IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
IN THE DISTRICT COURT OF OKLAHOMA COUNTY

IN RE: MULTICOUNTY GRAND	)	**Case No. SCAD-2023-44**
JURY, STATE OF OKLAHOMA	)	**D.C. Case No. GJ-2023-1**

REPORT OF INVESTIGATION

FINDINGS OF THE TWENTIETH MULTICOUNTY GRAND JURY REGARDING OKLAHOMA'S IMPLEMENTATION OF THE GOVERNOR'S EMERGENCY EDUCATION RELIEF FUNDS THROUGH THE BRIDGE THE GAP AND STAY IN SCHOOL INITIATIVES

October 10, 2024

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I. INTRODUCTION

In the years following the onset of the Novel Coronavirus Disease 2019 (COVID-19) global pandemic, audit reports by both federal and state authorities first alerted the public to the State of Oklahoma's mismanagement and misspending of federal grant money, known as the Governor's Emergency Educational Relief (GEER) Fund. The GEER funds were awarded by the United States Department of Education (USDOE) to assist the State in addressing its emergency educational needs resulting from COVID-19. More specifically, the audit reports brought to light that two of Oklahoma's five GEER-funded initiatives in particular—Bridge the Gap (BTG) and Stay in School (SIS)—resulted in millions of dollars in questionable and unauthorized expenditures, which thereby exposed Oklahoma taxpayers to liability for repayment to the federal government.

The GEER funds awarded to the Governor were to be allocated, at the Governor's discretion, to educational entities within the State most significantly impacted by COVID-19 or deemed essential for carrying out emergency educational services. Of Oklahoma's $39.9 million GEER Fund award, the Governor allocated $8 million and $10 million, respectively, to the BTG and SIS initiatives. Both programs were conceptualized to provide financial assistance directly to low-income families. BTG, also known as Digital Wallet, was designed to provide microgrants to eligible families for the purchase of technology, materials, and supplies essential for facilitating virtual learning and homeschooling during the pandemic. SIS was intended to provide scholarships to eligible families with children already attending a nonprofit private school to subsidize tuition costs so that no child would be forced to leave their school due to financial hardship resulting from the pandemic. Unfortunately, as a result of the State's irresponsible administration of the grant monies, both initiatives encountered substantial failures.

Over the past two months, the Twentieth Multicounty Grand Jury of Oklahoma received evidence, including witness testimony, documentary and video evidence, email correspondence, and the aforementioned federal and state audit reports, relating to the State's mismanagement of the BTG and SIS initiatives. We heard testimony not only from personnel with the Oklahoma State Auditor and Inspector's Office but also from current and former state officials and other key players who had personal knowledge and involvement in the decision-making surrounding implementation of the two initiatives. We found most, but not all, witnesses to be honest and candid. Overall, the credible evidence we received was wholly consistent with the findings set forth in the audit reports previously released to the public. Delving beyond the audit reports' revelations detailing *what* happened, this Grand Jury set out to investigate *how* and *why* the State failed to properly manage its federal grant money. The evidence shows state officials, though perhaps well-intentioned, disregarded available administrative safeguards in favor of advancing a political and philosophical agenda.

Although our investigation uncovered deeply troubling practices and actions (and inactions) by the state offices, non-state entities, and private individuals tasked with establishing and administering the BTG and SIS initiatives, we ultimately find insufficient evidence exists to establish, beyond a reasonable doubt, that a crime was committed. Nor do we find *willful* or *corrupt* misconduct or *willful* malfeasance. Nevertheless, we find the grossly negligent handling of federal grant money and utter lack of internal controls and oversight over the grant-funded initiatives to be irresponsible, disappointing, and indefensible. What's more, the waste and misspending of millions of dollars in emergency aid was easily preventable. This mismanagement prevented the most vulnerable Oklahomans from getting help they desperately needed during a global pandemic. Citizens deserve more from their government. This report is intended to shine a light on the systemic program failures we identified and to make recommendations to protect against such failures in the future.

After careful consideration of all the evidence, the Multicounty Grand Jury hereby submits to this Honorable Court the following report of its findings and recommendations.[1]

II. Background

A. COVID-19 and the Disruption of Education

In March 2020, the State of Oklahoma, like the rest of the country and the world, found itself facing an unprecedented public health emergency created by the

[1] This report is submitted pursuant to 22 O.S.2011, 346, which provides:

> In addition to any indictments or accusations that may be returned, the grand jury, in their discretion, may make formal written reports as to the condition and operation of any public office or public institution investigated by them. No such report shall charge any public officer, or other person with willful misconduct or malfeasance, nor reflect on the management of any public office as being willful and corrupt misconduct. It being the intent of this section to preserve to every person the right to meet his accusers in a court of competent jurisdiction and be heard, in open court, in his defense.

arrival of COVID-19. It was unquestionably a chaotic time for state leaders. With little warning and many unknowns, state officials were forced to make judgment calls aimed at protecting the health and welfare of all Oklahomans while at the same time maintaining continuity of essential public services. The pandemic disrupted most every aspect of Oklahomans' everyday lives as non-essential businesses were shut down and people were asked to stay home. For families, perhaps one of the most acutely felt impacts of the pandemic came early on when state officials made the difficult decision to close all public schools statewide.

With schoolchildren across the State abruptly homebound, state officials scrambled to implement workable distance-learning solutions. Time was of the essence as the threat of learning loss loomed. Although almost taken for granted in today's post-pandemic world, it must be remembered that in the spring of 2020 most schools had few or no mechanisms in place to provide universal virtual instruction to students. Additionally, while not a new phenomenon, the pandemic highlighted and deepened the "digital divide" experienced by Oklahoma students and families, that is, the gap created by unequal access to digital technology and information. Many families, particularly in rural and economically suppressed areas, lacked the technological resources—such as personal computers, tablets, and reliable, high-speed internet—necessary to participate in a virtual learning environment. It is against this backdrop that several emergency educational initiatives, including BTG and SIS, were conceptualized.

B. GEER Fund

In March 2020, Congress established the Governor's Emergency Education Relief (GEER) Fund as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act.[2] The USDOE awarded GEER Fund grants directly to State Governors for the purpose of supporting educational entities, including local school districts, institutions of higher learning, and other education-related entities (*e.g.*, nonprofit organizations and private schools), to address educational disruptions caused by the COVID-19 pandemic. Acceptable uses of GEER Fund money included purchasing educational supplies, technology, and services to enhance remote learning, address learning loss, and provide mental health services.

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[2] References to GEER Funds in this report refer solely to funds awarded as part of the CARES Act, commonly known as "GEER I." Aside from a few passing references during witness testimony, this Grand Jury did not receive evidence related to separate GEER funds later awarded under the Coronavirus Response and Relief Supplemental Appropriations Act, commonly known as "GEER II."

Extensive regulatory requirements were placed on GEER Fund grants to ensure funds were used effectively to address the pandemic's impact on education. Recipients had to adhere to federal guidelines regarding the use of funds, ensuring that expenditures were reasonable, necessary, and properly documented. For instance, States were required to distribute funds promptly to address urgent needs arising from the pandemic and to ensure that funds were distributed equitably among various educational institutions, prioritizing those most in need. States further had to provide regular reports on fund usage to the USDOE, demonstrating how the money was spent and its impact on educational outcomes. There were also specific mandates for transparency in the allocation process, including public disclosure of how funds were distributed. These regulatory requirements aimed to ensure that GEER funds were effectively used to support educational institutions in mitigating the impacts of COVID-19 while maintaining accountability and oversight.

