” *Id.* at 20.

The process in this case generally followed the submission and evaluation process called for in the RFP. Four companies submitted proposals in response to the RFP. Ex. E at 358. Of those, two, including Odyssey, were deemed to have met the minimum number of technical points and other requirements to be considered a responsive bidder. The two companies receiving the minimum number of technical points then demonstrated their products for the evaluation committee. In addition, although Inspired Life did not receive the minimum number of technical points on its proposal, the evaluation committee wanted to make sure it was not “missing anything” about Inspired Life’s proposal, and allowed Inspired Life to also perform a demonstration. Nicholson Testimony at Tr. 65. Inspired Life’s demonstration confirmed the evaluation committee’s original assessment of its proposal and after the demonstrations, only Odyssey and one additional company, Merit International, Inc. (Merit) were deemed capable of being awarded the Notice. Wendt Testimony at Tr. 37 (testifying that Inspired Life’s demonstration was not viewed favorably by the evaluation committee and its demonstration “confirmed the committee’s original assessment of its proposal that it would not be capable of producing an ESA that was desired by the Agency”).

After reviewing all three proposals and demonstrations, the evaluation committee awarded Odyssey a technical score of 505 and Merit received a technical score of 493. Inspired Life received a technical score of 368. The evaluation committee did not compute and finalize the costs scores. Instead, DAS reviewed the cost proposals and ran the calculations pursuant to the prescribed formula. Based on the cost calculations, Odyssey had more cost points available at 216 than Merit which had 54 cost points available. Based on this evaluation, the Agency caused the Notice to be issued in favor of Odyssey.

C. Appeal and Hearing

On March 3, 2023, Inspired Life timely appealed the award of the Notice to Odyssey. In its notice of appeal, Inspired Life lists the following as grounds for appeal:

1. The Agency erred in failing to verify and validate representations contained in Odyssey's Proposal and it should have strictly adhered to the experience and reference requirements contained in the RFP
2. Odyssey should have been disqualified due to misrepresentations regarding its experience.
3. Odyssey should have been disqualified for failing to provide three references from clients or customers relevant to the RFP.

In general, Inspired Life argues that Odyssey made inaccurate statements in its proposal regarding the extent of its experience. The alleged inaccurate statements can be placed into two categories: (1) statements regarding an Idaho ESA program currently being administrated by Odyssey; and (2) statements regarding two Arizona microgrant programs that were to be administered by Odyssey. The Idaho program is called the Empowering Parents Program and was created to provide supplemental funding to parents to make up for "learning loss experienced during the pandemic." (Ex. D1 at 230). The program is similar to the ESA envisioned by Iowa because Odyssey had to create and administer a program capable of collecting applications from parents and students, distributing funds to qualified individuals, and insure funds were being used pursuant to program rules. Nicholson Testimony, Tr. at 55, 57-58; Behrens Testimony Tr. at 156. The program's funding was \$50 million. (Ex. D1 at 230). In numerous places in its proposal, Odyssey represented that it had distributed \$50 million of the Idaho program funds to 50 thousand children. In reality, at the time Odyssey submitted its proposal, Odyssey had only distributed approximately \$31,397,000 of the \$50 million program to approximately 31,397 children. Ex. 2.

In regards to the Arizona programs, Odyssey represented that it had provided services to two Arizona programs called the Arizona Tax Credit Scholarship Child Opportunity Fund and the Arizona Microgrant Love Your School Program. Both programs required the following services from Odyssey: (1) marketing and outreach, (2) application verification; (3) marketplace creation; (4) payments; and (5) data retention. Ex. D1 at 231. However, contrary to its statements, Odyssey had not provided any services to either program because both programs were placed on hold due to a new government being elected in Arizona. *Id*; Connor Testimony, Tr. at 234. Both programs were officially cancelled in late February after Odyssey submitted its proposal to the RFP.

A hearing was held on May 3, 2023. At the hearing, Inspired Life argued that Odyssey made misleading and inaccurate statements that should have disqualified it from being considered for the Notice and Odyssey is not a Responsible Respondent as defined by the RFP. In response, Odyssey does not dispute that it made inaccurate statements about its experience. However, in regards to the Idaho program, Odyssey argued that it "reasonably believed" that it was going to distribute the full \$50 million to 50,000 students by the time its proposal was evaluated by the evaluation committee. In regards to the Arizona programs, Odyssey argued that it was ready to perform services for the Arizona programs, but the programs were canceled after it submitted its proposal. In addition, the Agency argued that Odyssey's inaccurate statements were not material, Odyssey proved that it could perform the services required by the RFP, and even if the evaluation committee had known about the inaccurate statements, such fact would not have changed the evaluation committee's decision to award Odyssey the Notice.

CONCLUSIONS OF LAW

I. Legal Background

DAS was “created for the purpose of managing and coordinating the major resources of state government including the human, financial, and physical resources of state government.” Iowa Code § 8A.103(1). In regards to physical resources, DAS has the duty to “[p]rovid[e] a system of uniform standards and specifications for purchasing.” Iowa Code § 8A.302(1). To that end, DAS has adopted rules related to purchasing goods and services, which are generally set forth in Chapters 117, 118, and 119 of its administrative rules.

DAS Central Procurement “is charged with procuring goods and services for agencies pursuant to Iowa Code chapter 8A” and DAS’s related administrative rules. *See* Iowa Admin. Code r. 11-1.4(6) (establishing the Central Procurement and Fleet Service Enterprise of DAS). An agency, however, may procure goods and services unique to its agency in accordance with Chapters 117, 118, and/or 119 of DAS’s rules, as applicable. *See* 11 IAC § 117.4(1), (2).

The overarching procurement policy of DAS is “to obtain goods and services from the private sector for public purposes to achieve value for the taxpayer through a competitive selection process that is fair, open, and objective.” 11 I.A.C. § 117.3. Competitive bidding of public contracts is purely statutory and is designed “for the protection of the public to secure by competition among bidders, the best results at the lowest price, and to forestall fraud, favoritism, and corruption in the making of contracts.” *Medco Behavioral Care Corp. v. Iowa Dep’t of Human Servs.*, 553 N.W.2d 556, 563 (Iowa 1996) (internal quotation marks and citations omitted).

Competitive selection processes are generally accomplished through either informal or formal competition. In the case of service contracts, competitive selection is required when the annual value of a service contract meets certain monetary thresholds. *See* 11 IAC § 117.3(1), (2). A formal competition selection process is required in cases where the value of a contract is \$50,000 or more or the multiyear value is \$150,000 or greater. *Id.* “Formal competition” is defined to mean “a competitive selection process that employs a request for proposal or other competitive selection process authorized by applicable law resulting in a service contract.” *Id.* There is no dispute that the procurement at issue in this case seeks a vendor who can provide a statewide system of managing payments for educational products and meets the criteria of 11 IAC § 118.5(1) requiring formal competitive selection. *See* Ex. A at 2.

The purpose of engaging in competitive selection for services utilizing the applicable formal or informal process is to provide an agency with the means “to compare provider qualifications, terms, conditions, and prices of equal or similar services in order to meet the objective of purchasing services based on quality, performance price, or any combination thereof.” 11 IAC § 118.3. Importantly, “[d]uring a competitive selection process, a state agency may weigh the relevant selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal. The lowest priced proposal is not necessarily the best proposal.” *Id.*

When engaging in the formal competition process for services, RFPs are required “whenever a requirement exists for a procurement and cost is not the sole evaluation criterion for selection.” The RFP is required to “provide information about a requirement for technical equipment or professional

services that is sufficient for the vendor to propose a solution to the requirement.” *Id.* § 117.9(4)(a). By rule, elements of an RFP include:

- (1) Purpose, intent and background of the requirement.
- (2) Key dates in the solicitation process.
- (3) Administrative requirements for submitting a proposal and format for the proposal.
- (4) Scope of work and performance requirements.
- (5) Evaluation criteria and method of proposal evaluation.
- (6) Contractual terms and conditions.
- (7) Need for a vendor conference.

Id.

The proposals submitted in response to an RFP remain sealed until the date and time set for opening. 11 IAC § 117.9(4)(b). All timely received proposals will be opened, and the “purchasing officer will review proposals for compliance with requirements before the proposals are submitted for evaluation.” *Id.* Broad discretion exists in determining and weighing criteria, as “[d]uring a competitive selection process, a state agency may weigh the relevant selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal.” *Id.* § 118.3. “The lowest priced proposal is not necessarily the best proposal.” *Id.* Moreover, material and nonmaterial variances from compliance requirements are permitted:

At its sole discretion, the department reserves the right to waive technical noncompliance with instructions when such noncompliance, as viewed by a reasonable and prudent person, did not result in an advantage to the vendor submitting the apparent lowest bid or best proposal or would not result in a disadvantage to other vendors submitting competing bids or proposals.

11 IAC § 117.19(10). Once referred for evaluation, an RFP “shall be evaluated according to criteria that are developed prior to the issuance of the request for proposal document and that consist of factors relating to technical capability and the approach for meeting performance requirements; competitiveness and reasonableness of price or cost; and managerial, financial and staffing capability.” 11 IAC § 117.9(4)”b”. “After evaluating responses to a solicitation using formal competition, [DAS] shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s).” *Id.* § 117.13(1). DAS “reserves the right to waive minor deficiencies and informalities if, in the judgment of the department, the best interest of the state of Iowa will be served. *Id.* §§117.13(2), (3).

“Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision . . . within five calendar days of the date of the award[.]” *Id.* § 117.20(1). “The notice of appeal shall state the grounds upon which the vendor challenges the department's award.” *Id.* § 117.20(1). “The aggrieved vendor may amend the grounds upon which the vendor challenges the department's award no later than 15 days prior to the date set for the hearing.” *Id.* § 117.20(d). A “presiding officer shall issue a proposed decision in writing,” and the decision will “become the final decision of [DAS]” unless timely appealed. *Id.* § 117.20(4).

II. Standard of Review

The standards to be applied by a presiding officer reviewing a notice of intent to award is not unequivocally stated in DAS's rules. In absence of a specific provision, the party seeking to set aside a notice of intent to award bears the burden of proof as the moving party. *See, e.g., Wonder Life Co. v. Liddy*, 207 N.W.2d 27, 31 (Iowa 1973) (holding, "in administrative proceedings, as well as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue"); *see also Norland v. Iowa Dept. of Job Services*, 412 N.W.2d 904, 910 (Iowa 1987).

As for what must be proved, this is a more difficult question. Each party advocates a slightly different theory, with DAS focusing on ensuring an open, fair, and competitive process, and Inspired Life relying more or less on the standard for reviewing final agency action found in the Iowa Administrative Procedures Act contained in Iowa Code section 17A.19 of unreasonable, irrationally, or affected by other errors of law.

First, a presiding officer issuing a proposed decision in an administrative review of a notice of intent to award is not a court reviewing final agency action. As such, while all agency action must adhere the standards contained in Iowa Code section 17A.19 to be valid, Iowa Code section 17A.19 does not technically apply to this proceeding. Instead, a presiding officer is participating in the process of making the final agency action in the first instance by issuing a proposed decision of the agency. The decision may become final if not appealed, and the presiding officer's authority flows from the agency itself. *See* Iowa Code § 17A.15. This approach appears consistent with other jurisdictions with similar reviewing structures. *See, e.g., Dynamic Solutions, LLC v. Tamp Bay Esuary Program*, 2011 WL 4944350, at *15 (Florida Div. Admin. Hear. Aug. 4, 2011).

With the understanding that a presiding officer is participating in the formation of the final agency action and not a review of finalized action, the most appropriate standard of review is whether the government substantially complied with the relevant rules and procedures applicable to the solicitation at issue, and if not, whether the noncompliance resulted in such prejudice to the non-prevailing vendor(s) demanding a conclusion the procurement process was not conducted fairly, openly or objectively. *Public Consulting Group v. Iowa Department of Administrative Services*, Appeal No. 18DASV0007, Final Decision (Designee of the Director of DAS, January 4, 2019); *Willett v. Cerro Gordo Cty. Zoning Bd. of Adjustment*, 490 N.W.2d 556, 560 (Iowa 1992). Substantial compliance is defined as "compliance in respect to essential matters necessary to assure the reasonable objectives of the statute." *Sims v. NCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009).

III. Notice and Standing

DAS and Odyssey argue that Inspired Life's appeal should be dismissed without reaching the merits of its case because it did not timely file its Notice of Appeal and Inspired Life lacks standing. Both arguments are rejected for the reasons set forth below.

A. Notice

The Agency and Odyssey argue that Inspired Life failed to properly and timely initiate its appeal because it submitted its request for appeal to the issuing officer at DAS, not the Director of DAS. Iowa Admin. Code r. 11-117.20(1) provides as follows:

Any vendor that filed a timely bid or proposal that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal before the Director, Department of Administrative Service, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319, within five calendar days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays. The department must actually receive the notice of appeal within the specified time frame for it to be considered timely.

