



June 14, 2023

Via email and certified mail

The Honorable Kimberly Yee
State Treasurer of Arizona
1700 West Washington Street, #102
Phoenix, Arizona 85007

Re: ESA Funding for Arizona Kindergarten Students

Dear Treasurer Yee:

I am writing on behalf of Empowerment Scholarship Account (ESA) recipients and their parents, to express our concern about Governor Hobbs' purported cancellation of ESA-related grants that would enable children to attend all-day kindergarten. When the Governor's Office entered an Interagency Service Agreement with your office to fund and administer the ESA all-day kindergarten grant program, the Governor made a binding commitment to go forward with the program unless certain specific conditions justified cancellation. No such conditions justify the Governor's recent attempt to unilaterally cancel the Agreement, and her legal arguments against the Agreement's validity are baseless. We urge your office to proceed with the grant program.

On January 1, 2023, the Governor's Office entered an Interagency Service Agreement with the Treasurer's Office to provide up to \$50,000,000.00 in federal grant money from the American Rescue Plan Act (ARPA), via the ESA program, to children in kindergarten starting with the 2023 academic year. The Agreement's express purpose was to benefit Arizona students by addressing educational disparities and to improve their access to educational opportunities.

In exchange for your office's commitment to administer and report on the grant program, the Governor made a contractual commitment to provide the funds and to "work with" your office "to establish a cadence whereby [the Governor] will transfer funding to [the Treasurer] to then disburse to grant program recipients."

The Agreement was, and is, a legally binding contract. *See* A.R.S. § 35-148. Moreover, by renegeing on her office's commitment to fund the grants for kindergarten students, the Governor has breached her obligations not only to your office, but to the children and parents who are the

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Agreement's direct and intended beneficiaries. *Norton v. First Fed. Sav.*, 128 Ariz. 176, 178 (1981); *see also Smith v. Central Arizona Water Conservation District*, 418 F.3d 1028, 1034-37 (9th Cir. 2005); *H.F. Allen Orchards v. United States*, 749 F.2d 1571, 1576 (Fed. Cir. 1984). The Agreement was finalized over five months ago, and many Arizona families are now understandably relying on the availability of the funds.

Nevertheless, Governor Hobbs announced on May 21 that she does not intend to honor the Agreement. We understand that Governor Hobbs has asked your office to stop all preparations to administer the grant program, and that the Arizona Center for Law in the Public Interest has threatened to sue your office if you do not acquiesce in the Governor's decision to renege on the Agreement.

While the Agreement contemplated several termination scenarios, nothing in the Agreement or in state law permits unilateral termination by the Governor. The Governor has suggested that the Agreement violates the Gift Clause, the Equal Protection Clause, the state's obligation to maintain a public school system, and the terms of the ARPA grant. But these arguments are completely groundless, and the Governor has no right to simply cancel an agreement based on unfounded speculation that the agreement violates the law.

In addition to these legal issues, we find it troubling that Governor Hobbs is attempting this rollback of the ESA program after a long history of campaigning against, and promising to end, the Legislature's recent expansion of the Arizona Empowerment Scholarship program. Having already failed in her bid to defund the ESA program through the budget process earlier this year, it appears Governor Hobbs is attempting to cancel the all-day kindergarten grants, not in order to comply with state or federal law (as described above, the program is entirely lawful), but as part of a transparent effort to harm and undermine the ESA program wherever possible.

Governor Hobbs' attempts to avoid her contractual obligations and claw back the money are unjustified, as a matter of both law and policy. We urge your office to go forward with the program, both as a legal obligation and for the sake of the parents and children who are relying on you and Governor Hobbs to implement the duly-enacted program to provide ESA grants for all-day kindergarten.

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If you have any questions or would like to discuss this issue further, please do not hesitate to contact me. Thank you for your time and attention to this matter.

Sincerely,



John Thorpe
Staff Attorney
Scharf-Norton Center for
Constitutional Litigation at the
Goldwater Institute

cc: The Honorable Katie Hobbs
Governor of the State of Arizona
1700 West Washington Street
Phoenix, AZ 85007