



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 16, 2021

CBCA 6971-FEMA

In the Matter of EARLY EDUCATION AND CARE, INC.

Sabara Quinn, Executive Director of Early Education and Care, Inc., Panama City, FL; and Adam Ferguson and Erik Mayo of Rostan Solutions, LLC, Baton Rouge, LA, appearing for Applicant.

Sherin Joseph, Appeals Officer, and Allison McLeary, Bureau Chief of Recovery, Florida Division of Emergency Management, Tallahassee, FL, appearing for Grantee.

Maureen Dimino, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC; and Charles Schexnaildre, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Baton Rouge, LA, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **SHERIDAN, KULLBERG, and LESTER.**

Following Hurricane Michael's landfall in 2018, Early Education and Care, Inc. (EEC) estimated it sustained over \$7 million in damages to its administrative headquarters and subsequently submitted a request for public assistance (RPA) to the Federal Emergency Management Agency (FEMA). FEMA determined that EEC, as a private non-profit provider (PNP) of early education and Head Start services, was an eligible non-critical, essential service provider as opposed to an eligible critical service provider. EEC sought arbitration of FEMA's determination under 42 U.S.C. § 5189a(d) (2018). We agree with FEMA that EEC is an eligible applicant for public assistance as a PNP providing non-critical, essential social services.

### Background

On October 11, 2018, the President declared a major disaster in the State of Florida following the landfall of Hurricane Michael. As a result of the damage EEC's facilities sustained during the hurricane, on January 11, 2019, EEC submitted an RPA to FEMA. EEC is a PNP that provides Head Start, Early Head Start, and childcare services in Florida.

On March 28, 2019, through the Florida Department of Emergency Management (FDEM), FEMA issued a determination that EEC was eligible for public assistance as a PNP providing non-critical, essential services, but not critical services. FEMA's determination resulted from a finding that EEC did not own or operate an elementary school. EEC appealed the determination positing that it was eligible for public assistance funding as a critical service provider of elementary education services.

FEMA informed EEC on March 13, 2020, that there was insufficient documentation to support a determination that EEC owned or operated an elementary school, and sought further documentation to substantiate EEC's allegations that it provided elementary education services. EEC submitted additional information to FEMA and continued to assert that it provided critical services as an elementary school because its Head Start services were separate from its childcare services.

When FEMA did not issue a decision on the appeal within 180 days, EEC submitted a request for arbitration to this Board on November 18, 2020. EEC seeks a determination that FEMA erred in its interpretation of the relevant Florida statutes and a finding that EEC provides critical services as an elementary school under Florida law. The parties jointly elected to have the arbitration hearing on the written record pursuant to Board Rule 611. 48 CFR 6106.611 (2019).

### Discussion

According to FEMA's Public Assistance Program and Policy Guide (PAPPG), "prior to determining whether [a] PNP is eligible [for public assistance], FEMA must first determine whether the PNP owns or operates an eligible facility." PAPPG version 3.1 at 11 (Apr. 2018). An eligible facility is one that provides "a critical service" or "a non-critical, but essential social service AND provides those services to the general public." *Id.* Critical services are defined as education, utility, emergency, and medical services. *Id.*; see 42 U.S.C. § 5172(a)(3)(B); 44 CFR 206.221(e).<sup>1</sup>

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<sup>1</sup> PAPPG lists in tables 1, 2, and 3, respectively, several examples of PNP eligible critical services; PNP eligible noncritical, essential social type services; and PNP ineligible services. PAPPG at 12-14. Among other examples, a facility that provides "[p]rimary or secondary education as determined under State law" is listed as a PNP eligible

In pertinent part, FEMA regulation provides that an educational institution includes “[a]ny elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965” (ESEA). 44 CFR 206.221(a). ESEA defines an elementary school as “a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.” 20 U.S.C. § 7801(19). Therefore, EEC’s status as a critical service provider rests on whether Head Start is considered elementary education under Florida law.

In its Request for Arbitration (RFA), EEC essentially posits that Florida statutes and administrative code are ambiguous and should be read broadly, not to limit “what type of entity or facility constitutes an ‘elementary school’ under state law.” RFA at 3. In response, FEMA maintains that EEC’s description of the relevant Florida statutes as being ambiguous is “not entirely accurate,” as the Florida statutes distinguish between early education and elementary education. Response to RFA at 11. We agree with FEMA. The Florida statutes clearly distinguish early education from elementary education and consistently refer to Head Start as early education or early learning as opposed to elementary education.

Title XLVIII (chapters 1000 through 1013) of the Florida statutes contains Florida’s K–20 (kindergarten through grade 20) Education Code. Fla. Stat. §§ 1000-1013 (2019). Although this title does not specifically define “elementary school,” it does define “school” to include “an organization of students for instructional purposes on an elementary . . . school level authorized under the rules of the State Board of Education.” *Id.* § 1003.01(2). Information regarding Florida’s Head Start programs is not found through the State Board of Education, but rather through the Office of Early Learning.<sup>2</sup> According to Florida law, the Office of Early Learning “shall not be construed as part of the K–20 education system.” *Id.* § 1001.213(1).

Moreover, Head Start repeatedly appears in the School Readiness Program part of Title XLVIII, Fla. Stat. § 1002, but never appears in the parts related to the kindergarten through grade 12 education system, Fla. Stat. § 1003. Florida Statute § 1002.82(4) refers to the Head Start program as a “school readiness program.”

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critical service; a facility that provides “[c]hild care” is listed as a PNP eligible noncritical, essential social service; and a facility that provides “[d]ay care services not included in previous table of eligible services” is listed as a PNP ineligible service. *Id.*

<sup>2</sup> Compare <http://www.fl DOE.org/policy/state-board-of-edu/> with <http://www.floridaearlylearning.com/statewide-initiatives/head-start>.

Decision

While we recognize the importance of the early childhood care and educational services that Head Start programs provide, the State of Florida's laws do not support a determination that Head Start programs provide elementary education. Because EEC's Head Start programs do not qualify as elementary education under Florida law, FEMA correctly determined that EEC is a PNP non-critical, essential service provider.

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN  
Board Judge

*H. Chuck Kullberg*

H. CHUCK KULLBERG  
Board Judge

*Harold D. Lester, Jr.*

HAROLD D. LESTER, JR.  
Board Judge