Distribution of the nearly $3 billion dollar GEER Fund was determined by a fixed formula, by which $39,919,354 was allocated to the Governor of Oklahoma. The Governor's use of GEER funds was limited to providing subgrants to local school districts and institutions of higher learning within the State that had been "most significantly impacted" by COVID-19 in order to support their on-going functionality and ability to continue providing educational services to students. Additionally, the Governor could use GEER funds to provide support, either through a subgrant or contract, to other local school districts, institutions of higher learning, or education-related entities that the Governor deemed "essential" for carrying out emergency educational services. While use of the GEER funds was narrowly limited, the Governor was afforded broad discretion in determining which entities within the State would receive GEER subgrants.

Time was also of the essence. Once received, the Governor was under a one-year deadline to award the allocated GEER funds to eligible entities. Any funds remaining by the one-year mark had to be returned to the USDOE for reallocation to other states. The State was also required to submit a report to the USDOE within forty-five days of receiving GEER funds detailing the process the State used in awarding those funds. The initial report also had to explain what criteria the State used to determine which entities were either most significantly impacted by COVID-19 or essential for carrying out emergency educational services, as well as the process and deliberations involved in formulating those criteria.

Of critical importance, the Governor was further required to designate a fiscal agent, which could be his own Office or another appropriate State agency, to administer the GEER Fund and monitor all GEER-funded activities in the State. Due to the onerous compliance requirements, the USDOE "recommended that the Governor designate an agency with appropriate experience in administering Federal grants and an understanding of the types of activities that may be supported by the GEER Fund." Unfortunately, as discussed below, this federal guidance went totally unheeded in the administration of the BTG and SIS initiatives.

III. OKLAHOMA'S IMPLEMENTATION OF THE GEER FUND

A. The Governor's Application for and Distribution of GEER Fund Award

To receive Oklahoma's GEER Fund allocation, the Governor submitted an application, formally titled a "Certification and Agreement for Funding," to the USDOE that described in very general terms the State's objectives and plans for the grant award. As part of its application, the State certified that the federal funds would only be used as authorized by Congress, *i.e.,* to provide emergency support to schools most significantly impacted by COVID-19 or to schools or other education-related entities essential for carrying out emergency educational services. The State further certified it would comply with all other federal laws and regulations, including monitoring and reporting requirements, and ensure every subrecipient of GEER fund monies would cooperate with the examination of records by federal authorities. The Governor signed the application on April 30, 2020, and designated his Secretary of Education (SOE), who also served as his Secretary of State (SOS) as the State's Program Representative. The State later received its Notification of Award from the USDOE.

From the outset, the State did not manage its GEER Fund award in a manner the public would ordinarily expect millions of dollars in federal grant funding to be handled. We recognize, of course, these were no ordinary times. Even so, in a State that finds itself all too often in a state of emergency—whether by acts of God or man—citizens depend on their government to steward emergency aid responsibly.

The Office of the Governor never solicited proposals for use of Oklahoma's $39.9 million GEER Fund award. Even so, as word of the impending award spread, the Governor's Office did receive some unsolicited proposals from various education-related entities. Ultimately, the Governor's Office chose to distribute the GEER Fund among five different initiatives, including $8 million to BTG and $10 million to SIS.[3] On July 2, 2020, the Governor's Office drew down Oklahoma's entire $39.9 million GEER Fund allocation from the USDOE's grant management system. At that time, no immediate cash need for the grant monies existed. Witnesses knowledgeable in federal grant management universally agreed this was highly unusual. In fact, Oklahoma's immediate 100% drawdown is what initially drew the federal government's scrutiny and triggered targeted monitoring by USDOE. Oklahoma's unnecessary drawing down of all $39.9 million at once is also emblematic of the pervasive problem we found throughout the implementation of the BTG and SIS initiatives, namely that decision makers were ignorant of their own ignorance.

B. Rejection of State Department of Education as Fiscal Manager

As noted above, the USDOE encouraged Governors to designate a state agency with knowledge and experience in administering federal grant programs to serve as the fiscal manager over the State's GEER Fund allocation. In Oklahoma, the most obvious state agency that fit the bill was the State Department of Education (SDE), which already had in place an experienced staff and grant management system dedicated to administering and monitoring hundreds of millions of dollars in federal funding for education on a daily basis.[4] Quite reasonably, then, SDE proactively submitted a proposal to the Governor and his SOS/SOE on April 20, 2020, giving notice of SDE's readiness and ability to implement a GEER-funded initiative to get funding to the students and communities with the greatest need in short order.

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[3] Additionally, $1 million was allocated to the Skills to Rebuild initiative, which provided accelerated, tuition-free job training programs for adults through Tri-County Tech; $12 million was allocated to the Learn Anywhere Oklahoma initiative, administered by the State Virtual Charter School Board, to provide schools and families access to online curriculum for K-12 students; and $8 million dollars was allocated to the State Department of Education to award competitive incentive grants to local school districts most significantly impacted by COVID-19. This report does not assess these initiatives, but we note that federal auditors determined that the risk of an unallowable use of funds for these programs was low due to the how the funds were used.

[4] SDE is the agency that oversees the State's public school system. The agency is headed by the State Superintendent of Public Instruction, a constitutional position elected by the people. In contrast, the SOE is a cabinet position appointed by the Governor, with consent of the Senate. The SOE acts as the Governor's chief advisor on public education policies. The SOE's primary responsibilities are to serve as chair of the Commission for Educational Quality and Accountability and approve education-related state expenditures above a certain threshold.

The program proposed by SDE was designed to bridge the digital divide by providing all students access to distance learning. Consistent with the federal statutory requirements, SDE's proposal laid out a comprehensive methodology, backed by empirical data already collected by SDE, for identifying school districts most significantly impacted by COVID-19. Under its proposal, SDE would establish a sub-granting process to direct funding to the hardest-hit school districts within the State. The plan included an application and scoring process that could be run through SDE's grant management system, allowing the grant money to be deployed to targeted districts both expeditiously and in compliance with federal statutory and regulatory requirements.

At least one member of the Governor's cabinet, his SOS/SOE, urged him to award the GEER money to SDE because it made sense both logistically and politically. But the Governor was adamant he did not want SDE to have control of all the GEER funds. Witnesses universally acknowledged that by this point in time, the relationship between the Governor's Office and SDE was strained, owing in large part to continuing policy disagreements over school closures and mask mandates. More than that, witnesses privy to the decision-making process all agreed the decision to bypass SDE was driven by another perceived policy difference over so-called "school choice." [5] The Governor, a widely known school-choice proponent, wanted to direct GEER money to benefit low-income families attending private schools. Without consulting the agency, the Governor's Office assumed SDE would be unwilling to support such initiatives instead of supporting public schools. Evidence received by this Grand Jury shows this assumption was unfounded. Regardless, with SDE out of consideration, the need to devise an alternative plan was urgent as the start of the new academic year was quickly approaching and the clock on awarding or obligating the GEER Fund money was ticking.

