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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

VELIA AGUIRRE; ROSEMARY McATEE,

Plaintiffs,

vs.

STATE OF ARIZONA; ARIZONA  
DEPARTMENT OF EDUCATION;  
THOMAS HORNE, in his official capacity  
as Superintendent of Public Instruction,

Defendants,

Case No. CV2024-026463

**PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

**(Assigned to the Honorable  
Rodrick Coffey)**

Plaintiffs are mothers who educate their children at home with funding from Empowerment Scholarship Account (“ESA”) awards. They supplement their children’s courses of study with a variety of educational materials, and under A.R.S. Section 15-2402(B)(4)(e), they are legally entitled to use ESA funds for these materials. That statute authorizes expenditures for “[c]urricula *and* supplementary materials,” (emphasis added) as do the Arizona Department of Education’s (“Department”) own regulations and the *ESA Parent Handbook*.

Although the Department has long allowed parents to buy materials to supplement their children’s studies, the Attorney General (“AG”) opened an investigation against the Department last summer for “illegal payment of public monies” based on its “supplementary materials” reimbursement policy. The AG pressured the Department into adopting a new “Documentation Policy,” which now *prohibits* parents from using ESA

1 funds for supplementary materials unless they provide documentation showing a specific  
2 connection between each item purchased and a “curriculum document.”<sup>1</sup>

3 As a consequence, the Department denied reimbursement to Plaintiffs for a variety  
4 of supplementary educational materials, including books (such as *Brown Bear, Brown*  
5 *Bear, What Do You See?* by Bill Martin, Jr. and *Where the Red Fern Grows* by Wilson  
6 Rawls), a box of pencils, a box of erasers, and a pack of markers. Many of Plaintiffs’  
7 purchases aren’t specifically listed on any curriculum documents and are thus barred  
8 under the new “Documentation Policy.”

9 This new policy violates Section 15-2402(B)(4)(e). It also violates the  
10 Department’s own regulations and the *Handbook*, both of which have the force of law.  
11 *See Gorman v. Pima Cnty.*, 230 Ariz. 506, 510 ¶ 18 (App. 2012).

12 There is no dispute that this new Documentation Policy is in place; the only issue  
13 here is whether that policy is lawful. On that question, there are no material factual  
14 disputes, and Plaintiffs are entitled to relief as a matter of law. Therefore, summary  
15 judgment is appropriate, and the Court should enter judgment:

16 (1) declaring that the Documentation Policy violates Plaintiffs’ right to use ESA  
17 funds for materials that are “directly related to the course of study for which they are  
18 being used,” or “that enhance, complement, enrich, extend or support the curriculum,”  
19 R7-2-1501(16) (emphasis added), which the Handbook identifies as materials that are  
20 “generally known to be educational” without providing additional documentation, *ESA*  
21 *Parent Handbook* (July 1, 2023) at 17-19;<sup>2</sup> and

22 (2) ordering Defendants to stop enforcing the Documentation Policy and to process  
23 all future reimbursement requests in accordance with the Handbook and applicable  
24 regulations.

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25 <sup>1</sup> The parties’ motion-to-dismiss briefing addressed the “Curriculum Nexus Policy” as  
26 described in the AG’s July 2024 letter. This Motion focuses more specifically on the  
27 Documentation Policy, which is Defendants’ implementation of the AG’s “curriculum  
28 nexus” requirements and is the basis for Defendants’ denials of Plaintiffs’ (and other ESA  
parents’) reimbursement requests.

<sup>2</sup> <https://www.azed.gov/sites/default/files/2023/06/2023-2024-ESA-Parent-Handbook-Accessible.pdf>.

## BACKGROUND

The ESA program empowers families to make decisions regarding their children’s education by enabling participants who do not attend public schools to spend a portion of “the monies that would otherwise be allocated to a recipient’s prior school district” on educational services and products of their own choice. A.R.S. § 15-2402(C). Since the program’s inception in 2011, the Legislature has repeatedly expanded it, amending the law to give parents more flexibility in educational expenditures, and extending ESA eligibility to any Arizona family that wishes to participate.

To be eligible for the ESA program, a family must abide by several conditions, including using “a portion of the [ESA] monies ... to provide an education for the qualified student in at least the subjects of reading, grammar, mathematics, social studies and science,” “releas[ing] [their] school district from all obligations to educate the qualified student,” and using ESA funds only for certain enumerated “expenses of the qualified student.” A.R.S. § 15-2402. One of the statutory expense categories, Subsection E, originally authorized expenditures on “curricula.” In 2020, however, the Legislature expanded the ESA program by (among other things) amending subsection E to cover “curricula *and supplementary materials*” (emphasis added).

