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BY EMAIL TO [REDACTED]

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Your ref: RE/ Pupil premium/P053-1-0
Our ref: Z2013663/JD5/AZZ

3 February 2021

Dear Sir / Madam

Re: R (^{HSI and HRI}) v Secretary of State for Education

1. This is the Secretary of State's response to your letter before claim dated 14 December 2020.

The Claimants

2. The Claimants are HSI and HRI (by their Litigation Friend and mother BXI).

The Defendant

3. The Defendant is the Secretary of State for Education.

Reference Details

4. This matter is being dealt with by:

[REDACTED]

Government Legal Department
102 Petty France
London SE1H 9GL

[REDACTED]

Your reference: RE/ Pupil premium/P053-1-0

Gilad Segal - Head of Justice & Development Division
Nic Newling - Deputy Director, Team Leader, MOJ, Public Law & SASO



Our reference: Z2013663/JD5/AZZ

Due to COVID-19 and the current circumstances I request that correspondence and Court documents are sent to me by e-mail rather than by post to limit the handling of materials.

Details of the Matter Being Challenged

5. The substance of the matter being challenged is the fact that pupils who were, at the material time, eligible for free school meals ('FSM') under the terms of the temporary extension to eligibility made in April 2020, are not treated as 'eligible' for the purposes of calculating the pupil premium grant paid to schools for the financial year 2021-22. The Secretary of State accepts that this was the effect of his existing (and long-standing) approach to calculating the pupil premium.
6. However, it is important to understand the particular nature of the pupil premium grant. The pupil premium is a discretionary grant made by the Secretary of State under section 14 of the Education Act 2002. The Secretary of State's policy on the allocation of the grant is set out in his Pupil Premium Policy Paper, the current version of which can be found at <https://www.gov.uk/government/publications/pupil-premium/pupil-premium>. The pupil premium is not paid to any individual pupil or their family and it does not confer any entitlement on any particular pupil or their family. Rather, a grant is paid to schools and, as the Policy Paper makes clear, its purpose is broad: 'to help [schools] improve the attainment of their disadvantaged pupils'. The Secretary of State's position is that schools are best placed to decide how to use this funding and the Policy Paper makes clear that 'schools can spend their pupil premium on pupils who do not meet the eligibility criteria'. Indeed, the Secretary of State endorses the recommendation of the Education Endowment Foundation that the focus should be on improving teaching quality, which is a step which benefits all pupils. The fact that a pupil is not treated as 'eligible' for the purposes of calculating the grant does not, therefore, mean that he or she will not benefit from it.

Response to the Proposed Claim

7. The Secretary of State considers the claim to be without merit. However, as you are aware, in light of the exceptional circumstances of the Covid-19 pandemic, he has agreed temporarily to extend eligibility for FSM. Further, he has agreed to review the eligibility criteria for FSM and maintain the temporary extension until the outcome of the review. As a temporary measure, he has now decided to treat pupils eligible for FSM under this temporary extension as 'eligible' for the purposes of calculating the pupil premium grant for 2021-22.
8. As set out in the Policy Paper, pupil premium payments for 2021-22 are based on the data provided in the October school census. It is now neither practicable nor desirable to change the census or to invite all schools to resubmit their data. Accordingly, the Secretary of State will invite all maintained schools and academies to make a claim for additional pupil premium funding if, on the date of the October census (namely 1 October 2020), they had on the school roll any pupils who were eligible for FSM under the temporary extension to eligibility announced in April 2020. This is akin to the process for allocating Covid funds, in which schools are invited to make claims based on published criteria.
9. The claims process will take time to develop, implement and complete, and will not be operational until later in the financial year. The Secretary of State will endeavour to complete this task by June/July 2021, when the first instalment of the pupil premium for 2021-22 will fall to be paid, but cannot guarantee that he will be able to do so. In the event that he is unable to complete the process by then, he will do so as soon as is reasonably practicable thereafter. The payment schedule may not align with the core pupil premium allocation but the Secretary of State will ensure that overall, and subject to making a claim through the prescribed process, schools will receive a total allocation of pupil premium which reflects the decision to treat pupils who were eligible for FSM under the temporary extension as 'eligible' for the purposes of calculating the pupil premium grant for 2021-22. In the meantime, the Claimants and others in their position should continue to benefit from the existing pupil premium grant as set out above.

10. This disposes of the Claimants' claim for judicial review. Indeed, we consider that this outcome is considerably more beneficial to the Claimants than they could reasonably expect to achieve in Court. Accordingly, we invite the Claimants to withdraw their claim. In the circumstances, it is neither necessary nor proportionate to respond further to the letter before claim, save to state that the claim is denied in its entirety.

Conclusion

11. Please confirm that the Claimants agree to withdraw the claim within 14 days of the date of this letter or, if not, set out the basis upon which the Claimants consider it appropriate to maintain the claim in the circumstances.

Yours faithfully



[REDACTED]
For the Treasury Solicitor

D [REDACTED]
E [REDACTED]