C. State Engagement of Non-State Entities and Individuals

SDE was not alone in proposing uses for the GEER Fund money. Sometime during the summer of 2020, the Governor's Office began strategizing with two private citizens who headed up nonprofit organizations aimed at advancing school-

[5] The term "school choice" generally refers to policies or programs that give public education dollars, *i.e.,* taxpayer money, directly to families (as opposed to public schools) to choose how a child receives academic instruction. Common examples of school choice programs include school vouchers, Education Savings Accounts (ESAs), and individual tax credits, such as the Oklahoma Parental Choice Tax Credit the Governor signed into law in 2023. *See* 70 O.S.Supp.2023, §§28-100–28-103.

choice policies. One was the executive director of a local nonprofit that had recently restructured under the name Every Kid Counts Oklahoma (EKCO). EKCO's mission at that time was to advocate school-choice policies to Oklahoma lawmakers on behalf of low-income families. The other was the executive director of the Oklahoma branch of the American Federation for Children (AFC-Oklahoma), a national special interest group that advocates for school-choice legislation across the country. Neither EKCO nor AFC-Oklahoma had a pre-existing relationship with state government and neither of their Directors were, at that time, employed by the State. The Grand Jury received conflicting testimony as to whether it was the Governor's Office or the nonprofit Directors who first approached the other about the two initiatives that would ultimately become the BTG and SIS programs. In any event, it is clear their visions were aligned.

This Grand Jury is deeply troubled by the manner in which the State offloaded its responsibility to oversee public funds onto private, non-State entities. To begin with, there is no indication the Governor's Office made any effort to vet EKCO, AFC-Oklahoma, or their respective Directors. Nevertheless, by late June or early July 2020, both organizations had been engaged to develop and implement the BTG and SIS initiatives on behalf of the State. Evidence was presented that this selection was attributable, in part, to representations made by the EKCO Director that EKCO had the staffing and expertise necessary to administer a federal grant program. However, at that time, the EKCO Director was the sole employee of EKCO and had no federal grant experience. Basic due diligence by the State would have uncovered this glaring lack of qualifications. It is of further great concern to this Grand Jury that although EKCO and AFC-Oklahoma were authorized by the Governor's Office to administer millions of dollars in federal grant money, no contract or other documentation exists holding these private individuals or their organizations accountable to the State. Instead, the Oklahoma government entered this undefined arrangement based on nothing more than conversations and informal agreements.

On July 17, 2020, the Governor issued a press release announcing his education allocation plan for Oklahoma's GEER Fund, which included BTG and SIS. The press release gave notice to the public that "**Every Kid Counts Oklahoma (EKCO) will be awarding grants** to families on a first come, first serve basis." Regarding SIS, the press release announced that another non-state entity, Oklahoma Private School Accrediting Commission (OPSAC), "had been requested to oversee the distribution of emergency educational relief funding to [low-income] families." There is no indication the State had any formal contract or agreement with OPSAC relating to its involvement in the SIS program either. On August 12, 2020, days after the public launch of BTG and SIS, the Governor issued another press release stating, "Bridge the Gap **is administered by Every Kid Counts Oklahoma (EKCO)**, a new education-focused organization, and **EKCO will be awarding the grants** to up to 5,000 Oklahoma families on a first come, first serve basis." The only option to access the application for BTG provided by the press release was a link to EKCO's website where access to the application was exclusively available.[6] The press release further directed the public to EKCO's homepage and provided an EKCO email address for any questions about the program.

D. Conceptualization of Bridge the Gap and Stay in School

Though some testimony conflicted, the evidence we received, particularly contemporaneous documentation and correspondence, suggests that the EKCO Director was the primary architect of the BTG program. BTG, which received $8 million in GEER funding, was designed to provide $1,500 microgrants to 5,000 families with children in grades K-12 who fell at or below 185% of the federal poverty guidelines. A family could only receive one microgrant, irrespective of the number of school-aged children at home. BTG micrograms were available to students attending both private and public schools. They were supposed to be used to purchase "curriculum content, technology and school supplies" for the 2020-2021 school year and were to be awarded on a first come, first served basis until the fund was depleted.

SIS, in contrast, was designed as a need-based scholarship program intended to provide financial assistance to low-income families with children in grades K-12 already attending nonprofit private schools. The plan was for SIS scholarship awards to be limited in the first week to students whose family income fell at or below 185% of the federal poverty guidelines and, after that, open up to those who fell at or below 350% of the federal poverty guidelines. Eligible families could apply to receive up to $6,500 per child to subsidize the family's out-of-pocket tuition costs. With a $10 million allocation, the SIS program was projected to benefit approximately 1,500 private-school students. Like BTG, SIS scholarships were to be awarded on a first come, first served basis. The AFC-Oklahoma Director is the individual consistently identified by witnesses as spearheading the SIS program, in conjunction with the EKCO Director.

[6] The EKCO website that the Governor's Office directed Oklahoma families must visit if they wished to apply for BTG grant funds prominently displayed an image and video of the EKCO Director.

Despite the federal restrictions mandating GEER Fund monies be allocated to schools deemed "most significantly impacted" by COVID-19 or to schools and other education-related entities deemed "essential" to providing emergency educational services, there is no indication that those involved in the development of the BTG and SIS initiatives ever undertook any analysis to reach these necessary determinations. From everything this Grand Jury has reviewed, it appears no meaningful process or deliberation was involved in formulating the criteria for awarding funds through either program. Indeed, as there is no documentation nor witness who could explain how the poverty guideline percentages for eligibility were even reached, it appears these figures were selected arbitrarily. Though BTG and SIS did not meet the programmatic requirements for GEER Fund monies, their general frameworks were clearly consistent with meeting a different objective: establishing a school voucher program. To be sure, witnesses involved in the implementation of these programs—from both inside and outside state government, from senior state officials down—uniformly acknowledged that the Governor's Office intended SIS to serve as a "test case" or "pilot program" for establishing an Oklahoma school voucher program. This understanding is corroborated by public statements made in December 2020 by the EKCO Director, who at that time was also serving as the Governor's new Secretary of Education, that the hope was for the programs to continue even after the pandemic ended.[7]

E. Delegating the Distribution of Public Funds to Private Vendors

A critical component of BTG and SIS was the use of a private vendor—one vendor in particular (hereinafter, the Digital Platform Company)—to actually execute the programs. The EKCO Director came to the table with the Digital Platform Company already in mind. The Digital Platform Company was an out-of-state business that hosted a digital financial-management platform designed to streamline the management and distribution of educational funds. It had been recently recommended to the EKCO Director by another school-choice advocate. After some inquiries, the EKCO Director learned the company had previously worked with a couple of other states to set up digital wallet applications for those states' publicly-funded, private-education programs. There has been some testimony that the Digital Platform Company was the only vendor that could provide the services needed to support the BTG and SIS programs. The Grand Jury is unable to

[7] *See How to Launch a Scholarship Program in 4 Weeks with Min Staffing Requirements*, at 00:47:33, YouTube (Feb. 29, 2021), https://www.youtube.com/watch?v=kn-tOqJ5DKg.

assess the validity of this assertion because the State never sought bids for the contract.

The Digital Platform Company's platform was designed to operate as an online marketplace, similar to Amazon. The concept was fairly streamlined. Once a family's application for the BTG and/or SIS programs was approved, awarded funds would be loaded onto the family's digital wallet. A family awarded BTG microgrants could then log into their online account on the Digital Platform Company's platform and purchase educational supplies and services through various approved vendors using those funds. Similarly, a family awarded an SIS scholarship could use their digital wallet to direct tuition payments to their child's private school.

An issue that arose early in the development phase of BTG and SIS was uncertainty as to how a family's eligibility for the programs could be determined. The Governor's Office was intent on minimizing administrative costs. To that end, attempts were made to obtain lists of families already determined to be eligible to receive Title I funds or other government assistance. But this approach was ultimately abandoned as unworkable and imprudent. The only viable alternative for timely assessing eligibility was to have the families themselves submit applications, with supporting documentation, to establish they fell within the requisite income threshold and were experiencing financial hardship due to the pandemic. However, the Digital Platform Company lacked the capability to process families' applications. Thus, if the State was unable to identify eligible families, another vendor would need to be brought in to manage the application and approval process.