The interpretation of Rule 11-117.20(1) proposed by the Agency and Odyssey is too narrow and will not be adopted by this Tribunal. Iowa Courts have held that notices of appeal should be liberally construed to preserve the right of review and only substantial compliance with the requisites of the statutes or rules is required. *See Iowa Dept. of Human Services ex rel. Greenhaw v. Stewart*, 579 N.W.2d 321 (Iowa 1998) (holding that “[n]otices of appeal should be liberally construed so as to preserve the right of review, and permit, if possible, a hearing on the merits; only substantial compliance with the forms and requisites of the statutes or rules of court is required . . .”).

Here, the purpose of Rule 11-117.20(1) is to ensure that appeals are timely filed within five days of the date of the award and that DAS has notice of any such appeals. In this case, Inspired Life provided notice to DAS of its appeal by emailing DAS’s procurement manager its Notice of Appeal including the issues it was raising in its appeal and Inspired Life submitted its Notice of Appeal within the five day timeline. Although Inspired Life did not address its email to the director of DAS but instead to the procurement manager, Inspired Life provided DAS with notice of its appeal and substantially complied with Rule 11-117.20(1).

B. Standing

In addition, the Agency and Odyssey both argue that Inspired Life does not have standing to appeal DAS’s decision to award the Notice to Odyssey. Specifically, they argue that Inspired Life does not have a specific, personal, and legal interest in this litigation because Inspired Life’s proposal failed to obtain the minimum technical score and would not have been in line to receive the Notice even if irregularities are found with Odyssey’s proposal. This argument is also rejected.

The Iowa Supreme Court “has formulated a two-prong test for standing under the Iowa Administrative Procedure Act (IAPA): the complaining party must (1) have a specific, personal, and legal interest in the litigation; and (2) the specific interest must be adversely affected by the agency action in question.” *Medco*, 553 N.W. 2d at 561. The argument that Inspired Life does not have standing in this matter assumes that when irregularities are found in the procurement process, the only remedy is to disqualify the winning bidder and award the notice to the second place bidder or another bidder whose proposal met the minimum score for the technical evaluation. However, there is no such requirement. Indeed, there are no rules or regulations specifying what remedy should be awarded when a winning bidder has been disqualified. *See* 11 IAC § 117.20. Rather, the Agency is afforded great discretion in determining how to remedy irregularities in the procurement process, including redoing the bidding process altogether. *See Noridian Administrative Services, LLC v. Iowa Department of Human Services*, Ruling on Petition for Judicial Review, CV8960 (Iowa Dist. Ct. Dec. 7, 2012) (finding that the procurement process was so flawed that awarding the notice to the second place bidder would be inappropriate and requiring the Agency to redo the bidding process entirely).

Therefore, if irregularities are found in the procurement process for the current case, an appropriate remedy may be to require the Agency to redo the entire bidding process. If the bidding process is reopened, Inspired Life would have an opportunity to submit a new proposal. Because Inspired Life may have the opportunity to submit a new proposal if it can demonstrate that the procurement process in this case was flawed, it has a specific, legal interest in this appeal and such interest was adversely affected by the Agency's decision to award the Notice to Odyssey.

IV. The Procurement Process.

The touchstone of a valid procurement process is one that is “fair, open . . . objective” and otherwise compliant with the governing law. 11 I.A.C. § 117.3. As discussed above, agencies select vendors “on the basis of criteria contained in the competitive selection document.” See 11 IAC § 117.13. When procuring services, Agencies are afforded great deference. 11 IAC § 118.3 (“during a competitive selection process a state agency may weigh selection criteria in whatever fashion it believes will enable it to select the service provider that submits the best proposal”); *Keystone Peer Review Org., Inc. v. Iowa Dep't of Human Servs.*, Appeal No. MED20000482, Final Decision at 11, (Designee of the Director, June 30, 2020).

Although the Agency is afforded great discretion, Iowa courts have found that if the Agency does not follow certain procedural processes, such failure can call into question the integrity of the competitive procurement process necessitating reversal of the Agency's decision. For example, in *Medco*, the court found that the winning bidder had an “appearance of impropriety” or a conflict of interest because a subsidiary of the winning bidder assisted the department in preparing the RFP. 553 N.W.2d at 564-65. The court found that such conflict “tainted the procurement process” requiring disqualification of the winning bidder. In *Noridian*, the court found prejudice and required the agency to redo the entire procurement process because the agency failed to convene a cost committee as required by the RFP. *Noridian*, Ruling on Petition for Judicial Review, CV8960 (Iowa Dist. Ct. Dec. 7, 2012).

Here, as an initial matter, no dispute exists that the Agency had the authority to issue an RFP for the ESA and the RFP could require companies to provide background information regarding their experience in the area. In addition, there is no dispute that the Agency had discretion to weigh the categories in the RFP as it saw fit and there is no allegation of bias on the part of the Agency or the evaluation committee. Rather, in its appeal, Inspired Life raises two issues related to representations made by Odyssey in its Proposal: (1) Odyssey made inaccurate statements meant to mislead the evaluation committee and therefore Odyssey did not constitute a Responsible Respondent; and (2) the Agency acted unreasonably and irrationally when it failed to verify Odyssey's representations in its Proposal. Inspired Life argues that Odyssey made the following inaccurate statements: (1) Odyssey inflated the number of applicants it processed, the number of applicants it approved, and the amount of money it distributed as part of Idaho's Empowering Parents Program; and (2) Odyssey stated that it provided certain services to Arizona's Love Your School Microgrant Program and Tax Credit Scholarship – Child Improvement Fund; however, neither program existed. As discussed below, none of the issues raised by Inspired Life require the rescinding of the Notice to Odyssey.

A. No Evidence of Bad Faith

Inspired Life's primary argument in its appeal is that Odyssey made inaccurate statements in its Proposal and, therefore, Odyssey does not meet the definition of a “Responsible bidder” under the Iowa Administrative Code or “Responsible Respondent” under the RFP. The Iowa Administrative

Code defines a “Responsible bidder” as a “vendor that has the capability in all material respects to perform the contract requirements.” 11 IAC § 117.2. Similarly, the RFP defines a “Responsible Respondent” as a respondent that can perform the contract requirements but also states that the Agency may consider various factors when determining whether a respondent is a “Responsible Respondent” including “Respondent’s competence and qualification to provide the goods or services requested, the Respondent’s integrity and reliability, the past performance of the Respondent and the best interest of the Agency and the State.” Ex. A at 2-3. In making its argument, Inspired Life focuses on the RFP’s definition of Responsible Respondent, arguing that Odyssey does not have integrity or reliability.

Iowa courts have had limited opportunities to address Iowa’s procurement laws and this Tribunal found only one previous decision that addressed the issue of misrepresentations or misleading information in a proposal submitted by a winning bidder. In a recent director decision, *Public Consulting Group v. Iowa Department of Administrative Services*, Appeal No. 18DASV0007, Final Decision (Designee of the Director of DAS, January 4, 2019), the Director of the Department of Administrative Services concluded that even though inaccurate financial information regarding the winner bidder was submitted, there was no structural error in the procurement process requiring the award to be overturned when there was no bad faith on the part of the winning bidder in submitting such information and no evidence that the winning bidder could not perform the work required by the RFP.

Here, it is undisputed that Odyssey made inaccurate statements regarding its experience in its proposal. In regards to the Idaho program, Odyssey made representations that it distributed more funds to more students than it had at the time it submitted its proposal to DAS.¹ At the time Odyssey submitted its proposal, it had distributed approximately \$31.4 million to 31,397 children. However, Odyssey rounded up in its proposal and stated that it had “successfully distributed \$50 million to families in ESA and microgrant programs” and helped over 50,000 children access the programs. *See* Ex. D1 at 221, 223. Odyssey did not meet the \$50 million benchmark until March 2023, or a few weeks after it submitted its proposal. At the hearing, Odyssey’s CEO testified that he “reasonably thought” that by the time Odyssey’s proposal was considered, Odyssey would have met the numbers it presented in its proposal, *i.e.*, \$50 million distributed to 50,000 students. *See* Connor Testimony Tr. 231-32 (“At the time we submitted the RFP, we reasonably thought we were at or near that number. As it turns out, it took a little longer for us to hit that number, but today we are beyond that.”).

Although Odyssey’s inaccurate statements are concerning and Odyssey should have performed more due diligence before submitting its proposal, the record does not support a finding of bad faith. Odyssey’s Idaho program is similar to the program contemplated by the RFP in that Odyssey collects applications and distributes disbursements to students on a daily basis. For example, in two days, from February 22, 2023 to February 24, 2023, Odyssey distributed approximately \$2.6 million dollars to two thousand children. Ex. 2. Therefore, the amount of money distributed and the amount of students receiving funds from the Idaho program were constantly increasing. There is no

¹ Inspired Life argued that Odyssey also misrepresented the amount of applications it processed in its proposal. However, Odyssey explained that it calculates every single parent and student as an applicant because every parent and student must be verified individually. When calculated in this manner, Odyssey’s representation that it had processed over 75,000 applications was accurate. Connor Testimony Tr. 237. In addition, Inspired Life argued that Odyssey incorrectly stated that it contacted 1,000 vendors who were ready to participate in its program. However, Inspired Life misstates Odyssey’s proposal. Odyssey only stated that it had conducted outreach to generate a list of vendors; it did not represent that it had contacted all 1,000 vendors. Ex. D1 at 225.

evidence in the record that Odyssey's belief that it would reach the \$50 million distributed benchmark at the time it submitted its proposal was unreasonable or irrational. Indeed, Odyssey met the benchmark only a few weeks after it submitted its proposal. Connor Testimony Tr. at 232.

In regards to the Arizona programs, Odyssey inaccurately stated in its proposal that it had performed services for the two programs when, in reality, Odyssey had not performed any services for the programs. Inspired Life implies that Odyssey knew it was not going to perform any services for the programs because there were no written agreements in place and Odyssey did not call any of the Arizona program administrators as witnesses. However, Inspired Life's argument is not supported by the record. At the hearing, Odyssey's CEO testified that Odyssey was supposed to provide services to the Arizona programs and he "reasonably thought" that Odyssey, in fact, would have performed such services if the programs were not cancelled by Arizona's new governor after Odyssey submitted its proposal. Further, although Odyssey did not call the program administrators as witnesses at the hearing, Odyssey did not hide such information from the evaluation committee but provided their names and contact information in its proposal. In addition, it is Inspired Life's burden in this case; Odyssey was under no obligation to call the program administrators as witnesses and no adverse inference will be applied by this Tribunal on the fact that it did not.

Inspired Life is correct that Odyssey should have been more diligent and careful when making representations about its experience in its proposal. *See* Connor Testimony Tr. 253-56 (testifying that it was a group effort to put together Odyssey's Proposal and due to the rushed nature of the deadline to submit proposals, the exact figure of how many dollars had been distributed to the number of children was not sought). However, the record does not support a finding that Odyssey made such representations in bad faith.

Finally, and importantly, notably absent from the record is any evidence that Odyssey lacks the ability to perform the services contemplated by the subject RFP. Indeed, the evaluation committee was impressed that Odyssey had previously implemented an ESA program like the one contemplated by the RFP. A member of the evaluation committee testified as follows:

[W]hat [the evaluation committee was] looking for was did [Odyssey] have valid experience. [The Idaho program] is clearly an analogous program, although it is smaller in scope to what Iowa is proposing.

In this instance 50 million is the same as 10 million or a hundred million. [Odyssey was] able to take applications. They were able to keep that information secure. They were able to administer and distribute funds. They were able to provide that service, and they were able to do it in a quick time frame. So this experience as outlined with Idaho is valid.

Nicholson Testimony Tr. 56-57.

Considering both the definition of Responsible Respondent under the RFP and the recent director decision addressing misstatements in proposals, this Tribunal finds that Odyssey did not make the inaccurate statements in bad faith. In addition, even though Odyssey made inaccurate statements regarding its experience, there is no evidence that Odyssey is unable to perform the contract requirements. Accordingly, the Agency did not error in finding that Odyssey was a Responsible Respondent under the RFP.

B. Inaccurate Statements are not Material

Inspired Life argues that Odyssey's inaccurate statements are material to the evaluation committee's determination of whether Odyssey can perform the contract requirements and therefore the Notice must be rescinded. Inspired Life cites federal procurement cases in support of its argument. *See GTA Containers, Inc. v. United States*, 103 Fed. Ct. 471 (2012) (finding that when misrepresentations are made in a proposal, courts need to examine whether the agency relied on the statement in making its decision); *Blue & Gold Fleet, LP v. United States*, 70 Fed. Cl. 487 (2006) (holding that a proposal should be disqualified when a material misrepresentation influences the award of a contract). Although Federal procurement cases have limited guidance in Iowa procurement cases due to differences in the legal structure governing the two processes, federal procurement cases would not require rescission in this case. Odyssey's inaccurate statements are not material to the contract requirements and the evaluation committee did not rely on Odyssey's inaccurate statements in making its decision.