Following this amendment, the Department did not require parents to justify every expenditure under subsection E by demonstrating that each specific “supplementary” material was expressly called for by, or listed on, some preapproved “curriculum.” Instead, the *Handbook* identifies two categories of “supplementary materials.” The first, “Supplementary Materials (no documentation needed),” includes a non-exhaustive “list of approved supplemental materials” as a “brief example of items that do not require curriculum” documentation. This list includes “[b]ooks,” “[c]oloring books,” “[e]ducational workbooks,” “[e]ducational flashcards,” “[w]riting utensils,” “[s]chool supplies” including “tape,” “white out,” “eraser,” and “pencil grips,” “[p]eriodic tables,” “[e]ducational kits,” “[m]anipulatives,” “[p]uzzles,” and “[c]locks.” Pls.’ Statement of Facts in Supp. of Mot. for Summ. J. (“PSOF”) ¶¶ 5-6. The second category, “materials

1 that are *not* generally known to be educational items,” *did* require additional  
2 documentation if parents wished to use ESA funds for them.

3 In July 2024, however, the AG—who has no statutory or constitutional role in  
4 administering the ESA program, apart from investigating instances of alleged fraud—  
5 opened an investigation against the Department for “illegal payment of public monies,”  
6 based on the Department’s reimbursement policy for supplementary materials described  
7 above. PSOF ¶¶ 7-8. The AG demanded that the Department stop allowing any  
8 expenditures for “supplementary materials” unless a parent submits specific  
9 documentation explicitly tying each expenditure to a particular curriculum approved by  
10 the Department. PSOF ¶ 8.

11 The Department complied with the AG’s demand and adopted the new  
12 Documentation Policy. PSOF ¶ 10. Consistent with that policy, on August 20 and 23,  
13 2024, the Department denied reimbursement requests from Plaintiffs for the following  
14 supplementary materials:

- 15 • *Brown Bear, Brown Bear, What Do You See?* by Bill Martin, Jr.
- 16 • *Mouse Paint* by Ellen Stoll Walsh
- 17 • *Catholic Encyclopedia for Children* by Ann Ball & Julianne M. Will
- 18 • *Little People Who Became Great* by Laura Antoinette Large
- 19 • *I Spy A to Z: A Book of Picture Riddles* by Jean Marzollo
- 20 • *Where the Red Fern Grows* by Wilson Rawls
- 21 • A Montessori-style “Time Activity Set” for teaching children to tell time
- 22 • A set of wooden puzzles
- 23 • A set of “Feeling & Emotions Puzzle Cards” for “social emotional learning”
- 24 • A phonics activity
- 25 • A set of educational placemats
- 26 • A box of pencils
- 27 • A box of erasers
- 28 • A pack of markers
- A set of pencil grips
- A pack of “white-out” tape

PSOF ¶¶ 13-21.

In its denials, the Department explained the new Documentation Policy:

To receive approval one of the following must be submitted pursuant to ARS 15-2401(2): 1. Formal curriculum with a material list that requires or recommends the requested item(s).  
OR 2. Proof of enrollment in a course of study AND a material list that requires or recommends the requested item(s). If

1 providing curriculum (highlighting or indicating with screenshots  
2 or page numbers), it should show that the requested item(s) are  
3 required or recommended. ...

4 Curriculum should contain: Scope/Overview of the course AND  
5 Lesson Plans with a Materials list requiring the item(s) being  
6 requested.

7 PSOF ¶¶ 18, 21.

8 When Plaintiffs tried to appeal these denials to the State Board of Education, the  
9 Board rejected their appeals, stating that Plaintiffs were attempting to challenge the  
10 Department’s underlying policy or procedure, not a specific administrative decision, and  
11 that the Board “cannot process appeals of [Department] procedure.” PSOF ¶ 23.

12 Plaintiffs filed this lawsuit on September 23, 2024, asserting that the  
13 Documentation Policy violates Section 15-2402(B)(4)(e) and the *ESA Handbook*, and  
14 seeking declaratory and injunctive relief against the Department, the Superintendent, and  
15 the State. The Department and the Superintendent filed an Answer admitting all of the  
16 allegations in Plaintiffs’ Verified Complaint except one, and affirmatively requesting  
17 declaratory and injunctive relief against the State similar to that requested by Plaintiffs.  
18 Defendant State of Arizona filed a motion to dismiss, which this Court denied on  
19 February 18, 2025. *See* Under Advisement Ruling (filed Feb. 19, 2025).