The Digital Platform Company suggested another out-of-state, private vendor (hereinafter, the Information Management Company) it had previously worked with that could process applications and issue BTG and SIS awards to families. The Information Management Company was a financial services provider that specialized in managing tuition payments and other education-related expenditures, as well as financial aid applications and awards. The EKCO Director asked if the Digital Platform Company could subcontract with the Information Management Company to "avoid[ ] the Governor seeming to pay two groups for one process." The Digital Platform Company's CEO agreed the State could contract with the Digital Platform Company alone, and the Digital Platform Company in turn would subcontract with the Information Management Company.

After consulting with the Secretary of Education, the EKCO Director exchanged a number of emails with the Digital Platform Company's CEO conveying the State's hesitation to employ two separate vendors. On July 10, 2020, the EKCO Director advised the Digital Platform Company's CEO:

> I'm trying to convince [the Governor and Secretary of Education] to eat the cost and just have you use [the Information Management Company]. . . . Im [sic] just trying to make them more comfortable with the option of giving you the money and allowing you to subcontract with [the Information Management Company].

The Digital Platform Company's CEO offered to draft something for the EKCO Director to use as a "conversation tool" with the Governor's Office and asked the EKCO Director to give him more information about certain program requirements. The EKCO Director responded by providing a copy of what he called "our original proposal" that he, along with the Executive Director of another educational nonprofit organization, had devised. The proposal approximated the BTG and SIS programs. The Digital Platform Company's CEO then provided the EKCO Director informational materials to guide his conversations with the Governor's Office.

Evidently, the pitch was effective, because the scenario described in the July 10 email is precisely what happened in the end. On or about July 21, 2020, the Secretary of Education, the EKCO Director, the Digital Platform Company's CEO, and the Information Management Company's CEO participated in a virtual meeting to introduce the Secretary of Education to those companies and to discuss how the BTG and SIS programs would be administered using the Information Management Company as a subcontractor of the Digital Platform Company.

F. Selection of OEQA as the Pass-Through Agency

Since the Governor's Office had neither the experience nor the capability to manage a federal grant program itself, the question then became which state agency could serve as a pass-through for GEER money. As discussed above, the Governor's Office did not consider SDE to be a desirable agency for the GEER initiatives due to political and philosophical differences between the two. But alternative options for administering and overseeing large-scale educational grant programs, if any, were scant.

Initially, it was thought funding for BTG and SIS could flow through the Office of the Secretary of State (SOS), who at that time also happened to be the

SOE.[8] On July 28, 2020, the SOS/SOE requested the Chief Financial Officer (CFO) for the SOS's Office assist with drafting a contract between the SOS and the Digital Platform Company for administration of the BTG and SIS programs. The request included a description of both programs, and the scope of work expected of the Digital Platform Company. The CFO responded with some follow-up questions, including whether the funding source was from federal grants. On this point, the CFO advised, "If they are federal grants there are probably complicated grant/contract requirements that would need to be determined." The CFO also raised concerns about using a sole source contract, as opposed to a competitively bid one, and recommended any contract draft be reviewed by legal counsel and procurement specialists with the Office of Management and Enterprise Services (OMES).[9]

OMES was brought into assist with drafting a procurement contract. The SOS/SOE advised an OMES deputy general counsel that the SOS/SOE was the point of contact for questions regarding the scope and pricing of the contract. In a follow-up email sent on August 4, 2020, the SOS/SOE was notified that the OMES Executive Director had requested that "SDE, or another agency is [sic] more appropriate, take ownership" of the contract. That afternoon, the SOS's Chief Financial Officer (CFO) sent an email to the SOS/SOE detailing the "serious concerns" he had for the SOS's Office being used as a pass-through for the BTG and SIS programs. He explained, "Dealing with federal funds, especially as a pass-through to subrecipients, will seriously complicate our agency's financial reporting and accounting beyond simply serving as a conduit of the funds." The CFO identified numerous concerns, including legal implications, budgetary issues, additional auditing requirements, complicated reporting requirements, drawdown requirements, and detailed monitoring and compliance requirements. He further cautioned that "[f]ederal grant reporting is a specialized area of governmental accounting, even within state government, and there's a lot that goes into it." He concluded that for the agency to try to establish and be ready to administer a federal grant program with no experience and a lead time of only one week "seem[ed] impossible."

With SDE and the SOS's Office out of the running, the SOS/SOE turned to another more obscure state agency which fell under his purview as the SOE—the Office of Educational Quality and Accountability (OEQA). Staffed by a dozen or

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[8] The SOE did not have a separate state office.

[9] OMES is a state agency that provides financial, property, purchasing, human resources, and information technology services to other state agencies.

fewer state employees, OEQA monitors educational programs statewide to ensure local school districts are performing in accordance with State standards. The agency's primary functions include accrediting teacher education programs and implementing statewide standardized testing. The agency has no direct interaction with students or families.

Like the SOS's Office, OEQA lacked any training or experience for administering a federally funded program. The agency received no federal funding whatsoever; it operated on a budget of around $1.5 million appropriated by the Legislature. It was therefore just as unqualified to oversee the BTG and SIS programs as the SOS's Office. Nevertheless, on August 4, 2020, the SOS/SOE notified OEQA's Executive Director that OEQA would be serving as a pass-through agency for GEER Fund money. It is undisputed that the OEQA Director was instructed that the only action needed on his part was to sign the contract with the Digital Platform Company and nothing more would be required of OEQA. That same day, an OMES deputy general counsel advised the Digital Platform Company's CEO via email that OEQA would "own" the contract.

G. The Contract

OMES hastily prepared the non-competitive procurement contract between the State, via OEQA, and the Digital Platform Company. The contract was signed by the Digital Platform Company's CEO on August 6, 2020, and by the OEQA Director and the State's Chief Information Officer on August 7, 2020. By its terms, the contract was effective immediately and extended through December 30, 2020, unless extended by written agreement of the parties.

In contrast to the typical payment structure found in State procurement contracts, which provides for incremental reimbursements upon receipt of deliverables, the contract here required the State to make advance lump-sum payments to Digital Platform Company. From the Governor's $18 million allocation to BTG and SIS, the State agreed to pay a flat fee of $650,000—half to be paid following the August 10, 2020 "go-live" date and the remainder to be paid following an August 30, 2020, de-briefing meeting. The remaining $17,350,000 would be invoiced to OEQA upon execution of the contract and then distributed as BTG and SIS awards until the funds ran out or the contract expired.[10] In the event that all BTG

[10] In practice, the State did not even adhere to the contract's payment structure. The evidence shows that on August 18, 2020, at the direction of the SOS/SOE, the OEQA Director picked up a

and SIS funds were not awarded by 5:00 p.m. on December 30, 2020, then the contract required the Digital Platform Company to refund the entire amount of the remaining grants to OEQA no later than January 30, 2021.[11]

Perhaps the most notable feature about the contract is what it did *not* include. For starters, it did not delineate whether the Digital Platform Company was a subrecipient of the federal grant award, in which case it would be responsible for adhering to the GEER Fund program requirements, or whether it was merely a contractor, in which case it would not be subject to heightened compliance requirements. The distinction is pivotal. Yet given the absence of any express declaration and other ambiguities in the Digital Platform Company's involvement in the grant programs' administration, even state and federal auditors disagreed on its status as a contractor or a subrecipient.