Odyssey's inaccurate statements are not material to the contract requirements. Although the RFP requested information regarding a respondent's experience, the Agency, in its discretion, chose not to place a lot of weight on a respondent's experience. The total possible points that could be awarded for the "experience" criterion was only 50 as compared to 150 points for "proposed software platform details" and 100 points available for "technology." Ex. E at 359, 361. One evaluation committee member testified that the ESA industry is new and, as a result, the Agency understood that no respondent would have a lot of experience or expertise in the ESA industry. Nicholson Testimony Tr. 39 (testifying that the evaluation committee knew that their applicant pool would be limited because there are not a lot of vendors specializing in ESAs and therefore they did not place much weight on experience); *See also* Paulson Testimony Tr. 119 (testifying that ESA is "relatively new across the country" and if you "overweigh" experience "all you're doing is picking incumbents"). In light of the fact that ESA is a new industry, the RFP did not require respondents to disclose specific information about any previous ESA programs that they administered, such as total dollar amount distributed to students. Rather, the RFP only required respondents to provide general information regarding business experience and experience with providing the services requested by the RFP. Paulson Testimony Tr. at 123-125 (testifying that specific dollar figures for prior programs that involved respondents was of no importance; what was important was "validation that they had done [the work]").

Further, the evaluation committee did not rely on Odyssey's inaccurate statements in making its decision to award the Notice to Odyssey. The evaluation committee members understood that Odyssey's statements that it distributed \$50 million in funds to 50,000 students were merely estimates. Behrens Testimony Tr. 172 (testifying that all proposals are given a degree of skepticism because the respondents "want[] to put their best foot forward"); Paulson Testimony Tr. 125-29, 147 (testifying that he knew that the figures used by Odyssey were rounded up and not exact figures and Odyssey's representations regarding Idaho would not have impacted his decision). In regards to the Arizona programs, the evaluation committee did not focus as much on the programs because unlike the Idaho program, the programs were not similar to the program contemplated by the RFP. Nicholson Testimony Tr. 89-90. In short, the evaluation committee members were much more concerned with whether Odyssey was able to perform the contract requirements than whether Odyssey had actually distributed \$50,000 to 50,000 children or completed the Arizona programs. Nicholson Testimony Tr. 56-57. Importantly, none of the inaccurate statements relate to mandatory requirements found in Section 4.0 of the RFP. Consequently, Odyssey's inaccurate statements are not material to the contract requirements and do not require rescinding the Notice to Odyssey.

C. Verification of Proposals

Inspired Life also argues that the Award should be rescinded because DAS acted “unreasonable and irrational” by failing to validate and/or verify all the information submitted in Odyssey’s proposal. Inspired Life suggests that DAS should have investigated all claims made by Odyssey regarding its prior experience. However, there is no such requirement under Iowa law or in the RFP. *See* Ex. A, Sections 2.15, 2.16 (providing the agency with discretion to consider other information and/or verify proposal contents). Rather, the procurement process itself provides for the vetting of possible vendors through the formation of the evaluation committee who reviews proposals and demonstrations by respondent bidders.

Further, while there is no requirement to verify all contents of a proposal, it is undisputed that DAS did complete preliminary verification of the respondent bidders in this case. DAS reviewed whether the respondent bidders were on a list of contractors doing business for the federal government and whether respondent bidders were registered to do business in Iowa. In addition, DAS independently verified Odyssey’s experience in Idaho because the services Odyssey provided in Idaho were very similar to what was being requested by the RFP. Wendt Testimony Tr. 192-93. Accordingly, the failure of the Agency to discover the inaccurate statements in Odyssey’s proposal and the Agency’s decision to continue with the Notice after learning of the misrepresentations is not unreasonable or irrational.

D. Inspired Life did not Suffer Prejudice

Under Iowa law it is not enough for a non-prevailing vendor to show that there was a defect in the procurement process, the non-prevailing vendor must also show that the defect caused it prejudice such that the procurement process was not conducted fairly, openly or objectively. *Public Consulting Group v. Iowa Department of Administrative Services*, Appeal No. 18DASV0007, Final Decision (Designee of the Director of DAS, January 4, 2019). To prove prejudice, the protesting bidder must establish that there was a substantial chance that it would have been awarded the contract but for the alleged defect in the agency procedure. *Hill v. Fleetguard, Inc.*, 705 N.W.2d 655, 671 (Iowa 2005) (holding that the agency’s action “should not be tampered with unless the complaining party has in fact been harmed;” finding the “substantial rights” language in Iowa Code § 17A.19(10) is “analogous to a harmless error rule”).

In this case, there was not a “substantial chance” that Inspired Life would have received the contract award absent the inaccurate statements in Odyssey’s proposal. This is due to one simple fact: Inspired Life’s proposal did not receive the minimum technical threshold score of 420 points. Ex. E. Because Inspired Life’s proposal did not meet the minimum technical score, the RFP required that Inspired Life be disqualified without even consideration of its cost proposal. Therefore, even without consideration of Odyssey’s proposal, Inspired Life would not have been awarded the Notice. Inspired Life suffered no prejudice as a result of the Agency’s actions in this case. *See* Nicholson Testimony, Tr. 52, 70 (testifying that in light of Inspired Life’s low score, Inspired Life would not have been awarded the contract no matter how Odyssey had been scored).

In sum, the Agency complied with Iowa law and the requirements in the RFP. Inspired Life has failed to establish that the procurement process contained a procedural deficiency so material that such deficiency requires rescinding the Notice to Odyssey.

ORDER

DAS's action in this case is AFFIRMED. DAS shall take whatever action is necessary to implement this decision. The materials subject to the protective order shall retain their protection and the disposition of such materials will occur as discussed at the hearing.

IT IS SO ORDERED.

cc:

Inspired Life, Walt Rogers, walt@inspired-life.com (By Mail and Email)

Nicholas Mauro, Attorney for Inspired Life, mauro@carneyappleby.com (By Mail and Email)

Mark Schultheis Attorney for Intervenor, mas@swlawiowa.com (By Mail and Email)

Patrick White, Attorney for Intervenor, pwhite@swlawiowa.com (By Mail and Email)

Andrew Ewing, AG Office, andrew.ewing@ag.iowa.gov (By AEDMS)

David Faith, AG Office, david.faith@ag.iowa.gov (By AEDMS)

Karl Wendt, karl.wendt@iowa.gov (By Email)

NOTICE

The proposed decision shall become the final decision of the department 15 days after mailing the proposed decision, unless prior to that time a party submits an appeal of the proposed decision. 11 I.A.C. § 117.20(4)(a). A party appealing the proposed decision shall mail or deliver the notices of appeal to the Director, Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. *Id.* § 117.20(4)(b).

Case Title: INSPIRED LIFE V. DEPARTMENT OF ADMINISTRATIVE SERVICES
Case Number: 23DASV0003
Type: Proposed Decision

IT IS SO ORDERED.



Rachel Morgan, Administrative Law Judge

Exhibit 4

CONTRACT AMENDMENT AND SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered effective September 25, 2023 by and between Primary Class, Inc. dba Odyssey (“Odyssey”) and the State of Idaho, by and through the Department of Administration, Division of Purchasing (“Purchasing”) and the Idaho State Board of Education (“SBOE”) (Purchasing and SBOE are collectively referred to as the “State”). Odyssey and the State are collectively referred to as “Parties”.

RECITALS

- A. Following a Request for Quote, Purchasing and Odyssey entered into State Contract No. CPO20231354 for the benefit of SBOE to procure grant administration and creation of a virtual marketplace for the Empowering Parents Grant Program (the “Contract”). The original contract value was \$1,485,000.00.
- B. SBOE initially received a fund allocation of \$50,000,000.00 for the Empowering Parents Grant Program. On July 1, 2023, SBOE received an additional fund allocation of \$30,000,000.00. Time is of the essence to award and distribute all currently allocated funds prior to June 30, 2024.
- C. Since entering into the Contract, both parties found it helpful to clarify certain issues as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein as if set forth in full, and the mutual promises and covenants herein contained, the Parties agree as follows:

1. The effective date of this Contract Amendment and Settlement Agreement (“Agreement”) is September 25, 2023 (“Effective Date”). This Agreement fully clarifies all issues raised by the Parties.
2. The Contract remains in full force and effect in accordance with its terms except as specifically modified in this Agreement.
3. The Contract is hereby amended by deleting Request for Quotation section 6 and replacing section 6 in its entirety with the following:

6 Delivery and Term

The system must be implemented and the Contractor must be administering the program as detailed in Appendix A within thirty (30) days of contract award.

The term of the Contract is for two (2) years, through August 8, 2024, and includes any fund allocations which the Board Office assigns to this Contract in Fiscal Year 2024. For each fund allocation assigned by the Board Office to this Contract, the Contractor must: (a) make new parent applications available

in compliance with Appendix A within thirty (30) days of the Board Office notifying Contractor in writing that the newly allocated funds are assigned to this Contract; and (b) begin processing such applications upon receipt. In order for the Contractor to meet the thirty day requirements set forth herein the State must perform all necessary conditions to allow Contractor to perform. Time is of the essence due to the need to provide education supplies and services to Idaho students as soon as practical.

4. This Agreement serves as notice that the new \$30,000,000.00 fund allocation is assigned to the Contract. The Contractor agrees to make new parent applications available in compliance with Appendix A within thirty (30) days of the Effective Date.

5. In consideration for services to be rendered and upon the Contractor meeting certain payment prerequisites, the State will pay the Contractor an amount not to exceed eight hundred ninety thousand dollars and 00/00 (\$890,000.00), in the following increments:

- Two hundred twenty-two thousand five hundred dollars and 00/00 (\$222,500.00) upon signature and prior to the Contractor's start of implementation for the \$30,000,000.00 fund allocation;
- Four hundred forty-five thousand dollars and 00/00 (\$445,000.00) once the new parent applications for the \$30,000,000.00 fund allocation go live;
- Forty four thousand five hundred dollars and 00/00 (\$44,500.00) when \$6,000,000 of the \$30,000,000.00 fund allocation is awarded to parents;
- Forty four thousand five hundred dollars and 00/00 (\$44,500.00) when \$12,000,000 of the \$30,000,000.00 fund allocation is awarded to parents;
- Forty four thousand five hundred dollars and 00/00 (\$44,500.00) when \$18,000,000 of the \$30,000,000.00 fund allocation is awarded to parents;
- Forty four thousand five hundred dollars and 00/00 (\$44,500.00) when \$24,000,000 of the \$30,000,000.00 fund allocation is awarded to parents; and
- Forty four thousand five hundred dollars and 00/00 (\$44,500.00) when entirety of the \$30,000,000.00 fund allocation is awarded to parents.

The Contractor forfeits the payment associated with any payment prerequisite that is not met in its entirety prior to the expiration of this Contract.

6. The Contract is hereby amended by deleting Request for Quotation Appendix C, section 5.2.1 and replacing section 5.2.1 in its entirety with the following:

- 5.2.1 Contractor shall hold the monies it receives from the Board Office for Awardee Accounts and all interest earned on such monies (the "State Funds") in a segregated, interest-bearing account held in trust for the State (the "Contractor Segregated Account"). Within thirty (30) days of the Effective Date, Contractor must distribute all interest earned in the interest-bearing account through October 15, 2023 to the Board Office. Thereafter, the Contractor must distribute interest earned in the interest-bearing account to the Board office on a monthly basis, such payment being due no later than thirty (30) days after the interest is earned.

5.2.1.1 The Contractor Segregated Account shall be used solely for the purpose of collecting State Funds and crediting them to Awardee Accounts.

5.2.1.2 Contractor shall identify the Contractor Segregated Account as tax exempt. Upon request, the State shall provide all documentation requested by a financial institution to identify the account as tax exempt. Contractor agrees it is responsible for any taxes incurred as a result of its failure to identify the Contractor Segregated Account as tax exempt.

5.2.1.3 Notwithstanding the provisions of this Contract, the Board Office will reimburse Contractor such amounts necessary to satisfy any federal or state tax liability to Contractor resulting from maintenance of the Contractor Segregated Account up to and including October 15, 2023. Contractor shall provide to the State a written statement signed by a certified public accountant verifying the Contractor's tax liability and that it has been determined in accordance with generally accepted accounting principles.

7. The Contract is hereby amended by deleting Request for Quotation Appendix C, section 5.2.4 and replacing section 5.2.4 in its entirety with the following:

5.2.4 Contractor shall provide the Board Office with real-time online access to view the Contractor Segregated Account. The online access shall allow the Board Office to review all electronic transactions when posted to the Contractor Segregated Account and monthly statements associated with the Contractor Segregated Account.

8. Public Statements. Neither party shall issue a public statement regarding this Agreement without previously consulting with the other parties. However, Contractor understands this Agreement is a public record subject to the Public Records Act, Idaho Code § 74-101, *et. seq.*

9. Expenses. The Parties shall each bear their own costs and expenses related to or arising from this Agreement.

10. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to the jurisdiction and exclusive venue of the state courts located in Ada County in the State of Idaho in the event of any dispute with respect to the Agreement.

11. Entire Agreement. The Contract as amended by this Agreement constitutes the entire agreement between the Parties hereto and shall supersede all previous proposals, oral or written, negotiations, representations commitments, and all other communications between the Parties.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13. Severability. If any provision of this Agreement is held invalid, illegal or unenforceable by a court or tribunal of competent jurisdiction, this Agreement will be deemed severable and all

other provisions will remain in full force and effect, provided that does not materially affect the Parties' rights under this Agreement or the Contract.