## 20 **LEGAL STANDARDS**

21 Summary judgment is appropriate “if the moving party shows that there is no  
22 genuine dispute as to any material fact and the moving party is entitled to judgment as a  
23 matter of law.” Ariz. R. Civ. P. 56(a). A plaintiff may move for summary judgment any  
24 time after a 12(b)(6) motion to dismiss is filed by the defendant. Ariz. R. Civ. P. 56(b)(1).  
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## DISCUSSION

### **I. The substance of the Documentation Policy is undisputed.**

Undisputed evidence—including Defendants’ own official, public statements—shows that Defendants have adopted the new Documentation Policy, which (contrary to the *Handbook*, regulation, and statute, as explained in the following sections) forbids the use of ESA funds on any “supplementary materials” unless parents provide documentation demonstrating that every item purchased is explicitly “required or recommended” by a formal “curriculum.”

On July 1, 2024, the AG ordered the Department to “cease approving supplementary material expenses without the requisite documentation of a curriculum nexus.” PSOF ¶¶ 7-9. On July 3, the Department confirmed that it would “comply with [the AG’s] directives” and that “[s]upplemental materials without curricula and textbooks without supporting documentation will no longer be allowed.” PSOF ¶ 10. The same day, the ESA Executive Director emailed all parents participating in the ESA program to announce the new Documentation Policy:

- “[E]ffective immediately, ESA Holders must submit a curriculum with all supplemental materials requested or purchased.”
- “ADE ... will fulfill its duty only to approve supplemental materials required or recommended by a curriculum it has approved.”
- “Moving forward, the ESA program will not approve or reimburse for any supplemental materials that are not required or recommended by a curriculum.”

PSOF ¶¶ 11-12.

When the Department denied Plaintiffs’ reimbursement requests, it reiterated the Documentation Policy as the basis for those denials, insisting that parents submit proof that supplementary materials are “require[d] or recommend[ed]” by a “[f]ormal curriculum,” or that such materials are “require[d] or recommend[ed]” by a “course of study” in which the student is “enroll[ed].” PSOF ¶¶ 18, 21. It also made clear that parents

1 were required to provide proof in the form of “Lesson Plans with a Materials list requiring  
2 the item(s) being requested.” PSOF ¶ 18.

3 Then, when Plaintiffs tried to appeal the denials to the Board, the Board rejected  
4 their appeals, stating that Plaintiffs were seeking to challenge an official “procedure” of  
5 the Department, rather than a particular denial, and that this was not allowed. PSOF ¶ 23.

6 In sum, there is no factual dispute about the substance of the Documentation Policy  
7 or the fact that Defendants have adopted and are now enforcing that policy.

## 8 **II. The Documentation Policy violates the Department’s own regulations.**

9 The Documentation Policy violates both the *Handbook* and the Department’s own  
10 regulation defining “supplementary materials,” A.A.C. R7-2-1501(16).

11 First, the Documentation Policy directly contradicts the *Handbook*, which provides  
12 a non-exhaustive list of materials the Department finds are generally known to be  
13 educational and thus “do not require curriculum” documentation to justify ESA  
14 expenditures. PSOF ¶¶ 5-6. Notably, every single item for which Plaintiffs were denied  
15 reimbursement in August 2024 is on that list.<sup>3</sup>

16 Second, the Documentation Policy also violates the Department’s regulation  
17 because it excludes “supplementary materials” that the regulation authorizes.  
18 “Supplementary materials,” as defined by regulation, are “relevant materials directly  
19 related to the course of study for which they are being used that introduce content and  
20 instructional strategies or that enhance, complement, enrich, extend or support the  
21 curriculum.” A.A.C. R7-2-1501(16). Thus, “supplementary materials” include not only  
22 those materials specifically “required or recommended” by a curriculum document. They  
23 also include materials that are “directly related to the course of study for which they are  
24 being used that introduce content and instructional strategies” *or* that “enhance,  
25 complement, enrich, extend or support” a curriculum. *Id.* But the Documentation Policy  
26

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27 <sup>3</sup> The Department does have some discretion in determining which materials should fall in  
28 this category and which ones should require additional documentation. The Department  
and the Board are of course free to propose changes to the *Handbook* and the regulations  
as they see fit. *See* A.R.S. § 15-2403(K). But they have not done so to date.