In addition to that glaring oversight, the contract also conspicuously omitted any provision detailing or referencing what mandatory regulations and requirements were applicable to the Digital Platform Company, or to any other party with whom the Digital Platform Company might subcontract, upon receipt of the federal funds. The contract did authorize the Digital Platform Company to utilize a subcontractor upon written approval of the State.[12] But curiously, even though it was clearly understood by all parties that the Digital Platform Company would be subcontracting with the Information Management Company to process BTG and SIS applications and determine award eligibility, the contract made no mention of the Information Management Company or its indispensable role in the programs' administration.

The contract also failed to require the Digital Platform Company or any subcontractor to protect the personally identifiable information which families were required to provide in the application for both programs. We learned that during a subsequent state audit of the BTG and SIS programs, the State Auditor's Office received an Excel spreadsheet that had been obtained from the AFC-Oklahoma Director. The spreadsheet contained the personal information families provided in

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check made out for the entire $18 million from the State Secretary of Budget and mailed it to the Digital Platform Company.

[11] As will be discussed below, neither party abided by this term either as BTG awards continued to be dispersed through March 2021.

[12] This Grand Jury received copies of email correspondence that established that the State authorized the Digital Platform Company to subcontract with the Information Management Company.

their BTG/SIS applications that they submitted to the Information Management Company. The spreadsheet included parent and student names, addresses, phone numbers, email addresses, and schools. The fact that the director of a special interest group obtained this personally identifiable information is itself concerning. More disturbing is the fact that the spreadsheet contained information that families did *not* provide in their applications, such as political party registration and voting district. This indicates that, unbeknownst to families, their information was being collected and processed for purposes other than that for which it was disclosed.

Another omission that proved particularly detrimental to the State was a failure to incorporate any safeguards to protect against unauthorized expenditures of BTG microgrant awards. While the contract generally stated the BTG program was created for eligible families "to purchase educational supplies, materials and technology," those terms were undefined. The contract also placed no limit on the types of vendors from which purchases could be made through the Digital Platform Company's platform. Nor did it provide any remedy to the State in the event BTG funds were misspent or overspent. In fact, despite being drafted by the State's own procurement agency, the contract lacked the provisions typically found in state contracts to limit the State's liability.

The inadequacies in the contract between the State and the Digital Platform Company are further representative of the State's systematic failure to include individuals knowledgeable with federal grant regulations in the implementation and administration of the BTG and SIS programs.

H. The Subcontract

As previously noted, the Digital Platform Company, at the request of the State, subcontracted with the Information Management Company to process BTG and SIS applications. The contract between the two companies provided that the Information Management Company would create and supply user-friendly online portals that included a combined application for families to apply for the BTG and/or SIS programs and an application for nonprofit private schools seeking inclusion as providers for the SIS program. The applications were required to be completed by the "go-live" date of August 10, 2020, with BTG awards ready for distribution to families by August 25 and private school enrollment and attendance verification processes implemented by August 28. For its services, the Digital Platform Company agreed to pay the Information Management Company a flat fee of $370,000.

Essentially, the Information Management Company was the entity responsible for making BTG and SIS award determinations. Despite playing this critical role in the distribution of the State's GEER Fund monies, the State had no contractual relationship with the Information Management Company. Nor was the Information Management Company under any contractual obligation to comply with GEER Fund's mandatory monitoring, reporting, and records retention requirements.

I. Development, Launch, and Mismanagement of BTG and SIS by Private Actors

1. The Application

BTG and SIS were both scheduled to "go-live" on August 10, 2020. That is, applications for the programs were not *supposed* to be accessible until that date. Although the two programs served entirely different functions—BTG to provide funding to all qualified families, irrespective of whether their children attended public or private schools, for educational materials and SIS to provide tuition assistance for qualified private school students—there was only one application for families to submit for either or both programs.

The BTG/SIS application gathered basic personal information, *e.g.*, the applicant's name, address, date of birth, marital status, and employment status. The applicant would then select which program(s) they were applying for. Applicants were also required to provide the personal information for each student applying, including which school the student would be attending for the 2020-2021 school year, whether that student attended the same school the previous year, and the student's grade level. Inexplicably, the application also asked whether the student had an Individualized Education Program (IEP) in place,[13] a consideration irrelevant to either program's stated eligibility requirements. Applicants were then asked to provide information regarding their household taxable and non-taxable income and to upload supporting documentation, such as a 2019 tax return.

Because GEER Fund awards were required to be provided to those "most substantially impacted" by COVID-19, the application also included a section addressing whether the applicant had experienced or anticipated a change in income that year. This was determined by asking (1) if the applicant anticipated a decrease

[13] An IEP is a legally binding document developed for students with disabilities that outlines specific educational goals, services, and accommodations tailored to meet the unique needs of the student.

in annual income for 2020; (2) what the applicant anticipated the annual income in 2020 to be; and (3) whether "the household income [has] decreased due to events surrounding Covid-19?"

Applications could only be submitted electronically. However, the application was not available through any State agency's website, including OEQA or the Governor's Office. Instead, press releases issued by the Governor's Office directed families to the EKCO and OPSAC websites to access links to the application. Information about BTG was exclusively available on EKCO's website, while information about SIS was exclusively available through OPSAC's website. Once submitted, the applications would then be processed by the Information Management Company, which would then notify families whether their application had been approved or denied. If a family was approved, their BTG and/or SIS award was loaded onto their digital wallet for use.

2. *Inequitable Treatment through Selective Early Access*

The evidence received by this Grand Jury irrefutably establishes that BTG and SIS awards were not bestowed in a fair or equitable manner. As previously mentioned, both BTG and SIS funds were awarded from finite grant allocations on a first come, first served basis. All publicly facing information about the programs—including press releases and the informational materials available on the EKCO and OPSAC websites—stated BTG and SIS applications would not be accepted until August 10, 2020. However, it turns out this was not true for everybody.

For approximately six hours on August 8, 2020, the application portal was opened to allow early access, a so-called "Open House," to families with students attending a select few nonprofit private schools (hereinafter, Exception Schools). These Exception Schools, of which there were five, met one or more of the following criteria: (1) all students attended the school tuition free, (2) the school was an accredited addiction recovery school, or (3) the school either subsidized at least 90% of the tuition costs or tuition was below $1,000 per child. However, there is no record of how or why these Exception Schools were actually chosen. It could not have been based on those criteria alone because at least three other non-Exception Schools participating in the SIS program also would have qualified. Further, there is no record of what methodology, if any, was used to determine how these Exception Schools were identified as essential for carrying out emergency educational services, as the GEER Fund required.

The evidence indicates no public employee was involved in the decision to hold this Open House. In fact, one former senior state official frankly described the process as "unfair." Nor were any public employees involved in the selection of the five Exception Schools that would be granted advance access to the application portal. The list of Exception Schools was instead provided by the AFC-Oklahoma Director, who was the administrator of the SIS program. But how the schools were chosen remains a mystery. The Grand Jury finds the lack of transparency over the administration of this publicly-funded program to be utterly unacceptable.[14]

Although it appears the five Exception Schools were the only private schools officially notified of the Open House, the portal was open to anyone who attempted to access the application during those six hours. As such, a large number of applications were also submitted by non-Exception School applicants prior to the public opening of the portal, although it is unclear how individuals outside of the Exception Schools learned of the Open House. Notably, no early application was submitted for a non-Exception School that nevertheless met one of the three exception categories. This further highlights the disparity in this process.