[Signature Page Follows]

The Parties, through their respective authorized agents, hereby execute this Agreement as of the Effective Date.

State of Idaho

Idaho State Board of Education

By 
Its Executive Director
Date: 10/13/2023

Department of Administration, Division of Purchasing

By 
Its Contract Administrator
Date: 10/13/2023

Primary Class, Inc.

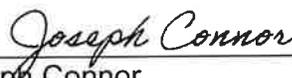
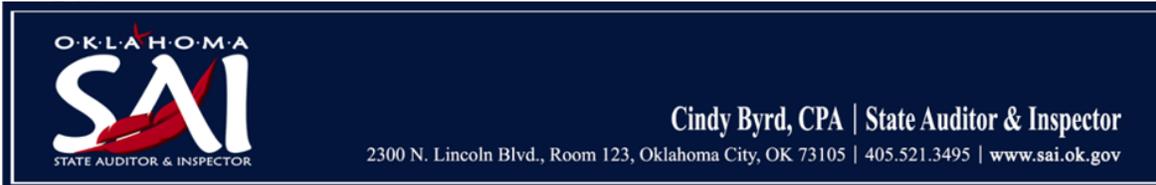
By 
Its Joseph Connor
Date: 10/12/23

Exhibit 5



STATE AUDITOR BYRD RELEASES FEDERAL SINGLE AUDIT “The State of Oklahoma dropped the ball on compliance and oversight.”

OKLAHOMA CITY, OK (June 27, 2023)

Oklahoma State Auditor & Inspector (SAI) Cindy Byrd released today the Federal Single Audit of expenditures made during SFY 2021 which includes pandemic funds. This annual audit is a federally-mandated examination of how the State of Oklahoma spends federal grant money and whether the State complied with federal regulations.

The audit report covers \$14 billion dollars of expenditures which are audited through a federal formula provided by the federal government.

The administration of federal grants requires specialized knowledge of federal laws and regulations, implementation guidelines, as well as monitoring and reporting requirements.

SAI is required to report ‘questioned costs’ that fail to align with the objectives of the grant. The federal government will review the reported questioned costs and determine if the State must repay misappropriated funds.

“Every federal grant comes with very strict requirements which the State of Oklahoma agrees to follow,” said Auditor Cindy Byrd. “Any person in charge of managing federal grants needs a certain level of proficiency because the compliance regulations are very complicated.”

The audit report reveals the following findings of note:

CARES

The State of Oklahoma was awarded federal grant funds through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES) to mitigate the effects of the pandemic. For SFY 2021, the State expended \$1.1 billion dollars on personal protective equipment (PPE), health services, payroll, and other COVID related expenses. State agencies, counties and cities were required to submit reimbursements of expenditures to the State of Oklahoma; however, the State did not obtain sufficient documentation to ensure the payments were made for COVID related expenditures and did not ensure that the goods and/or services were received prior to payment. Because of this, **SAI has reported \$12.2 million dollars in questioned costs.**

EMERGENCY RENTAL ASSISTANCE

Oklahoma received more than \$376 million dollars for the Emergency Rental Assistance (ERA) program to assist households unable to pay rent or utilities during the pandemic. For SFY 2021, the average award per application was \$1,975 dollars. The State failed to properly oversee the expenditures of this program and allowed an OKC foundation that was administering the ERA program to charge a management fee in addition to the actual ERA program administrative expenditures, effectively doubling the amount charged for administrative costs.

During the audit period, the OKC foundation charged the ERA program \$1.6 million dollars in excessive management fees that were not needed for the administration of the grant. Because of the administrative overcharge, many Oklahomans who applied for ERA awards were denied assistance because the unallowable charges were kept by the OKC foundation. **SAI has reported \$1.6 million dollars in questioned costs.**

In September of 2022, SAI alerted the State that these management fees were unallowable costs, but **the State failed to stop the overcharge of administrative fees to the ERA grant** which has resulted in an additional \$8.6 million dollars in unallowable costs as of June 30, 2022. If these processes continue, the total State of Oklahoma ERA program unallowable costs may increase to \$15 million by the end of SFY 2023.

GEER

Among the expenditures investigated was \$39.9 million designated for the Governor's Emergency Education Relief Fund (GEER). GEER was designed for Governors to decide how best to meet the needs of educating students during the pandemic.

Two GEER programs, *Bridge The Gap* (BTG) and *Stay In School (SIS)*, had significant issues. Both programs were designed to help families facing an economic hardship due to the pandemic and were marketed as being awarded on a first come, first served basis.

BRIDGE THE GAP:

Bridge The Gap (BTG) had a budget of \$8 million dollars to help low-income families purchase education supplies, curriculum, technology, and tutoring for their child to effectively learn at home during COVID.

5,000 families received \$1,500 each which they could spend at designated retailers. However, the State of Oklahoma did not place any restrictions or parameters on which items families could purchase.

"Proper system controls were offered by the digital wallet vendor to limit the families' purchases to education-related items but those controls were declined by the individual placed in charge of the BTG program," Auditor Byrd said. "We found that \$1.7 million was spent on various non-educational items such as kitchen appliances, power tools, furniture, and entertainment."

Almost 20% of the total purchases were spent on items not related to educational learning per the grant guidelines. In July 2022, the Federal government demanded \$650,000 to be returned from their high-level review of the BTG digital wallet program. **SAI has reported \$1.8 million dollars in questioned costs which includes the \$650,000.**

STAY IN SCHOOL:

Stay In School (SIS) had a budget of \$10 million to help low-income families cover the families' portion of school tuition in order to keep their child(ren) in their existing private school. The program was designed to assist 1,500 or more low-income families who could qualify for up to \$6,500 dollars per student.

The audit uncovered a deliberate operation to give selected private schools and individuals preferential treatment by allowing early access for application submission prior to the date this program was offered to the general public. It was also determined that awards were provided to 1,073 students whose family attested that they had not suffered an economic hardship due to the pandemic.

Sixty-five percent (65%) of the total budget, \$6.5 million worth of grant funds, were identified as questionable because the grant objectives were disregarded. **As a result, 657 students of low-income families who qualified for the SIS program did not get the financial assistance they requested because the funds were exhausted.** Of the \$6.5 million in question, \$1.8 million was paid to private schools in excess of the families' tuition responsibility. **SAI has reported \$6.5 million dollars in questioned costs.**

SPECIAL INTEREST INVOLVEMENT:

The State abdicated its responsibility to administer and oversee the GEER funds and placed outside individuals in the role of program decision-makers of the GEER award without a contract to govern their involvement. These individuals were responsible for coordinating the program details including the application process with the digital wallet vendor.

These individuals neither had the authority nor did they meet federal qualifications to administer or oversee these grant funds. Consequently, federal guidelines, compliance requirements, and mandates to retain records were not followed.

"This was a tangled web of government agencies, non-profit organizations, and non-government individuals representing special interest groups managing millions of tax dollars with no contracts and no written agreements," Auditor Byrd said. "Sadly, millions of tax dollars were misspent because certain individuals who were put in charge of managing these programs seemingly ignored federal grant guidelines."

COLLECTION OF STUDENT DATA:

The outside individuals representing special interest groups requested that grant applications be customized to include two questions asking whether the student had a disability and/or an Individualized Education Program (IEP). To submit their applications, families were forced to provide their child's personal information which was never an eligibility requirement for these awards. **The State of Oklahoma failed to ensure that private information collected from families followed the guidelines of the *Family Educational Rights and Privacy Act (FERPA)*.**

"These outside groups were allowed to collect and view personal student information without a contract; therefore, we do not know where this personal student information is being stored or how it is being used by these outside parties" said Auditor Byrd.

From emails, the special interest groups also invited an outside "data scientist" to review the information collected from the BTG program.

LACK OF STATE OVERSIGHT:

The State was officially responsible for all decision-making, monitoring, reporting, and administering of the GEER grant. The State was also responsible for ensuring third parties complied with all grant regulations and objectives. **The State was not allowed to relinquish those duties to any other entity yet that is what occurred.**

The State of Oklahoma also neglected to monitor and file the proper federal compliance reports for the GEER funds. In June 2021, the Federal government warned the State of Oklahoma about its lack of monitoring and reporting of the GEER grant. The State then hired a consulting firm to monitor the GEER funds. The State of Oklahoma has paid \$325,000 to the firm to monitor the GEER program but the firm has not fulfilled the duties for which it was paid. This same consulting firm has been paid \$1.3 million dollars to date to perform subrecipient monitoring and reporting requirements for both the CARES and GEER program which are the largest questioned costs for the Single Audit.

Further, the State of Oklahoma granted the digital wallet vendor an \$18 million contract without employing a competitive consideration process.

AUDITOR'S CONCLUSION:

"Oklahoma has systemic issues that make me very concerned for taxpayers. When federal grant money is spent incorrectly, the federal government has the authority to demand repayment from the people of Oklahoma. **If the federal government decides the State must pay back these questioned costs, you and I will end up paying the bill.** If that happens, gross mismanagement and lack of compliance and oversight will be to blame."

"The State of Oklahoma dropped the ball on compliance and oversight."

SFY21 SINGLE AUDIT FINDINGS:

State Agency	SFY21 # of Findings (# of Repeats)	Federal Questioned Costs
CARES Forward	8 (0)	\$13,941,987
State of Oklahoma/Governor's Office	4 (0)	\$8,404,700
Dept. of Education	4 (2)	\$0
Office of Emergency Management	3 (0)	\$0
Employment Security Commission	11 (4)	\$222,951
Oklahoma Health Care Authority	6 (5)	\$286*
Dept. of Health	8 (3)	\$45,193
Dept. of Human Services	26 (13)	\$1,481,565 (federal); \$893,864 (state MOE/match)
Human Services/Health Care Authority	3 (2)	\$0
Dept. of Transportation	8 (0)	\$5,141,550
Dept. of Veterans Affairs	1 (0)	\$57,740
Total	82 (29)	\$29,295,972 (federal) \$893,864 (state MOE/match)

**Due to disclaimer, unable to identify all questioned costs*

The full audit report is now posted on the Oklahoma State Auditor & Inspector's official website: www.sai.ok.gov.

To schedule an interview with Cindy Byrd, please contact Andrew Speno at 405-315-5924.

Link: [SFY 21 Federal Single Audit](#)

YELLOW SHEET REPORT

A product of Arizona Capitol Times

Thursday, July 13, 2023

News Notes & Gossip

Talk about bad timing

An ESA parent claimed they were able to access thousands of purchases from other parents in the program through her ClassWallet account. One of her five children's ESA accounts showed a "View All Approvals" tab, which included pages of orders along with student names, home addresses, disability categories and other purchase information. In an [email](#) to lawmakers alerting them of the breach, a second ESA parent attached screenshots and cited prior alleged breaches in ClassWallet, including one instance that revealed names of ESA account holders and another that made shipping addresses accessible.



In the new email, the parent called ClassWallet a "hacked-together mess that has no business handling personally identifiable information of Arizonans." The parent who initially accessed the breach was not able to view the information again when logging back in. Some ESA users speculated a consumer fraud investigation into the ESA program could involve ClassWallet, because some parents previously took complaints about funds being withheld, among other concerns, to the AG. One parent, Tonya Reiner, testified to the State Board of Education in February and claimed she had debit cards with more than \$1,500 in trapped funds. ESA director Christine Accurso reached out to Reiner in an [email](#) at the time and wrote, "I believe it is better you take your concerns to the authorities," rather than go through the department's investigator. Accurso and the AG's office were not immediately available for comment. The latest issues with ClassWallet come as the Arizona Dept of Education and the state Treasurer's Office are vetting responses to a new RFP seeking a vendor to run the ESA program. ClassWallet was awarded the contract with no contest in 2019. This time around ClassWallet faces three other bidders – Odyssey, Merit International and Student First Technologies. The state was set to award the contract on July 7 but pushed the deadline back to August 1.

Will fake electors face real consequences?

The AG's office is amping up the investigation into fake Trump electors, *The Washington Post's* Yvonne Wingett-Sanchez [reported](#). Two anonymous sources close to the investigation told *WaPo* the investigative team, which Mayes assigned to the case in May, contacted the pro-Trump electors and their lawyers and requested records and information from local election officials, the parallel probe by the Justice Department and a similar investigation in Georgia. Dan Barr, chief deputy attorney general, said the investigation was in its "fact-gathering phase" but declined to say the status of any subpoenas or cite any potentially violated state statutes. Barr told *WaPo* the investigation must be "ironclad shut." "This is something we're not going into thinking, 'Maybe we'll get a conviction,' or 'Maybe we have a pretty good chance,'" Barr said.