1 means parents cannot use ESA funds on materials within this definition—including  
2 materials, like school supplies, reading books, and the other items Plaintiffs purchased,  
3 that are “directly related to the course of study,” or obviously do “enhance, complement,  
4 enrich, extend or support” their children’s curriculum, but which are not specifically listed  
5 on a curriculum document. That violates A.A.C. R7-2-1501(16).

6 The *Handbook* and the Department’s regulations are legally binding, and while  
7 they remain in force, Defendants cannot act contrary to them. *McKesson Corp. v. Ariz.*  
8 *Health Care Cost Containment Sys.*, 230 Ariz. 440, 443 ¶ 9 (App. 2012) (“[A]s a general  
9 principle of administrative law, ‘an agency must follow its own rules and regulations; to  
10 do otherwise is unlawful.’” (citation omitted)); *Gibbons v. Ariz. Corp. Comm’n*, 95 Ariz.  
11 343, 347 (1964) (“[T]he general rules and regulations of an administrative board or  
12 commission[] have the effect of law and are binding on [Defendants] and must be  
13 followed by [them] so long as they are in force and effect.”). By adopting and enforcing  
14 the Documentation Policy in direct violation of their own *Handbook* and regulations,  
15 Defendants have acted unlawfully, and this Court should enjoin the Documentation Policy  
16 and declare it unenforceable.

### 17 **III. The Documentation Policy violates statute.**

18 The Documentation Policy also violates A.R.S. Section 15-2402(B)(4)(e), which  
19 entitles Plaintiffs and other ESA parents to purchase “supplementary materials.” The  
20 statute’s plain language, statutory context, and legislative history make clear that the  
21 Legislature intended ESA funds to cover a broad class of “supplementary materials”  
22 rather than requiring specific curriculum documentation for every single item purchased.

23 Section 15-2402(B)(4)(e) authorizes participants to spend ESA funds on both  
24 “[c]urricula” and “supplementary materials.” Because these terms appear separately,  
25 “supplementary materials” must refer to something other than simply “curricula.” See *In*  
26 *re Riggins*, 544 P.3d 64, 67 ¶ 12 (Ariz. 2024) (“A cardinal principle of statutory  
27 interpretation is to give meaning, if possible, to every word and provision so that no word  
28 or provision is rendered superfluous.” (citation omitted)). And because the items at issue



1 here are plainly “supplementary materials”—meaning they supplement the provision of an  
2 education—the statute authorizes ESA expenditures for these materials.

3 Section 15-2402(B)(4)(e) allows ESA participants to spend money on both  
4 curricula *and* supplementary materials—that is, materials that supplement a child’s course  
5 of study. Nothing in this section limits permissible expenditures to supplementary  
6 materials that are *called for* or *required by* or *included in* some formal curriculum. It  
7 simply permits the purchase of “curricula *and* supplementary materials.”

8 One potential source of confusion (a confusion which underpins the AG’s  
9 argument) is the fact that a *different* section of the statute—the definition section, Section  
10 15-2401(2)—also uses the phrase “supplemental materials” as part of its statutory  
11 definition of the word “curriculum.” It defines the word “curriculum” as “a course of  
12 study ... including any supplemental materials required or recommended by the  
13 curriculum...” But that definitional provision cannot trump the operative text of Section  
14 15-2402(B)(4)(e) in the way the AG argues, for three reasons.

15 First, the definition section is not the operative portion of the statute. The operative  
16 portion of the statute allows the use of funds to purchase “curricula *and* supplementary  
17 materials.” If the only “supplementary materials” that Section 15-2402(B)(4)(e) allows  
18 parents to purchase are those that fall within Section 15-2401’s definition of “curriculum,”  
19 then the word “and” would be rendered meaningless surplusage. *See Redhair v. Kinerk,*  
20 *Beal, Schmidt, Dyer & Sethi, P.C.*, 218 Ariz. 293, 295 ¶ 6 (App. 2008) (“[Courts] give  
21 effect to each ‘word, phrase, clause, and sentence ... so that no part of the statute will be  
22 void, inert, redundant, or trivial.’” (citation omitted)).