It should be noted that it was not just SIS applicants that benefited from submitting early applications. Since a single application was used for both the BTG and SIS programs, families could apply early to both programs. Once an application was started, it could be submitted at any time. Thus, even after the portal was re-closed on August 8, applications that were already underway could be submitted at any time before the portal went live to the public at 7:09 a.m. on August 10. Because applications were processed in the order in which they were received, those allowed to submit early applications received clear preferential treatment over everyone else. All told, program administrators allowed 486 applicants to submit BTG and SIS applications before the application should even have been publicly accessible. Of the early applications, 346 applicants were awarded SIS scholarships and 169 applicants received BTG microgrants. In total, nearly $2 million in SIS scholarships (20% of SIS funds) and over $167,000 in BTG micrograns (2% of BTG funds) were awarded to applicants who were unfairly granted early access to the application.

[14] It should be noted that the Grand Jury's ability to investigate the decision-making processes behind the SIS program was significantly hampered by the fact that neither the AFC-Oklahoma Director, who was chiefly responsible for administering the SIS program, nor the Information Management Company were contractually obligated to retain written communications about the program, notwithstanding federal records-retention mandates.

3. Specific Failures of SIS

Preferential treatment to the five Exception Schools extended beyond premature access to the applications during the Open House. Although the Governor's press releases and the SIS program's FAQs posted on the OPSAC website all stated SIS Scholarships would be awarded to low-income families to subsidize their out-of-pocket tuition costs, participating private schools were the actual recipients of the funds. SIS payments made to Exception Schools were, moreover, wholly unrelated to a family's financial need. Indeed, at three of the Exception Schools, students paid no tuition whatsoever to attend, while the other two Exception Schools had significantly discounted tuition rates, each less than $1,000 per student. Yet four of these Exception Schools received maximum $6,500 SIS awards per student and one received $6,000 per student. The State Auditor determined that all five Exception Schools appeared to be adequately funded through other funding sources, such as private donors and other federal grant programs.[15] Nevertheless, altogether, the Exception Schools were awarded over $1.8 million in SIS funds.

It was not just Exception Schools that received excessive SIS payments. In assessing the amount of SIS funds to award to approved private schools, the Information Management Company did not require schools to submit detailed statements reflecting their tuition rates or to list all scholarships, financial aid, work study, or tuition reductions a family was already entitled to receive, *e.g.*, employee discounts, multiple-child discounts, or military discounts. Instead, private schools were allowed to merely submit an invoice reflecting their full tuition rates. When those additional considerations are factored into the calculation, however, almost all SIS awards exceeded actual financial responsibility. A major contributor to such discrepancies is likely the fact that the guidance listed in the SIS FAQs was vague and conflicting. Further, a sampling of email correspondence reflects that private schools were receiving inaccurate, incomplete, and inconsistent information regarding tuition invoicing from the Information Management Company and the AFC-Oklahoma Director, who was administering the program.

Not only were excessive SIS payments allowed to be disbursed to private schools, but the evidence also shows that a majority of SIS funds were awarded to families who attested they were experiencing no pandemic-related financial hardship. 56% of SIS awards (1,073 awards) were provided to families whose

[15] At least one Exception School was actually able to *increase* enrollment for the 2020-2021 school year.

applications plainly indicated that they did *not* anticipate any decrease in their annual income in 2020 and that their household income had *not* decreased due to events surrounding COVID-19. This accounts for over $5.3 million of the SIS awards. Additionally, more than $11,000 SIS funds were awarded to families whose household income did not fall below the required federal poverty guidelines.

In total, more than $6.5 million in SIS funds were expended between excessive tuition payments and awards to families who either were not facing pandemic-related economic hardship or did not fall within the threshold poverty level. These errors had real consequences. By August 11, 2020—the day after the public go-live date—program administrators issued a notice that the SIS funds were nearly depleted. Had the State adequately administered and monitored the SIS program, hundreds more Oklahoma families in need could have received emergency tuition assistance. In fact, the State Auditor estimated 657 students of eligible families who were actually experiencing financial hardship due to COVID-19 were denied SIS awards simply because the funds had been drained.

4. *Specific Failures of BTG*

Like the SIS program, the BTG program was plagued by administrative mismanagement that resulted in extensive waste of GEER Fund monies. Simply stated, a total lack of internal controls and monitoring over the program allowed families to use BTG funds to purchase hundreds of thousands of dollars in items with no education-related purpose. Regrettably, the situation was easily preventable. But the State's failure to involve any person or entity with even a basic understanding of federal grant management in the implementation and administration of the program ultimately led to further unchecked spending of federal dollars on items that satisfied neither the State's stated program objectives nor the federal government's GEER Fund requirements.

Although the Grand Jury received conflicting accounts, the evidence overwhelmingly demonstrates the BTG program was chiefly designed and administered by one individual, the EKCO Director, who during most relevant time periods had no contractual or employment relationship with the State. Even before OEQA's contract with the Digital Platform Company was in place or the Governor publicly announced that EKCO would be administering BTG, the EKCO Director maintained regular communication with the Digital Platform Company's CEO to discuss BTG's anticipated parameters and requirements. Significantly, on July 22, 2020, the Company's CEO provided the EKCO Director with a list of all integrated vendors (thirty-five in total) available on the Company's platform along with a brief description of each vendor's products or services. Without question, many of the listed vendors exclusively supplied education-related materials, such as Scholastic and other school supply merchants. But some vendors, like Staples and Office Depot, although certainly school supply retailers, were commonly known to sell many non-education-related items as well. Still others on the list of vendors had no obvious tie to educational needs at all, most notably Home Depot.

As addressed above, in order to satisfy federal GEER Fund criteria, items purchased with BTG funds must have had an educational purpose that was applicable to a K-12 student and essential due to the COVID-19 emergency. To this end, the BTG program's stated intent was for families to use awarded funds to pay for "school supplies, tutoring and/or technology needs." The Digital Platform Company offered two optional safeguards that allowed program administrators to ensure purchases by families fell within program limits. First, administrators had the option on the front end to select or restrict which vendors families could buy from. The second option, known as marketplace approval, would allow program administrators on the back end to review all purchases and give final approval before transactions were processed. There was no additional cost to implement either option.

On August 25, 2020, as the Digital Platform Company was preparing to release BTG funds to families, the Company's Account Manager assigned to configure the BTG/SIS digital platforms asked the EKCO Director to identify the individual who would serve as the program administrator to be "provided[d] access to all reports and activities around the [families'] accounts." The EKCO Director never answered the question. Instead, he responded by inquiring about adding a new vendor to the platform. It was not until February 2021—after the State's GEER Fund was already under a federal audit—that any individual on behalf of the State requested administrative access to the account reports.

On August 31, 2020, the Account Manager sent an email to the AFC-Oklahoma Director, and copied to the EKCO Director, posing questions the Digital Platform Company had received from families regarding (1) allowable purchases through the BTG program, and (2) whom families with inquiries should contact regarding pending applications. Specifically, as to the first question, the Account Manager asked:

> For the BTG funds, we're getting a few questions about eligible items (i.e. printer for kids class work). **It's my understanding that all purchases through any of our vendors is allowed,** but parents want to make sure as **the website does not provide a list of allowable items**[16] – should we direct these inquiries to [the AFC-Oklahoma Director] or [the EKCO Director]?