The AZ GOP pleads poverty



A federal judge will hear argument on [another](#) discovery dispute in the federal suit over the 2021 law removing “permanent” from the permanent early voting list, this time between plaintiffs and the AZ GOP. The plaintiff, including Mi Familia Vota, claim the AZ GOP failed to comply with a subpoena and an October [order](#) compelling discovery, and the party’s “initial search for documents was insufficient, omitting searches likely to identify responsive

documents.” The plaintiffs cited a handful of examples, including a “facially deficient” privilege log; failure to include key search terms in sifting through emails over the legislation at the center of the lawsuit; and limited documentation on emails with third parties. Plaintiffs further argued the party refused to comply with the subpoena and court order unless the plaintiffs agreed to pay for the searches. The AZ GOP claimed the requests from the plaintiffs were not limited to the few keywords they put in their filing but included 46 individual keywords. Attorneys for AZ GOP said the party “produced hundreds of pages of documents and emails to Plaintiffs last December/this January, following a reasonable search that was conducted with reasonable search terms.” The attorneys also noted the party only has “few fulltime staff (around four at any given time) and had to utilize temporary staff at its own expense to perform the searches.” They wrote they had asked the plaintiffs to pay for a third-party litigation support group to assist in the searches, but plaintiffs refused. The party further argued it is not a party to the litigation and the request for nearly 10,000 documents is “unreasonably burdensome/expensive.” Last week, the plaintiffs filed a [summary](#) of discovery dispute, a filing that typically includes both parties, sans the AZ GOP. Attorneys for the plaintiffs argued the state party “has continued to engage in a practice of delay and has neither provided Plaintiffs with its portion of a joint statement of discovery dispute nor informed Plaintiffs when they might expect to receive the same.” Attorneys for AZ GOP filed a [motion to strike](#), claiming the plaintiffs did not make an effort to confer with the party on the discovery dispute. They claimed they did make the deadline for the joint report, but the plaintiffs did not submit their portion. The judge denied the motion to strike and set a hearing on the matter. “It is disappointing that the parties could not find a way to present their positions by way of a joint statement, as the scheduling order requires, but the substance of both sides’ positions is now before the Court and it would put form over substance (and promote inefficiency) to strike any of the existing filings only so they can be refiled in a different format,” Judge Dominic Lanza wrote in his order. Lanza set a hearing for Monday.

If it walks like a c4 and talks like a c4...

The Arizona Democratic Party filed a complaint with the SoS' office against No Labels, claiming it failed to properly register and report its donors as a political party. ADP alleged No Labels spent "considerable resources" to gather the signatures needed to qualify as a party in Arizona, and, after certification, No Labels continued to operate without registering or reporting any of the funds raised or spent. No Labels has not filed any documentation with the SoS' campaign finance reporting system since Fontes certified the party in March. An election attorney told



our reporter No Labels was in a "green zone" as far as operating as a nonprofit when it was collecting signatures. But, now that No Labels is a certified political party, the attorney confirmed the party, "obviously needs to register as a political party now that they've filed the signatures...they don't have the option of not disclosing their donors and expenses" going forward. A spokesperson for Fontes confirmed the office received the complaint and it was the only complaint filed against No Labels they were aware of. The complaint from ADP comes as the party is [challenging](#) No Labels' party certification in court. After oral argument earlier this week, a Maricopa County Superior Court judge is now mulling whether to dismiss the suit. More than 7,000 voters registered with No Labels in Maricopa County and Pima County alone. And more Democrats are switching to No Labels than Republicans. In June, Maricopa County reported 232 Republicans switched to the new party while 335 Democrats made the change. But the biggest shift came from independents, with 1,110 voters moving from party not declared to No Labels. In a written statement, ADP Executive Director Morgan Dick called No Labels "shadowy" and its agenda "potentially nefarious." "No Labels is not following the rules required of a political party, despite claiming to the Secretary of State and Arizonans that they are a functioning political party," Dick said. "That is why the Arizona Democratic Party is filing this complaint – nobody should be exempt from the law, especially not an out of state dark money group."

Welcome back, Carl

Nearly two years after the old bust was stolen, former House Speaker Rusty Bowers returned to the Capitol this morning to install a new bust of longtime U.S. Senator Carl Hayden. "That is a worthy compliment to a wonderful statesman for the State of Arizona, and I'm glad to have been a part of it," he said. Bowers and former Tempe Mayor Hugh Hallman organized the effort to replace the bust after a person [made off with the old one](#) in broad daylight in September 2021. Rather than create a replica of the old bust, Bowers worked from a collage compiled from a [collection](#) of photos to create a brand new memorial. The old bust, which showed an older Hayden, was designed by sculptor Francisco Lopez-Burgos based on photos and descriptions from Hayden' family and friends, according to a 1966 *Republic* story. The new piece depicts Hayden in his younger years wearing a cowboy hat and was

inspired by a photo of Hayden during his time as Maricopa County Sheriff, Bowers said. “I thought we should do something back when he was younger and had a muscular presence, not muscular physique, although I don't know maybe he did... we have had some incredible senators who have made a big national presence, and yet as far as accomplishing what the Senator did, they'd be all hard pressed,” Bowers said. The former House Speaker also has a more personal connection with the Hayden family. Bowers said Hayden’s father was “influential on helping my grandfather as a farmer and rancher” and also helped save the family during a flood. Bowers said a would-be thief will be hard pressed to make off with the new bust. He noted the old piece was affixed on “one little point about the diameter of a pencil lead.” The installation ran into some trouble this morning when Bowers’ drill could not penetrate the stone base; however, a chisel proved more effective, and they were able to drill down into the base and securely attach the new bust. “They’re not going to push it anywhere,” Bowers said. A freezer bag “time capsule” was also placed underneath the bust. It included a description of Hayden, some House rule books, business cards from people in attendance and letters from some staff members.

Wake Up Call

[Advocates: Family reunification policy helps some migrants, but not enough](#)

Cronkite News

A new immigration policy that makes it easier for people from four Central and South American countries to join family in the U.S. will help but is still “far from” the migration solution needed, advocates said.

[Interior Department official with key role in Colorado River talks is stepping down](#)

Associated Press

A senior Interior Department official who has had a key role in negotiations over the shrinking Colorado River plans to step down from the job next week.

[The US House majority is in play next year after a weak GOP midterm showing and recent court ruling](#)

Associated Press

After an anemic showing in the midterms, Republicans have virtually no cushion in their quest to retain control of the House, which was made all the more complicated by a surprise U.S. Supreme Court decision last month that will likely bring two new safely Democratic districts.

[Pima County asks state to quickly determine if we have enough groundwater](#)

Arizona Daily Star

Pima County supervisors want Arizona’s water agency to expedite a study of the Tucson area’s groundwater supply to see if it’s large enough to support all subdivision development expected over the next 100 years.

[Why a power outage amid this Phoenix heat wave would be so deadly](#)

The Washington Post

If residents were to lose power for air conditioning, roughly half the city could end up in the emergency room, according to a study

[Would Arizona voters agree to limit their power? Maybe, if they got this](#)

Arizona Republic (Opinion, Abe Kwok)

Arizona already has tough requirements to place citizen-led initiatives on the ballot. Lawmakers need better reasons to make them even tougher.

[Kari Lake smells a conspiracy in the transfer of her appeal. Of course, she does](#)

Arizona Republic (Opinion, Laurie Roberts)

The transfer of Kari Lake's appeal to Tucson is yet another lucrative opportunity for her to cry 'Conspiracy! (And give me money).'

[Conservatives blame Brittney Griner, as if being taken hostage was her fault](#)

Arizona Republic (Opinion, Phil Boas)

Marijuana had nothing to do with Brittney Griner's time in a Russian prison. It was simply a tyrant's pretext for kidnapping.

Press Releases

Ciscomani Secures \$14.5 Million for Transportation and Workforce Development Projects in Arizona's 6th District

The Arizona congressman has secured nearly \$20 million in total for community projects across the district.
WASHINGTON – U.S. Congressman Juan Ciscomani (AZ-06), a member of the House Appropriations Committee, today secured over \$14.5 million for transportation and workforce development projects in Arizona's Sixth Congressional District. He is both the only freshman and only member of the Arizona congressional delegation on the House Appropriations Committee.

“As a member of the House Appropriations Committee, it's my top priority to make sure federal dollars are coming to some of the most important projects in our district,” **said Ciscomani**. “I am proud to have leveraged my seat at the table to bring home nearly \$20 million, money which will leave a long-lasting impact on our communities.”

Congressman Ciscomani worked to secure the following funds through Community Project Funding requests:

- **\$2.7 million for the Pima JTED: Urban Workforce Development via Career and Technical Education (CTE):** These funds will be used to expand Pima JTED's Innovation Tech High School campus, immediately benefitting the school's programs for Heavy Equipment Operation, Construction Technology, Engineering, Bioscience and Sustainability, and others.
- **\$3.79 million for the City of Sierra Vista for the Buffalo Soldier Trail (BST):** This funding will go towards Phase I of the project and provide for the design and reconstruction of the trail, specifically between Hatfield/SR90 Bypass to 7th Street.
- **\$3.79 million for the City of Casa Grande Thornton Road Widening project:** These funds will be used to widen Thornton Road, which is experiencing increased traffic due to new manufacturing jobs in Casa Grande and sees significant traffic back-up several times a day when a train is present.
- **\$1.3 million for the Graham County Gila River Linear Park and Trail project:** Funding will be used for the groundbreaking and construction of the Gila River Linear Park and Trail, specifically a 4.2-mile segment of river trail located just north of Safford and Thatcher.
- **\$3 million for the Town of Sahuarita Campbell Ave Extension project:** This money will be used for the expansion of and improvements to the road, including new pavement, bike lanes, sidewalks, curbs, gutters, and signage.

Congressman Ciscomani also successfully included a provision in the bill that directs the Department of Transportation (DOT) to prioritize highways in the intermountain west, which includes the I-10.

The funds were provisionally awarded during the House Appropriations Committee markup of the Transportation, Housing, and Urban Development (THUD) package, one of the initial stages of the committee's annual budget process. The Arizona congressman has secured nearly \$20 million in total for community projects across the district, with the committee set to consider more packages in the coming days.

###

NEW: Ruben Gallego Raises \$3.1 Million in Second Quarter of 2023

For the second quarter in a row, over 58,000 individuals supported Gallego's Senate bid

PHOENIX, ARIZONA – Today, the Gallego for Arizona campaign announced that it raised **\$3.1 million** in the second quarter of 2023, with **an average contribution of \$29** from more than **105,000 donations**.

Small-dollar donors continue to power the campaign, with **98% of all contributions being \$100 or less**. Hardworking Arizonans across the state's fifteen counties have rallied behind Ruben, chipping in what they can to support his candidacy. Over the last three months, **58,533 individuals** donated to the campaign, with the most common donor profession being retirees and teachers and the most common home state being Arizona.

The campaign's steady Q2 fundraising haul follows a historic \$3.7 million first quarter raise, the biggest launch quarter for any Latino Senate candidate in history. In just the first six months of the off-year, Gallego

has raised **nearly \$7 million from over 200,000 donations**. And, notably, because Ruben's campaign is powered by small-dollar supporters, **99% of donors can give again**.

"For the second quarter in a row, over 50,000 people have chipped in what they could to support Ruben's campaign because they know it's time to elect a U.S. Senator who fights for Arizonans — not special interests or big corporations," **said Gallego for Arizona campaign manager Nichole Johnson**. "With two quarters of momentum and a strong foundation of grassroots support, we are the only team in this race that is built to win."

###

"This is not how it works"- Sundareshan, Hernandez Respond to Ongoing Election Misinformation from Senate Republicans

PHOENIX – *With a simple two-vote majority, the Republican Legislature passed SCR 1037, a non-legally binding postcard to each county with a list of extremist voting machine conspiracy theories. Acting outside Caucus Leadership, [according to staff](#), Senator Borelli and Senator Rogers continue to peddle dangerous lies that threaten to undermine election integrity in the coming cycle.*

On Tuesday, Senators Borrelli and Rogers, and failed Republican candidate for Secretary of State Mark Finchem, traveled to Gila County, as they have already done in several other Arizona counties, to pressure the Gila County Board of Supervisors to break the law and throw out their voting machines based off a misunderstanding of how the Legislature enacts laws and a radical legal theory that has been repeatedly rejected by courts and elections officials at every level.

Senator Priya Sundareshan (LD18) stated, "Senator Borrelli and the Republican-controlled Legislature have attempted to pass laws that banned voting machines, which were vetoed in 2023 and voted down by a bipartisan coalition in 2022 for being impossible to implement and based on conspiracy. Now that those have failed, Senators Borrelli and Rogers are traveling the state with famed conspiracy theorist and losing Secretary of State candidate Mark Finchem to visit each individual county claiming this non-binding postcard somehow requires each county to throw out their voting machines and hand count their ballots instead. This is not how it works. Two Senators cannot change the law without passing a bill that is signed by the Governor or approved by the voters."

"Senators Borrelli and Rogers are basing this conspiracy tour on the "Independent State Legislature Theory", a debunked legal theory that was rejected by the U.S. Supreme Court two weeks ago," **Senator Anna Hernandez** (LD24) added. "Cochise County attempted a similar hand count that these Republicans are seeking in 2022 and was blocked by the courts because the plan was illegal. Nothing has changed to suddenly make this move legal today. Senator Borrelli has told the counties he disagrees with this fact. However, "I disagree" is not a sufficient or valid retort when your legal theory has been repeatedly rejected by the US Supreme Court, multiple federal courts, an Arizona court, the former and current Secretaries of State, state elections directors, and the counties themselves. We should be working together, across party lines, to give our elections officials everything they need to do their job – not bombarding them with the whims of radical legislators who are intent on breaking our elections system to benefit them politically."

