



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

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*In the matter of*

**THE VR SCHOOL**

**Docket No. 23-39-O**

Emergency Assistance to  
Non-Public Schools

Petitioner.

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**DECISION OF THE SECRETARY**

The VR School (Petitioner) has requested that the U.S. Department of Education (Department) review action taken by the California Department of Education (CDE) in its administration of the Emergency Assistance to Non-Public Schools (EANS) Program. Petitioner asserted that the Department had jurisdiction over this matter based on the General Education Provision Act (GEPA) and other authorities.

Chief Administrative Law Judge (CALJ) Elizabeth Figueroa considered whether the Department's Office of Hearings and Appeals (OHA) or Office of Administrative Law Judges (OALJ) had jurisdiction over the case. In addition to voluminous filings made by Petitioner, the CALJ also considered briefs from the Department and CDE. Both the Department and CDE asserted that neither OHA nor OALJ had jurisdiction. The CALJ agreed and issued an order on January 2, 2024, (Dismissal Order) dismissing the case. In the Dismissal Order, the CALJ stating the following:

There are only two ways that [OALJ] within [OHA] is vested with jurisdiction to hear cases brought under GEPA, 20 U.S.C. § 1234 *et seq*: Congress may expressly mandate jurisdiction by clear statutory authority reference to GEPA or OALJ, or the Secretary may exercise discretion to designate OALJ jurisdiction.<sup>1</sup>

The CALJ found neither of these bases for jurisdiction in the instant case.

Petitioner has since filed a request for Secretarial review styled as an interlocutory appeal from the CALJ's Dismissal Order. Because the CALJ's Dismissal Order was not an interim ruling in an ongoing case, I find that the specific provisions for interlocutory appeals under GEPA do not apply. To the extent Petitioner relies on those provisions, I deny the request for interlocutory appeal. Nevertheless, I proceed with reviewing this matter to determine whether it is properly before the Department.

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<sup>1</sup> Dismissal Order at 3.

After reviewing all materials in the record, I find the CALJ’s Dismissal Order to be a thorough and well-supported analysis of this matter. I agree with the CALJ’s holding that neither OHA nor OALJ have jurisdiction to hear this case under GEPA. There is no statutory provision related to the EANS Program giving OALJ jurisdiction over Petitioner’s case. There is also no delegation of authority for OALJ to hear such appeals. I affirm the CALJ’s Dismissal Order and adopt the entirety of the Dismissal Order as part of this decision.

The question remains whether the Department has jurisdiction over the subject of this appeal.<sup>2</sup> If so, a delegation of authority would establish OALJ’s jurisdiction as described by the CALJ. However, I find that the Department does not have jurisdiction.

As an initial matter, I am unpersuaded by Petitioner’s general assertions that the Administrative Procedure Act or the actions of the Governor of California establish the Department’s jurisdiction to review any action taken by CDE related to this case.<sup>3</sup> I turn to the statutory basis for the EANS Program to determine whether it provides any avenue for review by the Department under GEPA.

The GEPA statutory enforcement provisions cited by Petitioner provide administrative review for a “recipient” in proceedings that involve, e.g., recovery of funds, withholding, and cease and desist orders.<sup>4</sup> These cases involve actions taken by the Department against a recipient, which means “a recipient of a grant or cooperative agreement under an applicable program.”<sup>5</sup> However, the original statutory text establishing the EANS Program contemplates State governors as the applicants for and recipients of EANS funds, with designated state agencies administering the program.<sup>6</sup> The statute does not articulate any direct relationship between the Department and a non-public school, let alone a right to an administrative appeal.

Departmental guidance expressly states that “[r]eimbursement under the CRRSA EANS program does not make a non-public school a recipient of Federal financial assistance.”<sup>7</sup> It also states that “a Governor is the recipient of Federal financial assistance” under the EANS program, so “Federal requirements that apply to a recipient of Federal financial assistance are not directly applicable to a non-public school” which receives EANS assistance.<sup>8</sup>

The FAQ specifically notes that “[t]he CRRSA and ARP Acts do not require a [State educational agency] to have a process by which a non-public school may appeal a denial of its

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<sup>2</sup> As the CALJ had determined the case should be dismissed based on OHA’s and OALJ’s lack of jurisdiction under GEPA, the CALJ dismissed as moot the broader question of whether the Department had jurisdiction at all. Dismissal Order at 4.

<sup>3</sup> See Interlocutory Appeal to the Secretary from Initial Rulings of an Administrative Law Judge at 2–3.

<sup>4</sup> 20 U.S.C. § 1234.

<sup>5</sup> *Id.* § 1234i(1).

<sup>6</sup> Consolidated Appropriations Act of 2021, Pub. L. No. 116-260 § 312(d)(1)(A), 134 Stat. 1925 (“the Secretary shall allot the amount described in subparagraph (B) to the Governor of each State with an approved application . . . in order to provide services or assistance to non-public schools under this subsection.”).

<sup>7</sup> Frequently Asked Questions, Emergency Assistance to Non-Public Schools (EANS) Program as authorized by the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA Act) and the American Rescue Plan Act of 2021 (ARP Act), U.S. Dep’t of Educ. (Sept. 17, 2021) (EANS FAQ) at D-7, . <https://oese.ed.gov/files/2021/09/Final-EANS-FAQ-Update-9.17.21.pdf> (last visited Jan. 25, 2024).

<sup>8</sup> EANS FAQ at D-12.

application for services or assistance under the EANS program” although a state educational agency (SEA) may establish such a process.<sup>9</sup> However, a status update provided by Petitioner indicates that the California Office of Administrative Hearings was poised to conduct a hearing related to this matter on January 8, 2024. To the extent CDE has provided a forum for Petitioner to seek relief, that forum and not the U.S. Department of Education is the correct one to hear this matter.

Based on the foregoing analysis, I dismiss the case.

**ORDER**

ACCORDINGLY, the January 2, 2024, Dismissal Order is hereby **AFFIRMED** and adopted into this decision. The request for interlocutory appeal is **DENIED**, and the case is **DISMISSED**.

So ordered this 5th day of February 2024.

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Miguel A. Cardona, Ed.D.  
U.S. Secretary of Education

Washington, D.C.

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<sup>9</sup> EANS FAQ at C-19.