The AFC-Oklahoma Director responded first, stating that any inquiries regarding the status of pending applications should be directed to the Information Management Company and that the Account Manager's question regarding allowable BTG purchases would need to be answered by the EKCO Director. The Grand Jury received testimony that based on communications with the Oklahoma BTG/SIS points of contact, the Account Manager was given to understand that the AFC-Oklahoma Director's decision-making authority was subordinate to that of the EKCO Director's. Therefore, in situations like this, it was not unusual for inquiries about BTG or SIS programs to be "escalated" to the EKCO Director. After receiving the AFC-Oklahoma Director's email, the Account Manager advised she would "await [the EKCO Director]'s confirmation and update our support team regarding those funds at that time." At 6:21 p.m. on August 31, 2020, without consulting with any state official or employee, the EKCO Director sent the following fateful reply:

> **1 Blanket approval with vendors on your platform**
> 2 I agree with [the AFC-Oklahoma Director]

Having already ignored the Digital Platform Company's request to designate a program administrator to oversee account activity, the EKCO Director's authorization of all integrated vendors on the platform effectively disregarded all internal control options offered by the Company. In other words, no limit was placed on the items families could purchase with BTG funds in the first instance, and

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[16] The *only* guidance provided to the public regarding allowable uses of BTG funds was the following statement in the FAQ page found on EKCO's website, which was drafted by the EKCO Director with the director of another nonprofit organization with close ties to EKCO:

> **What exactly can I buy with the funds?**
>
> Integrated with [the Digital Platform Company] are over 30 education materials, supplies, technology and book e-commerce vendors. Some popular ones include Office Depot, Staples, Scholastic, School Specialty, Really Good Stuff and many more. Parents will be able to log into [the Digital Platform Company] and purchase what they need for their children using funds in their [the Digital Platform Company] digital wallet account.

nobody was monitoring purchases to ensure they complied with program requirements on the back end. It should come as no surprise then that a massive portion of BTG awards—over $1.7 million by the State Auditor's assessment—went to the purchase of items that could not reasonably be deemed to serve an emergency educational purpose.[17]

An audit report later issued by the USDOE Office of Inspector General (OIG) identified over 3,100 BTG purchases that were unauthorized under GEER Fund requirements.[18] Such unallowable purchases included but were not limited to: 817 televisions, 385 watches or smartwatches, 179 doorbell cameras, 174 cell phones and related accessories, 71 refrigerators, 27 Xbox systems, and 3 Christmas trees. Not only did the use of these funds to purchase non-education items breach the State's duty to ensure GEER Fund money was only used for pandemic-related emergency educational assistance, but that money could have been directed to provide intended pandemic relief where it was actually needed. What's more, because the unallowable purchases did not meet GEER Fund criteria, the federal government demanded the $650,000 be returned by the State—a cost that can now only be borne by Oklahoma taxpayers.

5. Absence of Accountability and Questionable Practices

More concerns surrounding the BTG and SIS programs came to light after the federal government began investigating the State's noncompliance with drawdown and reporting regulations related to its GEER Fund allocation. For one, the ability to readily identify which entity or individual was overseeing the programs or who could provide an accounting of program funds proved inexcusably difficult.

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[17] Ironically, the BTG FAQs hosted on EKCO's website, in response to the inquiry "**What is being done to prevent fraud?**" stated:

> *All vendors integrated into the . . . digital wallet platform have been approved.* Parents will only be able to use grant funds to acquire materials from the approved vendors. This ensures compliance and transparency, as well as streamlines the processing time for students' requests. The [Digital Platform Company] platform automates the tracking and reconciliation of all the purchases, so there will be no work required by the parents to submit receipts or expense reports.

[18] The non-education items were identified by the OIG using only a simple keyword search and did not include purchases of $25 or less. The State Auditor later performed a more thorough, line-item inspection of every BTG expenditure and identified a total of **39,634 unallowable items** families were allowed to purchase, including those items previously identified by the OIG.

With no documentation from which to start, inquiries were initially addressed to SDE, the most logical agency to possess knowledge about federally funded education initiatives. But, of course, SDE could provide no information on the programs since it had been excluded from involvement with them. Questioning of the former SOS/SOE[19] revealed he had only a superficial understanding of the BTG and SIS programs and could provide no meaningful insight into their administration. Moreover, even though OEQA was the designated pass-through agency for the BTG/SIS funds and its Executive Director was the State's signatory on the contract with the Digital Platform Company, the agency had been given explicit instructions that no further participation in the programs was required on its part.

Sometime around late August 2020, the Office of the State's Chief Operating Officer (COO) was brought in to help get to the bottom of things.[20] But even the COO's Office struggled to obtain answers. The absurd result was that government officials ultimately had to resort to asking private individuals from various special interest groups, who had no official relationship with the State, where the State's federal dollars had gone. Even then, satisfactory answers were not forthcoming.

Investigators attempted to ascertain information about the administration of BTG and SIS from the EKCO Director, who had by that time also been appointed as the new Secretary of Education. However, despite making prior public statements boasting of his partnership with the Digital Platform Company's CEO and their collaboration on developing the BTG and SIS programs, the EKCO Director/SOE disclaimed any particularized knowledge or involvement in the programs aside from basic public promotion.[21] Any such claim by the EKCO Director/SOE is fully belied by all other evidence and testimony received by this Grand Jury.

Case in point, in September 2020, when OEQA staff attempted to ask the Digital Platform Company if accountability measures had been put in place to ensure funds were being used for allowable purposes, the Company responded that it would need authorization from the EKCO Director before it could share data with OEQA,

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[19] The SOS/SOE who was initially involved in implementing the BTG and SIS programs resigned as Secretary of Education on August 12, 2020. Approximately two months later, he also resigned as Secretary of State. The Governor appointed the EKCO Director as his new Secretary of State on September 10, 2020. The new SOE retained his position with EKCO until he later took office as the State Superintendent of Public Instruction in 2023.

[20] The COO's Office was created to oversee the Governor's cabinet and coordinate among all state agencies to improve government operations.

[21] *See* fn. 7, *supra*.

despite OEQA being the state agency with which it had a contract. On January 28, 2021, the Company finally provided requested data to OEQA and the COO's Office indicating families were still being awarded BTG funds, even though the contract with OEQA required any funds that had not been awarded by December 30, 2020, to be refunded to OEQA by January 30, 2021. The data also indicated that $6,000 SIS funds had been distributed in excess of that provided for in the contract.

On February 15, 2021, the EKCO Director/SOE sent an email to the COO's Office stating: "I spoke with [the Digital Platform Company] over the weekend. This Fall, the timeline for them to return extra money was extended to March 30th to give the families extra time for the money to be spent. I don't know that it was ever communicated to [OEQA's Director]." Since the OEQA Director—the signatory to the contract—was neither involved in nor informed of any contract extension, this was quite alarming. The evidence shows that in November 2020, the Digital Platform Company's CEO and the EKCO Director/ SOE made an oral "gentleman's agreement" to extend the contract through March 2021. The agreement was memorialized in an email sent to the Digital Platform Company's CEO and Account Manager, and copied to the EKCO Director/SOE, by the director of a nonprofit organization with ties to EKCO who had also been involved in the conversation but had no accountability to the State.

The opaque processes and loose dealings with federal funds seen throughout this investigation is simply unacceptable. The State's failure to ensure competent management and oversight of BTG and SIS funds justifiably drew the federal government's scrutiny over all the State's GEER funds and jeopardized the State's eligibility to receive federal funding in the future.

J. A Successful Implementation of Allocated GEER Funds

It is not lost on this Grand Jury that decisions regarding the use of Oklahoma's GEER Fund allocation had to be made swiftly under chaotic circumstances to address the ongoing emergency posed by the pandemic. However, it is precisely *because* of these circumstances that the State should have relied on its established institutions to administer federally funded emergency aid initiatives. Instead, the State opportunistically chose to capitalize on the sudden influx of federal aid money to launch publicly funded, private education initiatives. What's worse, the State relied on unvetted, unqualified private individuals and entities with virtually no accountability to the State to carry out these political objectives.