Due to the Republican Legislature's refusal to adjourn this session for political reasons or call the Legislature back to solve actual problems facing Arizona, Senators Borrelli and Rogers can receive Legislative per diem to fund this conspiracy theory tour. Not only are these actions irresponsible, but they are also likely to lead to a further loss of elections expertise in this state by forcing out elections' experts with decades of experience who refuse to bow to radical demands to break the law.

17 county elections officials have left their jobs in Arizona since the 2020 election, including recent highly publicized resignations in Cochise and Pinal Counties. Many of these resignations have been the direct result of these county elections experts refusing to break the law after attempts to pressure, threaten and demean them into doing so. Arizona cannot afford to continue to burden elections officials with unlawful demands to try unnecessary and ineffective new elections procedures based on wild and disproven speculation of "stolen elections".

###

Sinema Introduces Bill to Protect Pay for Wildland Firefighters

Sinema secured a pay raise for wildlife firefighters while writing and negotiating her bipartisan infrastructure law

WASHINGTON – Arizona senior Senator Kyrsten Sinema, along with U.S. Senators John Barrasso (R-Wyo.), Joe Manchin (D-W.Va.), Steve Daines (R-Mont.), Alex Padilla (D-Calif.), and Jon Tester (D-Mont.), introduced the *Wildland Firefighter Paycheck Protection Act* – legislation maintaining the [pay raise secured for wildland firefighters in Sinema’s bipartisan infrastructure law](#).

“Wildland firefighters in Arizona and across the country risk their lives to keep our communities safe. Recognizing their sacrifice and hard work, I secured fair pay in my bipartisan infrastructure law for wildland firefighters, and now I’m ensuring this pay is permanent,” said Senator Sinema, co-author and lead negotiator of the bipartisan infrastructure law.

“For years, wildland firefighters have been asked to do too much for too little,” said Senator Barrasso. **“These brave heroes must be compensated for risking their lives to protect forests and communities in Wyoming and across the West. Our bipartisan Wildland Firefighter Paycheck Protection Act is a major step toward ensuring wildland firefighters are treated fairly.”**

“America’s federal firefighters bravely put their lives on the line to protect all of us from the devastating impact of wildfires. I am happy that both parties were able to come together to ensure that our federal firefighters are supported. This bipartisan legislation will help us recruit and retain qualified individuals to our firefighting workforce. As I heard in our Energy and Natural Resources hearing last month, without this legislation we risk losing a sizable portion of our workforce, which is unacceptable,” said Senator Manchin, Chairman of the Senate Energy and Natural Resources Committee.

“As fire season devastates Montana communities year after year, Montana wildland firefighters put everything on the line to protect Montana families and towns. I was glad to work with my colleagues across the aisle to secure a well-deserved pay-raise for these Montana heroes and now it’s time we make this compensation permanent,” said Senator Daines.

“Wildland firefighters across the country deserve our full support as they heroically risk their lives on the frontlines to protect our communities,” said Senator Padilla. **“This legislation permanently preserves federal firefighter pay and acknowledges the extreme strain of the job by providing support for critical rest and recuperation time. While we owe it to them to swiftly pass this legislation, this is only a first step and I remain committed to continuing to better support our federal firefighters.”**

“Montana’s wildland firefighters put their lives on the line to protect our communities and public lands, and the least we can do is ensure fair and competitive pay for the work they do,” said Senator Tester. **“This fire season, these brave men and women are our first line of defense against disaster, and they’ve earned the right to be fairly compensated for the dangerous work they do—including for adequate recovery time after a tough fire. Our bipartisan bill will make that compensation permanent, and I’ll be fighting to get it across the finish line in Congress.”**

“NTEU appreciates and commends the work done by Sens. Sinema, Manchin, Barrasso, Tester, Daines, and Padilla to ensure our nation’s wildland firefighters are paid fairly. We expect a lot from these firefighters and it is only right that their pay reflects the dangerous conditions they face on the job. Wildland firefighters, like those at the Department of Interior, are dedicated public servants who risk their lives to keep us safe. NTEU urges swift passage of this legislation to prevent the upcoming ‘pay cliff,’ and we look forward to continuing to work with Congress to support our hardworking wildland firefighters,” said Tony Reardon, National President, National Treasury Employees Union (NTEU).

“This is a welcome down-payment on a sorely needed continuous investment in our federal wildland fire workforce. Wildfires will continue to impact millions of people across the US, and we need to ensure we have wildland firefighters to respond whenever the call is made,” said Riva Duncan, Vice President, Grassroots Wildland Firefighters.

“In terms of addressing our growing wildland fire crises, the Wildland Firefighter Paycheck Protection Act (WFPPA) is absolutely critical to prevent the worst-case scenario within the federal wildland firefighting services this year. If the provisions within this law do not pass by September 30, federal wildland firefighters will endure a pay cliff of a 50% cut of their base pay up to \$20,000. If this happens, a mass exodus will begin that may be impossible to stop. Thankfully, there is a tremendous amount of bipartisan support for the WFPPA. In addition to continuing existing practices on pay, the bill recognizes the 24/7 working life of wildland firefighters while on assignment, and it calls attention to the burnout and exhaustion that these firefighters experience throughout the year. I call upon every member of the Congress to pass this bill quickly. The WFPPA represents a first step in modernizing the federal wildland fire services so that in the future, the country can see fewer smokey days,” said Randy Erwin, National President, National Federation of Federal Employees (NFFE)

Sinema’s *Wildland Firefighter Paycheck Protection Act* supports federal wildland firefighters by maintaining the pay raise Sinema secured in her bipartisan infrastructure law. Sinema’s legislation helps ensure the federal government can recruit and retain a sufficient wildland firefighting workforce, and that these brave men and women feel supported as they protect and keep Arizonans safe from life-threatening wildfires.

Sinema’s bipartisan infrastructure law makes [historic investments in wildfire mitigation and recovery](#) – including the ability for the federal government to create a new occupational series for wildland firefighters and set aside funding for pay increases.

In May of last year, Sinema [urged](#) the Administration to establish a special pay rate for federal wildland firefighters to prevent staffing shortages and strengthen Arizona’s wildfire response. Following Sinema’s request, the [Administration announced a temporary pay raise](#) from her law.

Due to funding limitations, pay is set to revert to previous levels on October 1, 2023. Given the lower pay and grueling nature of the work, there is great concern about the ability to meet the staffing and labor levels required to adequately respond to wildfires across the country.

Sinema’s *Wildland Firefighter Paycheck Protection Act* continues her work strengthening Arizona’s ability to prevent, prepare for, and mitigate wildfires by making wildland firefighters’ pay raise permanent.

According to the [Government Accountability Office](#) (GAO), the federal wildland firefighting workforce is made up of approximately 18,700 firefighters (including fire management and support staff) from the Department of Agriculture’s Forest Service and from four agencies in the Department of the Interior.

A [recent report](#) conducted by GAO found that the most commonly cited barrier to wildland firefighter recruitment and retention was low pay. Officials and stakeholders unanimously stated that the pay is too low and noted that the pay does not reflect the risk or physical demands of the work.

###

WATCH: Sen. Kelly Champions Land Transfer Bills to Create Veterans Center, Solar Farm in Rural Arizona

Yesterday, during a Senate Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining hearing, Arizona Senator Mark Kelly championed two bills to support community projects in Gila and La Paz Counties.

The first bill, [introduced](#) by Kelly, would transfer an underutilized Forest Service ranger station near Young, Arizona and the accompanying 232 acres to Gila County to be used as a veterans retreat and community center. The site would provide a gathering space for Gila County’s 5,200 veterans and their families and serve as a mobile veterans clinic for those who cannot easily access a VA Medical Center. A companion bill has been [introduced](#) in the House of Representatives by Representative Eli Crane (R-AZ-02).

The second bill—the *La Paz County Solar Energy and Job Creation Act*—which was introduced by Arizona Senator Kyrsten Sinema and [cosponsored](#) by Kelly, would create good-paying renewable energy jobs by transferring roughly 4,800 acres of federal land to La Paz County for the completion of a large-scale solar farm.

Click [here](#) to watch Sen. Kelly’s remarks. See below for a complete transcript:

I want to first of all thank you for including S. 1015 and S. 1657 in this hearing. I was proud to introduce this first bill earlier this Congress with Representative Crane leading efforts in the House.

The transfer of this 232-acre area will allow Gila County to build a veterans center in Young, Arizona that will serve not only the nearly 5,500 military veterans who call Gila County home, but also veterans throughout rural Arizona. This center will be the first of its kind in northern Arizona, providing the community with a space to gather.

Additionally, this new center will also serve as a mobile clinic for veterans who cannot easily access a VA Medical Center. This is going to help address some of the disparities facing veterans living in rural areas and improve their long-term health outcomes.

As a Navy veteran myself, I'm committed to keeping America's promises to our veterans and delivering the care and benefits that they've earned. This piece of legislation provides a place for our veterans in Gila County and will help veterans in a rural area of northern Arizona get the support and resources that they need. I appreciate the Forest Service's support of this bill in Deputy Chief French's written testimony.

Senator Sinema and I introduced the second bill, which would transfer 4,800 acres from the Bureau of Land Management [BLM] to La Paz County at fair market value. This land will be used for solar energy projects, attracting economic development opportunities to an underserved community.

That's going to create good-paying Arizona jobs, facilitate the transition to clean energy, and ensure La Paz County's economy continues to grow. Mr. Heinlein—who I believe is here—I appreciate you testifying today, and BLM's commitment to making the bill work for everyone.

Madam Chair, thank you for holding this hearing.

###

Common Sense Institute Releases Arizona Inflation Update: July 2023

Inflation in Metro Phoenix was 0.1% between month-over-month and 4.4% over the last 12 months. While the monthly rate remains volatile, US and local year-over-year inflation continues its gradual decline in June – YOY rates reached their lowest levels in over 18 months.

Some of our key findings include:

- While gas inflation is **-20.7% year over year**, inflation excluding more volatile food and energy prices is at 5.9%.
- Shelter inflation (+12.1% year-over-year) remains elevated in the Phoenix area as does services (+8.0% year-over-year). These will continue putting upward pressure on over all prices.
- Inflation today is costing households over **\$7,000 more per year** to purchase the same goods and services as they were two years ago.
- Month-over-month inflation was 0.1% -- a decrease of 0.7 percentage points from April, the largest decrease in the Phoenix metro area since August 2022.
- **Real wages in Arizona have fallen 10.1%** since peaking in April 2020, despite this month's decrease in inflation rates.

[FULL REPORT](#)

###

Arizona Democratic Party Files Complaint to Ensure Voters are Protected from Shadowy Dark Money Interests Breaking Campaign Finance Rules

PHOENIX – Today, the Arizona Democratic Party filed a complaint with the Office of the Secretary of State highlighting the failure of the No Labels Party to properly register and report its donors as a political party. This follows the legal challenge brought by the ADP to the qualification of the No Labels Party itself after it failed to adhere to the rules required by that process. In both cases, No Labels has refused to follow the rules that a political party must follow as they continue to try to game the system to advance their dark money special interests at the expense of Arizonans. Once again, ADP is acting to ensure that Arizonans are

protected from these out of state dark money groups seeking to intervene in our state's electoral process with no accountability or transparency.

First, No Labels spent considerable resources to gather signatures from Arizonans in order to be recognized as a new political party. Yet the group failed to register and report its donors throughout the signature gathering effort. Then, even after the Secretary of State's office certified them as a political party, No Labels continued to operate without registering and reporting, refusing to disclose even a single dollar of what it has raised or spent.

No Labels is not entitled to special treatment under the law. All of Arizona's recognized parties are required to register and report with the Secretary of State. No less should be expected of Arizona's newest party.

"No Labels is not following the rules required of a political party, despite claiming to the Secretary of State and Arizonans that they are a functioning political party," said **Morgan Dick, Executive Director for the Arizona Democratic Party**. "That is why the Arizona Democratic Party is filing this complaint – nobody should be exempt from the law, especially not an out of state dark money group. Arizonans deserve better and voters deserve to know who is behind this shadowy organization and what potentially nefarious agenda they are pushing."

###

Arizona Teamsters Ready to Strike for First Contract At Republic Services

Teamsters Local 104 Members Vote to Authorize ULP Strike in Waste Giant's Backyard

PHOENIX, July 13, 2023 /PRNewswire/ -- Teamsters Local 104 members in Phoenix have voted by 99 percent to authorize a strike at Republic Services after months of contentious contract negotiations for a first contract. The 116 waste workers seek to address years of concerns regarding pay, health care, safety, working conditions, and lack of respect. The company continues to stall in negotiations and has committed several unfair labor practice (ULP) charges during the workers' organizing and bargaining efforts.

"Republic Services does not value us as workers and is continuously violating federal law," said Danny Domingez, a five-year driver at Republic Services serving on the worker-led bargaining committee. "All we want is a fair contract."