23 What’s more, the Legislature recently *added* the phrase “and supplementary  
24 materials” to Section 15-2402(B)(4)(e) specifically because parents were being denied  
25 reimbursement for important educational materials. When the Legislature amended that  
26 section in 2020 to authorize not just “curriculum,” but “supplementary materials” as well,  
27 it intended to broadly authorize parents to buy materials that supplemented their children’s  
28 courses of study. *See Hernandez-Gomez v. Leonardo*, 185 Ariz. 509, 513 (1996) (“[W]hen

1 the sponsors of a bill and the very committees considering that bill tell [the Legislature]  
2 and the public what they intended to accomplish with a specific provision of that bill, such  
3 expressed intentions can be useful to clarify any ambiguity in the meaning of the enacted  
4 legislation.”). Indeed, in extending the statute’s reach, the Legislature specifically  
5 repudiated the very approach Defendants now take: the problem of officials giving an  
6 overly constricted reading to the ESA law and denying parents the educational flexibility  
7 and opportunity the program was meant to provide. *See* S.B. 1224, COW at 16:49 (Feb.  
8 26, 2020) (“We’re redefining curriculum more broadly by changing the definition to allow  
9 rather than require supplemental materials to be part of the established curriculum. This  
10 allows parents to use the learning materials that are right for their children.”); *id.* at 25:10  
11 (“This is all somebody sitting somewhere looking at the original language which was very  
12 narrow and interpreting it—especially since it’s a hostile administration now that is  
13 managing this program and not managing it to help parents be successful, but managing it  
14 in the opposite direction by making it very restrictive and very difficult for parents to  
15 manage their education for their child. So this reform that we’re proposing in this  
16 amendment is very much needed for these parents so they can go forward and teach their  
17 children.”); *see also* Compl. ¶¶ 43-55 (detailing legislative history). To read the statute the  
18 way the AG does would essentially nullify the 2020 amendment to the statute.

19 Second, the AG’s construction of the statute is an untenable reading. Since Section  
20 15-2401 defines “curriculum” as including “supplemental materials required or  
21 recommended by the curriculum,” construing Section 15-2402(B)(4)(e)’s reference to  
22 “supplementary materials” as only those “required or recommended by [a] curriculum”  
23 would effectively make Section 15-2402(B)(4)(e) mean that parents could spend funds on  
24 “curricula and curriculum,” which is redundant and makes no sense.

25 The “supplementary materials” that parents may purchase pursuant to Section 15-  
26 2402(B)(4)(e) go beyond those things encompassed by the definition of “curriculum” to  
27 include not only materials listed on a curriculum *document*, but also materials that  
28 supplement a *course of study*. *See also* A.R.S. § 15-2403(L)(2) (“The department *shall* ...

1 [a]llow the use of account monies to reimburse the parent of a qualified student ... for the  
2 purchase of a good or educational service that is an allowable expense pursuant to  
3 [Section] 15-2402, subsection B.” (emphasis added)). The Department acknowledges this  
4 in its own regulation. *See supra* Section II.

5 Third, Section 15-2403(L)(1) reinforces the conclusion that Plaintiffs may purchase  
6 materials that supplement their children’s courses of study, even if those materials are not  
7 specifically required or recommended by a curriculum. That section instructs the  
8 Department to identify “allowable and disallowed *categories* of expenses,” as the  
9 Department has done in the *Handbook*—contrary to Defendants’ new policy of requiring  
10 documentation for every single expenditure *regardless* of category. A.R.S. 15-2403(L)(1)  
11 (emphasis added).

12 **IV. The natural reading of the law allows the purchase of supplementary**  
13 **materials like pencils and books.**

14 Statutes and regulations should be given their meaning according to ordinary  
15 language. *State v. Salzman*, 139 Ariz. 521, 524 (App. 1984). The natural reading of the  
16 statute, regulations, and *Handbook* is that parents may spend ESA funds on curricula,  
17 including supplemental materials required by those curricula, *and also* that they may  
18 spend those funds on supplementary materials—that is, items that supplement the child’s  
19 education as supervised by the parent and the Department. It would be unusual for a  
20 curriculum document to expressly list such mundane, everyday items as pencils and  
21 erasers—things too obvious to be mentioned in an ordinary curriculum. Likewise, it is  
22 common sense that a parent educating her child is authorized to spend ESA funds on a  
23 copy of *Brown Bear, Brown Bear, What Do You See?* even if that book does not appear  
24 on some pre-approved formal curriculum document. The AG’s effort to twist the statute to  
25 avoid enabling parents to obtain materials for the education of their children is contrary to  
26 both the text and the intent of the ESA statute, regulations, and *Handbook*.

27 **CONCLUSION**

28 The Court should grant Plaintiffs’ Motion for Summary Judgment.

**RESPECTFULLY SUBMITTED** this 24th day of February 2025.

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