We need not speculate as to how GEER Fund money might have been more responsibly stewarded had it been allocated to an appropriate state agency, such as SDE. Notwithstanding the Governor's reservations about SDE discussed above, $8 million in GEER Fund money was ultimately awarded to SDE after the agency offered to match the Governor's contribution with federal funding it had received separately through a different CARES Act grant program, the Elementary and Secondary School Emergency Relief (ESSER) Fund.[22] By combining the $8 million in ESSER Fund money and $8 million in GEER Fund money, SDE created a competitive Incentive Grant program to provide assistance to local school districts to address emergency needs related to COVID-19.[23] The program was intended to help educators bridge the digital divide and strengthen distance learning in the wake of the pandemic.

Unlike the BTG and SIS programs, SDE designed and implemented a comprehensive, formulaic awarding process that ensured its $8 million GEER grant was actually used to support local school districts that were most significantly impacted by COVID-19. SDE provided grant packages to school districts that included an application, instructions on the application, and guidance on allowable and unallowable expenditures (*e.g.,* establishing Wi-Fi hot spots and online systems to support distance learning). Federal auditors later determined that the areas of impact SDE included in its award process did in fact align with the purpose of the CARES Act. SDE further developed a written monitoring plan and a reimbursement process to ensure the funds were only used for allowable purposes. After SDE allocated the GEER Fund subawards to school districts, SDE posted the criteria it used to determine allocations to its website. It further included the criteria and the related processes it used to determine subrecipient schools, as well as the amounts awarded to each, in a 45-Day Report submitted to the USDOE.

Following audits by both state and federal authorities, it was uniformly determined that all SDE GEER Fund subawards were allocated consistent with GEER Fund objectives. In the end, SDE allocated 100% of its $8 million GEER Fund award with no questioned costs. The success of SDE's GEER-funded Incentive Grant program was unquestionably the result of its well-established grant management system. SDE at that time employed its own trained and experienced

[22] ESSER Fund grants were awarded directly to State Educational Agencies for the purpose of providing local school districts with emergency relief funds to address the impact of COVID-19.

[23] Although the program used both GEER and ESSER Funds, SDE took steps to segregate the funds into two different accounts to maintain fidelity to the separate programmatic requirements.

grant management staff of between fifty to one hundred state employees accustomed to administering hundreds of millions of dollars in federal educational grants daily.

Contrary to the assumptions evidently held by the Governor's Office at the time, this Grand Jury received convincing evidence that SDE would have been willing to implement and administer initiative programs directed at providing financial aid to address the pandemic-related educational needs faced by private schools and non-public school students. As a matter of fact, SDE did allocate a portion of its federal pandemic relief dollars to assist students attending private schools. We have no reason to doubt SDE would have carried out private-education focused initiatives with as much success as it did its Incentive Grant initiative. Further, there is every reason to believe that the systemic mismanagement that pervaded BTG and SIS would have been avoided had the programmatic monitoring, reporting, and transparency mechanisms employed by SDE been applied in the administration of those programs.

IV. Conclusions and Recommendations

The evidence received by this Grand Jury provided important context that elucidates how the decisions and inactions of State leaders resulted in the woefully inadequate management of GEER funds allocated by the Governor to the BTG and SIS programs. Our investigation revealed significant issues, including a complete lack of oversight and accountability, that led to the improper distribution and allocation of federal funds through these programs. We heard the testimony of multiple individuals from both inside and outside of state government who were best positioned to witness firsthand—and for some, to participate in—the decision-making processes surrounding the programs' development, implementation, and administration.

Upon consideration of all the evidence and testimony presented over the course of our investigation, the Grand Jury concludes that the fundamental problem from which all other deficiencies in the BTG and SIS programs stem was the State's disregard of existing administrative safeguards in the interest of advancing a political and philosophical agenda. While there is nothing inherently improper with elected officials pursuing their own policy goals, the politically motivated decisions in this case were made at the expense of ensuring responsible stewardship of public money. Contrary to the assurances the State made to the federal government, and despite the warnings it received at the outset, the State failed to consult or include any person or entity knowledgeable in federal grant management to ensure BTG and SIS satisfied GEER Fund compliance requirements.

To compound the problem, the State delegated its administrative and decision-making authority to private individuals and special interest groups with no qualifications or experience to competently manage federal grant funds. The State bestowed these individuals and organizations with control over millions of dollars in federal funding without any vetting process or formal agreement assuring their accountability to the State. Similarly, the State contracted with a private vendor without requiring compliance with grant specific requirements, such as monitoring and recordkeeping obligations. The systemic deficiencies in the BTG and SIS programs resulted in the waste and misspending of millions of dollars in emergency relief funds, subjecting Oklahoma taxpayers to liability for repayment to the federal government and depriving hundreds, if not thousands, of Oklahoma families and students from receiving the educational pandemic aid that they needed and were entitled to receive.

While many of the issues revealed by our investigation were caused by ill-advised decisions by private individuals, the State bears the ultimate responsibility to account for its own misuse of federal funds. It cannot delegate or contract away this duty. The errors identified in this report could have been and should have been prevented. To ensure these government missteps are not repeated in the future, the Multicounty Grand Jury makes the following recommendations:

1. The State should establish minimum, mandatory, and ongoing training requirements in federal grant management for any state agency or office receiving federal funding of $10 million or more annually. Training should be consistent with the requirements and recommendations of the federal agency or agencies issuing the grant(s) and encompass topics including, but not limited to: procurement and purchasing standards; competitive bidding requirements; identification and resolution of conflicts of interest; recordkeeping and retention requirements; implementation of internal controls; recognizing and preventing fraud and mismanagement; making and monitoring subawards; considerations in selecting subrecipients; distinguishing subawards from procurement; and keeping informed of changes and updates to federal grant requirements including the Uniform Grants Guidance promulgated by the United States Office of Management and Budget.

2. Every state agency or office receiving federal grant funds in excess of $10 million annually should be required to promulgate written rules or adopt written internal policies establishing appropriate federal grant management guidance.

3. The State should establish a training program for elected officials, agency and department heads, and the chief deputies and finance officers of elected officials and agency and department heads that encompasses procurement and purchasing standards, competitive bidding requirements, identification and resolution of conflicts of interests; recordkeeping and retention requirements; the implementation of internal controls; and recognizing and preventing fraud and mismanagement.

4. A state agency or office receiving federal grant money should ensure the use and disbursement of funds is overseen by personnel with sufficient training and experience in federal grant management to ensure compliance with general and grant-specific laws, regulations, and guidelines.

5. The Legislature should enact legislation (1) limiting a state agency or office's authority to delegate decision-making authority over federal funding to private entities or individuals, (2) mandating a state agency or office undertake appropriate vetting of any private entity or individual with which it desires to collaborate on the management of federal funding, (3) prohibiting a state agency or office from collaborating with a private entity or individual without a written contract defining the scope of the private entity or individual's authority to act on behalf of the state and agency with specificity and the compensation afforded to the private entity or individual, (4) requiring any such contract to be published for public inspection, and (5) voiding any contract or obligation entered into by a private entity or individual on behalf of a state agency or office without written approval by the appropriate state office or agency.

6. State executive officials must utilize available state resources, experience, and processes regardless of political and philosophical differences between various segments of state government. Failure to do so risks, if not ensures, repeating the mistakes and failures of the BTG and SIS programs. Doing so is perhaps most important in times of crisis and urgency, which our State will surely face again.

Respectfully submitted,

[redacted]

FOREPERSON
Twentieth Multicounty Grand Jury

ORDER

This *Report of Investigation* of the Twentieth Multicounty Grand Jury is hereby received and submitted this 15 day of October, 2024.

NATALIE MAI, DISTRICT JUDGE
Presiding Judge of the
Multicounty Grand Jury