In October, Domingez and his co-workers overcame a fierce anti-union campaign by Republic Services to join Local 104. In February and March, more than 100 additional Republic Services workers voted overwhelmingly for Teamster representation in two separate elections at facilities in North Phoenix and Mesa, Ariz.

"The company continues to delay negotiations. After months of failing to address these workers' demands, our members sent a clear message to Republic Services by voting overwhelmingly to strike," said Josh Graves, Vice President of Local 104. "They are fired up and ready to hit the streets if Republic doesn't get back to the table and take these negotiations seriously."

Headquartered in Phoenix, Republic Services [NYSE: RSG] is the second-largest trash collection and landfill company in the U.S. The International Brotherhood of Teamsters represents more than 7,000 Republic Services workers nationwide.

Over the last several years, Republic Services has forced high-profile strikes across the U.S., disrupting trash collection for hundreds of thousands of people and putting communities at risk.

"Our fight at Republic Services is growing by the day. Teamsters in Arizona are on the front lines in Republic's backyard. They have shown immense strength in their determination to secure a first contract that reflects their worth," said Chuck Stiles, Director of the Teamsters Solid Waste and Recycling Division. "Teamsters nationwide are standing by, prepared to take militant action, and ready to stand shoulder-to-shoulder against the corporate greed and exploitation."

Founded in 1903, the International Brotherhood of Teamsters represents 1.2 million hardworking people in the U.S., Canada, and Puerto Rico. Visit [Teamster.org](https://www.teamster.org) for more information. Follow us on Twitter @Teamsters and "like" us on Facebook at [Facebook.com/teamsters](https://www.facebook.com/teamsters).

###

Rep. Tsosie Demands Thorough Investigation in California Indigenous Sex Trafficking Case

PHOENIX – State Representative Myron Tsosie is calling for a thorough and serious investigation by military and local authorities into underage sex trafficking after a 14-year-old Indigenous girl [was discovered](#) in barracks with a Marine at Camp Pendleton, California. The girl had been missing for about two weeks after running away. Relatives of the girl alleged that she had "been sold to a soldier for sex." She has since been returned to her family. The Marine was taken into custody but later released pending further investigation.

"We need to hold authorities and the military accountable," said Tsosie, D-Chinle. "According to relatives, this young girl is a member of an Indigenous tribe. Because of the crisis of missing and murdered Indigenous people in Arizona and around the country, this is a very sensitive issue that hits many of us personally. I am glad to hear the girl is safe and with family, but the authorities must investigate this matter thoroughly and hold anyone who compromised this girl's safety accountable. Indigenous communities everywhere are watching this closely."

###

Address Change Chatbot Helps AHCCCS Members Update Their Contact Information to Prepare for Renewal

PHOENIX – The Arizona Health Care Cost Containment System (AHCCCS) launched a new feature that makes it easy for members to update their contact information. Sam, the chatbot on the Medicaid eligibility website www.healtharizonaplus.gov (HEAplus), can now process address changes directly in chat, in English and Spanish, with no need for the member to log into their HEAplus account.

Since launching at the end of June, more than 2,000 AHCCCS members have successfully updated their contact information in the chatbot in less than 3 minutes, on average.

Because the annual Medicaid renewal process began April 1, it is critical that enrolled AHCCCS members ensure their contact information is correct. As each member's renewal is processed, AHCCCS may request additional information to verify eligibility.

While updating contact information, AHCCCS members can also use the chatbot to get answers to more than 40 common questions about the renewal process, or transfer to a live agent during business hours for more help with their renewal.

To make sure eligible members stay covered, AHCCCS asks all members to:

1. Update contact information using the address change chatbot, logging in to www.healtharizonaplus.gov, or calling Health-e-Arizona Plus at [1-855-HEA-PLUS](tel:1-855-HEA-PLUS) (1-855-432-7587), Monday through Friday 7:00 a.m. - 6:00 p.m. ALTCS members need to call [1-888-621-6880](tel:1-888-621-6880) to update their contact information or to get help with renewals.
2. Sign up for text or email alerts from AHCCCS. [Learn how in this flier.](#)
3. Watch for a renewal notification from AHCCCS.
4. Respond to requests for more information so AHCCCS can determine eligibility.

For more information on the regular Medicaid renewal process, please visit the [Renewals](#) web page.

###

WATCH: Sen. Kelly Champions Bill to Maximize CHIPS Act in Speech on Senate Floor

Today, Arizona Senator Mark Kelly spoke on the Senate floor in support of his bill to maximize benefits of his landmark [CHIPS and Science Act](#) by streamlining federal reviews while maintaining bedrock environmental protections for clean air and water. The *Building Chips in America Act*, which Sen. Kelly [introduced](#) earlier this week, would give the administration additional authority to more effectively implement the CHIPS and Science Act and maximize its potential to boost domestic microchip

manufacturing, strengthen domestic supply chains, lower costs, and improve national security. Kelly's bill is supported by Democrats and Republicans in both the Senate and House of Representatives.

“Right now, we have an opportunity to maximize the impact of the CHIPS Act for our economy and for our national security. Plans already underway that have received the necessary permits should not have to face extra hurdles,” **said Kelly during his floor speech.** “So, Mr. President, let’s cut the red tape. Let’s start reaping the benefits of our historic CHIPS Act.”

Click [here](#) to watch Sen. Kelly’s remarks. See below for a complete transcript:

Mr. President,

When Congress passed the CHIPS and Science Act last summer, we made a promise to America that these historic investments would be felt in communities across the country. More microchip manufacturing facilities. More high-paying jobs that do not require a four-year degree. Lower costs. A stronger supply chain and a stronger economy.

Since the CHIPS Act became law, companies have announced plans to invest hundreds of billions of dollars to bring microchip manufacturing back to America, including in Arizona. But here’s the problem: as currently implemented, when these projects receive incentives through the CHIPS Act, they are subject to a new federal review under a process called NEPA. This includes projects that have already received the necessary state and federal environmental permits and are already under construction. So, factories that are being built right now in places like Phoenix could be forced to pause construction and undergo a redundant federal review. And that just doesn’t work.

So, this week, along with my colleagues Senators Young, Brown, and Hagerty, I introduced the Building Chips in America Act. And this bill would speed up the construction of projects supported by the CHIPS Act by streamlining federal permitting reviews and keeping in place bedrock environmental protections for clean air and clean water.

To do this, the bill designates the Department of Commerce as the lead agency to carry out NEPA reviews for any CHIPS Act project. It also clarifies that certain projects—certain chips projects, like those already under development with necessary permits—are not major federal actions and, therefore, are not subject to a NEPA review. These measures would prevent costly delays for projects.

And right now, we have an opportunity to maximize the impact of the CHIPS Act for our economy and for our national security. Plans already underway that have received the necessary permits should not have to face extra hurdles.

So, Mr. President, let’s cut the red tape. Let’s start reaping the benefits of our historic CHIPS Act. Thank you.

###

The GOP War on Health Care Ramps Up as House Republicans Eye Critical Health Care Cuts

New Republican Legislation Includes Severe Cuts to HHS, NIH, and the CDC While Eliminating Funding for the Title X Family Planning Program

Washington DC — Today, House Republicans released [legislation](#) that would put the health and well-being of the American people in jeopardy. The radical bill includes cuts to critical health care agencies, including the Department of Health and Human Services (HHS), the Centers for Disease Control and Prevention (CDC), and the National Institutes of Health (NIH). The legislation also eliminates funding for the Title X Family Planning Program, which is a lifeline for low-income families across the country for contraception, cancer screenings, and other basic primary and preventive health services. This comes after Republican lawmakers passed [legislation](#) to promote junk plans that can discriminate against people with pre-existing conditions. All of these proposals are particularly harmful for communities of color, LGBTQI+, people in rural areas, and other marginalized groups who are more likely to have poorer health and to be living in poverty. **In response, Protect Our Care Chair Leslie Dach issued the following statement:**

“Republicans are once again showing us who they are and who they serve. They are not interested in protecting the programs that work to advance our nation’s health care system by lowering costs and

improving public health. Instead, they are interested in lining the pockets of Big Pharma and the wealthiest individuals and corporations. Ripping away the Title X Family Planning Program is unconscionable at a time when conservatives have made it harder to get abortion care and as America faces a worsening maternal mortality crisis. If Republicans were serious, they would throw out this reckless, ultra-MAGA plan and prioritize legislation to expand access to affordable care, not gutting the programs that people across the nation depend on.”

###

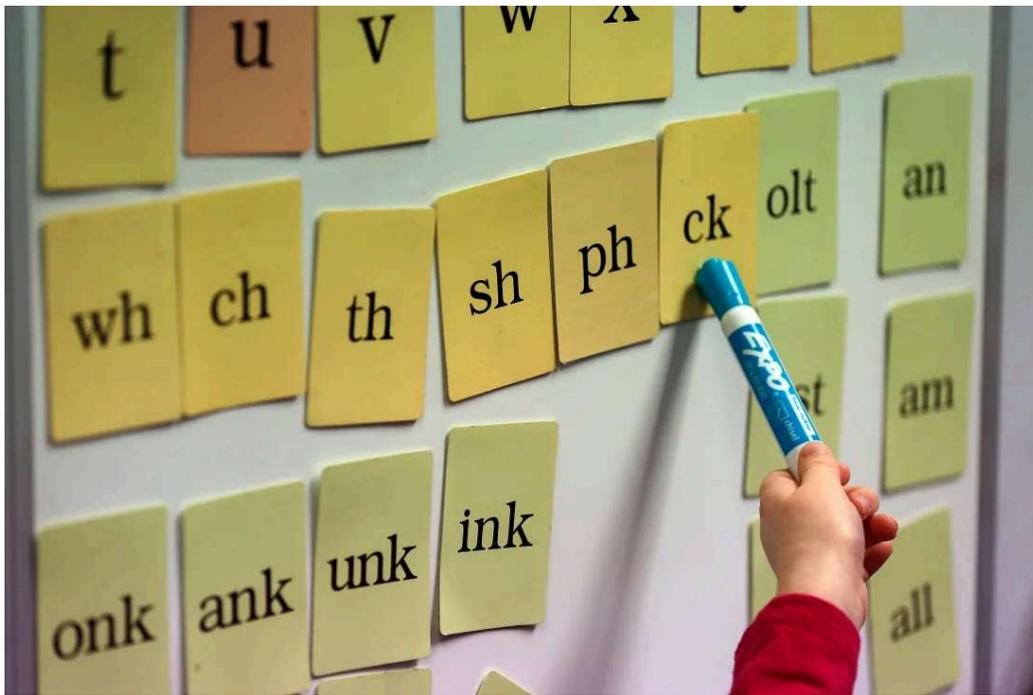
“QUOTE OF THE DAY”

“This is something we’re not going into thinking, ‘Maybe we’ll get a conviction,’ or ‘Maybe we have a pretty good chance.’”

- *Chief Deputy Attorney General Dan Barr on the Arizona AG’s investigation into fake electors*

NEWS > EDUCATION

Virginia tries to address complaints as it adds \$30 million to learning recovery grants



Jonathon Gruenke/Daily Press

The learning grants can be used for tutoring in reading, math, science and other subjects.



By **NOUR HABIB** | nour.habib@virginiamedia.com | Staff writer

July 15, 2023 at 9:53 a.m.

This website utilizes technologies such as cookies to enable essential site functionality, as well as for analytics, personalization, and targeted advertising purposes. To learn more, view the following link: [Cookie Policy](#)

Gov. Glenn Youngkin last week announced that funding for the K-12 Learning Acceleration Grants was doubled from \$30 million to \$60 million, due to overwhelming demand. The announcement came shortly after some parents began publicly expressing concerns about the rollout of the program.

“We have reached out to them from the Department of Education to try to help them navigate the system,” Youngkin said last week about the parents who have said they’ve had trouble using the grants. “We’ve had 34,000 individuals access the system. And I really am sorry for the handful that are having challenges and we’re trying to get those resolved.”

The grants seek to address the effects of the pandemic on learning. Through the program, all school-age children would qualify for \$1,500 grants, which can be used for tutoring in English, math, science or other instruction needed to meet diploma requirements. Children from low-income homes could qualify for \$3,000 grants. Grants can also be used for support services, such as speech language pathology and reading interventions, or for assistive technologies for students with special needs.

Some parents have complained that have been unable to use their grant money, which is deposited into a Classwallet account that parents can use to place orders for approved materials and services. Classwallet is a digital wallet platform.



Parents complained that orders were being denied, and at least a couple of originally approved vendors were later removed because they didn’t comply with the program’s payment requirements, according to emails sent to one parent from Classwallet. Funds can only be used for reimbursement after the service has already been provided. Vendors must invoice parents, who then submit the invoice through the Classwallet account.

This website utilizes technologies such as cookies to enable essential site functionality, as well as for analytics, personalization, and targeted advertising purposes. To learn more, view the following link: [Cookie Policy](#)

“With overwhelming demand, VDOE received the maximum number of applications for K-12 Learning Acceleration Grants and all available funds have been used,” Porter said.

VDOE Chief of Staff Jeremy Raley said as of Friday, all parent concerns had been addressed and technical questions were forwarded to Classwallet. Raley said families also were notified this week that the deadline to use the first portion of the grant was extended to Sept. 1. New tutoring vendors were added this week to meet demand, and a parent webinar has been set to help families understand how to use their grants and navigate the platform.

“The Learning Acceleration Grants have been a major success, with thousands of families applying for and receiving the grants,” Raley wrote in an email Friday.

Raley said the grants were awarded in a way to reach all geographic areas in the state, with funding proportional to total student enrollment numbers.

“The department has also put a focus on ensuring grants go to foster and homeless youth, students with special needs, English language learners and military families,” he said.

Some vendors in Hampton Roads say they mostly see the program as a success.

Jessica Bradley is the owner of The Learning Room, which specializes in closing the academic gap for children who are significantly behind. She is based in Virginia Beach, but she and her employees work with students virtually.

Bradley, whose packages start at \$600, said the grant has given people who would not have been able to afford her service the opportunity to work with her.

Though critics of the grant program have said the money would have been better spent if it was given to public schools and used in a more targeted approach for the students most impacted by learning loss, Bradley said this path alleviates the pressure on school systems that are already taxed. She notes that schools are having trouble staying fully staffed and finding teachers for both the regular school year and summer school. Additionally, she said not each school has specialists in all areas, such as dyslexia. She said these grants give parents more flexibility.

Bradley’s biggest concern with the program has been the payment model, which she said has led some smaller vendors to choose not to participate. Vendors are often not paid until six weeks after the service is provided, and have to rely solely on parents to file invoices.

For smaller vendors, that means they might not be able to buy materials or staff up according to demand.

Additionally, the lack of control over the invoice submissions has caused some apprehension, she said. Some vendors have asked parents to place a credit card on file, in case of any trouble collecting payment from the state. In turn, parents then become reluctant to use services, she

Stephanie Horn is a certified dyslexia specialist, and she owns the Hampton-based Literacy in Flight. She said she is pleased that the program has allowed more clients to access her services, and she has added summer hours to accommodate the demand.

But Horn was also concerned about the payment process, and she said she has sat with parents as they all figured out the invoice submission process together. She also had to reassure parents that she will not seek out payment from them if there are any hiccups with the grant payments.

“There was a lot of confusion,” she said.

Nour Habib, nour.habib@virginiamedia.com

TRENDING NATIONALLY

- 1 Virginia becomes first Southern state to abolish child marriage**
- 2 NASA confirms space junk that hit Florida home came from space station**
- 3 California health workers may face cuts in hours, benefits under \$25 wage law**
- 4 The biggest Key Bridge section yet was pulled from the Patapsco River this weekend. Here's how.**
- 5 The Saharan dust coating Europe may actually help weaken hurricanes this season**

2023 > July > 15

This website utilizes technologies such as cookies to enable essential site functionality, as well as for analytics, personalization, and targeted advertising purposes. To learn more, view the following link: [Cookie Policy](#)

NEWSLETTERS

After Scathing Audit, What Comes Next?



by Keaton Ross

July 3, 2023



State Auditor and Inspector Cindy Byrd walks to her seat before the inauguration ceremony for Gov. Kevin Stitt in this file photo from January 14, 2019. (Whitney Bryen/Oklahoma Watch)

Statewide elected officials and legislative leaders raised concerns last week after the release of [a bombshell audit](#) showing widespread questionable state spending of federal COVID-19 relief funds.

But it will likely take months for the release of additional reviews pinpointing who exactly is to blame and who — if anyone — could face criminal charges.

The State Auditor and Inspector's review of spending in Fiscal Year 2021, which includes the second half of 2020 when federal relief dollars began flowing to states, found \$29.3 million in questionable expenses. The audit condemned oversight and compliance issues with Governor's Emergency Education Relief, or GEER, programs that led to wealthier families receiving assistance over those facing financial hardship.

Last year, [*Oklahoma Watch and The Frontier investigated*](#) the state's lax oversight of the Bridge the Gap program, a branch of the GEER initiative, that allowed grant recipients to buy TVs, gaming consoles and Christmas trees instead of education supplies.

"If the federal government decides the state must pay back these questioned costs, you and I will end up paying the bill," State Auditor and Inspector Cindy Byrd said in a statement. "If that happens, gross mismanagement and lack of compliance and oversight will be to blame."

In [*an interview Thursday with News 9*](#), Attorney General Gentner Drummond said an investigative audit of GEER spending will shed greater light on what went wrong and who's responsible. That examination, which Drummond requested in April, should be completed by the fall and may include recommendations for criminal charges, he said.

"I just think we empowered people who didn't have the qualifications or skills or knowledge to administer the money," Drummond told News 9.

In [*statements to Oklahoma Watch*](#), representatives for the Department of Education and the Governor's office said ClassWallet is responsible for the issues and the vendor should work with the federal government to recoup misspent funds. Drummond, who dismissed a state lawsuit against ClassWallet earlier this year, pushed back on that claim in interviews last week, saying ClassWallet followed instructions from the state is not culpable.

House Speaker Charles McCall, R-Atoka, issued a statement calling the audit "extremely troubling" and said the House would consider legislative actions to avoid similar misspending in the future.

What are your takeaways from the audit? Any thoughts or suggestions on how the state should try to claw back the misspent funds? Let me know at kross@oklahomawatch.org. I'm taking some vacation time this week and will reply when I return.



Democracy Watch will publish next on Monday, July 17.

The Democracy Watch Newsletter is sponsored by:



Tweet Watch

In a 6-3 ruling issued last week, the U.S. Supreme Court affirmed the authority of state courts and governors to review congressional district maps and laws affecting federal elections.

In *Moore v. Harper*, North Carolina argued that state legislatures retain the sole authority to regulate federal elections under the elections clause of the U.S. Constitution. Writing the majority opinion, Chief Justice John Roberts said state courts have a long history of striking down laws that violate state constitutions and nothing justifies a special exception for elections.



USA TODAY 
@USATODAY



In the latest round of rulings, the Supreme Court rejected what's known as the independent state legislature theory, which would have given state legislatures the ability to set the rules for federal elections without oversight from courts



GETTY IMAGES

USA TODAY

which would've given state legislatures the ability to set rules for federal

0:26

Experts worried about the implications of the case.

Experts worried about the implications of the case, which could have affected upcoming elections and gerrymandering and eroded trust in election systems.

12:00 PM · Jun 27, 2023 · **13K** Views

10 Retweets **1** Quote **23** Likes



What I'm Reading This Week

- **‘Consequence’: Jury Finds Former Rep. Dan Kirby Guilty of Involuntary Manslaughter:** Kirby, who was elected to the Legislature in 2008 and resigned in 2017, was intoxicated to the point of impairment when he drove off a road and wrecked his motorcycle near Checotah in July 2022. A jury found him guilty of causing that wreck, which killed his girlfriend Sheryl Bichsel. [[NonDoc](#)]
- **Senate Fails to Override Stitt Veto of Compact Extension Bill:** Senate Bill 26x would have extended the tobacco compacts until Dec. 31, 2024, but the override attempt fell one vote shy of the 32 needed. Senate President Pro Tem Greg Treat, R-Oklahoma City, said the Senate does have the required votes to override the vetoes but some members who would have voted yes were not able to attend the special session. The Senate will convene again this month. [[Tulsa World](#)]
- **Oklahoma AG Says Latest Supreme Court Decision ‘Promising’ For Foes of Catholic Charter School:** U.S. Supreme Court justices declined to hear a lawsuit challenging a dress code at a North Carolina charter school that required girls to wear skirts. The decision could provide support for the legal argument that charter schools have to abide by the same laws as other public schools and are not private entities. [[The Oklahoman](#)]

Support our newsroom

Oklahoma needs high-quality investigative journalism. That is our mission at Oklahoma Watch. We produce stories that hold government and public officials accountable and that make transparent what some prefer to keep secret. We depend on financial support from readers like you to sustain our coverage. [Help us make a difference.](#)

Support us



Gov. Hobbs, Superintendent Horne engage in back-and-forth over ESA data breach

Horne: Departure of two high-ranking ESA program officials unrelated to breach

KGUN 9

GOV. HOBBS ASKS SUPT. HORNE ABOUT DATA BREACH
COMPANY RESPONSIBLE FOR STATE ESA PROGRAM MONEY BREACHED

- ClassWallet manages AZ ESA program's money
- ClassWallet had data breach
- 2 ESA officials resigned
- ClassWallet says breach is fixed, only affected 1 person

5:00
107°

According to the governor's office, ClassWallet—the third-party vendor that handles funds for ESA, the now-universal school voucher program—recently experienced a significant data breach.



By: Anne Simmons

Posted at 1:11 PM, Jul 28, 2023 and last updated 5:00 PM, Jul 28, 2023

TUCSON, Ariz. (KGUN) — After two high-level resignations within the Arizona Department of Education's Empowerment Scholarship Account (ESA) program, Governor Hobbs called early Friday for Superintendent of Public Instruction Tom Horne to release his department's plan to address a recent ESA data breach.

In the exchange, Horne met the governor's request for a written report by Thursday, Aug. 3. He concluded his response letter with a line reading, "I beat your six day deadline by six days."

According to the governor's office, ClassWallet—the third-party vendor that handles funds for ESA, the now-universal school voucher program—recently experienced a significant data breach.

Hobbs says in her letter to Horne that the ClassWallet breach compromised "thousands of personal information data points, including student names and disability categories."

Hobbs says the Arizona Department of Homeland Security's State Incident Response Team is reviewing the breach. In the letter dated Friday, July 28 Hobbs asks Horne to provide a written report detailing his current and next steps for addressing the data breach, including how his administration plans to address potential violations of state law on student data privacy.

Horne responded, saying his office had contact with ClassWallet after receiving reports of the breach, and that the company informed his team the breach was an 'isolated incident.' He says no parents were notified.

Read both letters in full:



Click lower left icon to expand letter to fullscreen view

Horne's response to the governor included heated language, apparently directed at the governor herself, saying her initial letter was "full of wild exaggerations." He deferred the responsibility of reporting the breach to Attorney General Kris Mayes back to the governor's office.

Horne says his department received the following statement July 14:

"The problem has been solved. It was a permission setting error. Once discovered, we (ClassWallet) took immediate action and corrected the permission setting.

Additionally, we performed a database search and concluded no other users were affected. Therefore, this is an isolated incident to a single user."

Hobbs says ESA Program Director Christine Accurso and ESA program administrator Linda Rizzo both resigned their positions earlier this week, just as the first academic year after the state's universal ESA expansion is beginning.

According to Horne, the resignations were unrelated to the breach.

RELATED: [Arizona Attorney General Kris Mayes issues school choice voucher warnings](#)

Anne Simmons is [the digital executive producer for KGUN 9](#). Anne got her start in television while still a student at the University of Arizona. Before joining KGUN, she managed multiple public access television stations in the Bay Area and

has worked as a video producer in the non-profit sector. Share your story ideas and important issues with Anne by emailing anne.simmons@kgun9.com or by connecting on [Instagram](#), [Twitter](#) or [LinkedIn](#).

Copyright 2023 Scripps Media, Inc. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

Report a typo

Sign up for the **Headlines Newsletter** and receive up to date information.

E-mail

Submit

CURATION BY

Recommended by 



Forget Gabapentin, Use This New Device To Relieve Neuropathy

Paid Content: Health Insight Journal

Windows Users Didn't Know This Simple Trick To Block All Ads (Do It Now)

Removing ads is the first step in having a faster, safer and hassle-free browsing experience!
Paid Content: Safe Tech Tips

Forget Furosemide, Use This Household Item To Help Drain Edema Fluid

Paid Content: healthlabnews.com



Top Podiatrist: If You Have Toenail Fungus Try This Tonight (It's Genius!)

Paid Content: WellnessGuide101.com

New Edema Device Leaves Seniors Speechless

Paid Content: Health Inside Journal

Doctor Urges Seniors With Numbness In Hands & Feet To Do This Daily

Here's why millions of seniors suffering from numbness in their hands and feet are turning...
Paid Content: gadgetsreviewers.com



Oldest living conjoined twins die at 62

KGUN 9 Tucson News



Nikki Haley announces new job after quitting 2024 presidential race

KGUN 9 Tucson News



Police say man bought 350 pounds of nails, scattered them on roads

KGUN 9 Tucson News



Neuropathy is not from Low vitamin B. Meet the Real Enemy of Neuropathy (Stop Doing This)

Paid Content: neuropathy.pro



Urologist: Building Muscle After 60 Comes Down To This 1 Thing

Paid Content: alphahealthsecrets.com



This Game is So Beautiful. If You Have a Computer it's a Must-Have

Paid Content: Raid: Shadow Legends

Unleash Adventure and Explore the Great Outdoors in an

SUV



Scripps Local Media
© 2024 Scripps Media, Inc

Give Light and the People Will Find Their Own Way

News Weather Traffic You Ask. We Investigate.™ Support

Sitemap Privacy Policy Privacy Center Journalism Ethics Guidelines Terms of Use EEO
Careers KGUN FCC Public File KWBA FCC Public File FCC Application Public File Contact

