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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' RESPONSE TO
MOTION TO DISMISS**

INTRODUCTION

Plaintiffs are mothers who educate their children at home with funding from Empowerment Scholarship Account ("ESA") awards. As experienced educators who are deeply familiar with their children's needs, they supplement their children's courses of study with a variety of educational materials. They have a right to use ESA funds for these materials under A.R.S. Section 15-2402(B)(4)(e), which authorizes expenditures for "[c]urricula and supplementary materials," and until recently, the Department of Education ("Department") allowed these purchases.

This summer, however, the Attorney General (who has no statutory role in administering the ESA program apart from investigating fraud) pressured the Department and the State Superintendent into adopting a new "Curriculum Nexus Policy," under which parents could use ESA funds for supplementary materials only if they could show

1 that those funds were specifically listed by name in a curriculum document. Many of
2 Plaintiffs' purchases, such as reading books, workbooks, and even pencils, aren't
3 specifically listed on curriculum documents, and are thus barred under the Curriculum
4 Nexus Policy.

5 This new policy violates Section 15-2402(B)(4)(e), as well as the Department's
6 own regulations and Handbook approved by the State Board of Education ("Board"), all
7 of which recognize ESA participants' right to use funds for materials supplemental to a
8 child's course of study regardless of whether those items appear in a particular curriculum
9 document.

10 BACKGROUND

11 I. The ESA Program

12 The ESA program empowers families to make decisions regarding their children's
13 education by awarding students who do not attend public schools with scholarships that
14 provide a portion of "the monies that would otherwise be allocated to a recipient's prior
15 school district." A.R.S. § 15-2402(C). Since the program's inception in 2011, the
16 Legislature has repeatedly expanded it, amending the law to allow parents more flexibility
17 in educational expenditures, and extending ESA eligibility to any Arizona family that
18 wishes to participate.

19 To be eligible for an ESA scholarship, a family must abide by several conditions,
20 including using "a portion of the [ESA] monies ... to provide an education for the
21 qualified student in at least the subjects of reading, grammar, mathematics, social studies
22 and science," "releas[ing] [their] school district from all obligations to educate the
23 qualified student," and using ESA scholarship funds only for certain enumerated
24 "expenses of the qualified student." *Id.* (B)(1), (2), (4). The statutory list of expenses
25 includes "[t]uition or fees at a qualified [private] school," "[t]extbooks required by a
26 qualified school," and "[t]utoring or teaching services." *Id.* (B)(4)(a), (b), (d).

27 One of the expense categories, subsection (e), originally authorized expenditures
28 on "curricula." In 2020, however, the Legislature expanded the ESA program by (among

1 other things) amending subsection (e) to cover “curricula *and supplementary materials*”
2 (emphasis added). In keeping with this amendment, the Department did not (until
3 recently) require parents to justify every expenditure under subsection (e) by
4 demonstrating that each specific material was expressly called for or listed on a
5 “curriculum.” Instead, the *ESA Program 2023-2024 Parent Handbook* (“Handbook”)
6 identifies two categories of “supplementary materials.” The first category,
7 “Supplementary Materials (no documentation needed),” includes a non-exhaustive “list of
8 approved supplemental materials” as a “brief example of items that *do not require*
9 *curriculum*” documentation to justify ESA expenditures.¹ This list includes “[b]ooks,”
10 “[c]oloring books,” “[e]ducational workbooks,” “[e]ducational flashcards,” “[w]riting
11 utensils,” “[s]chool supplies” including “tape,” “white out,” “eraser,” and “pencil grips,”
12 “[p]eriodic tables,” “[e]ducational kits,” “[m]anipulatives,” “[p]uzzles,” and “[c]locks.”
13 Compl. ¶ 58.

14 The second category is for supplemental materials that are “generally known to be
15 educational items.” *Id.* ¶ 59. The Department and the Board *did* require documentation to
16 verify the appropriateness of such expenditures for an ESA recipient’s educational needs.
17 *Id.* ¶ 60.

18 This approach recognized the reality that “[m]any educational materials are *not*
19 specifically enumerated in, or expressly called for by, curricula, but rather, are ‘generally
20 known to be educational items,’ and by their nature are plainly appropriate for a child’s
21 education”—while allowing the Department to focus its resources on scrutinizing other
22 expenditures that might not be as obviously educational. *Id.* ¶ 59.

23 **II. The Attorney General’s “Illegal Payment of Public Monies” Investigation**

24 The Attorney General has no statutory or constitutional charge to administer the
25 ESA program. The Legislature entrusted another elected official—the State
26 Superintendent—with that job, and it’s the Superintendent—not the Attorney General—
27

28 ¹ <https://www.azed.gov/sites/default/files/2023/05/ESA-2023-24-Parent-Handbook-FINAL-PROOF.pdf>.

1 “in whom all executive, administrative and ministerial functions of the department are
2 vested and who is the executive officer responsible for the execution of policies of the
3 State board of education.” A.R.S. § 15-231(B). Moreover, the Board²—not the Attorney
4 General—is “the policy-determining body of the department,” charged with establishing
5 rules for administering the ESA program. *Id.*; *see also* A.R.S. § 15-2403(I) (“The state
6 board of education may adopt rules and policies necessary to administer Arizona
7 empowerment scholarship accounts, including rules and policies...”). State statute also
8 grants the Board of Education power to adjudicate disputes over allowable expenses.
9 A.R.S. § 15-2403(D) (“A parent may appeal to the state board of education any
10 administrative decision the department makes pursuant to this article, including
11 determinations of allowable expenses.”).

12 In July 2024, however, the Attorney General pressured the Department and the
13 Superintendent into restricting ESA families’ ability to use funds on “supplementary
14 material” purchases, even when those purchases are plainly necessary and appropriate for
15 a child’s education. Compl. ¶¶ 3, 4. She sent the Department a letter announcing that her
16 office had “opened an investigation” of the Department for “illegal payment of public
17 monies.”³ *Id.* ¶ 63. This alleged “illegal payment of public monies” consisted of the
18 Department allowing Arizona parents to receive reimbursement from their own ESA
19 scholarship accounts for “expenses for supplemental materials ... without any
20 documentation of a curriculum nexus.” *Id.* ¶ 64.

21 **III. The “Curriculum Nexus” Policy**

22 Attorney General Mayes’ letter claimed that the ESA statutes require an explicit
23 “curriculum nexus” for any “supplementary material” expenditures, and therefore, that the
24

25 ² The Board consists of the State Superintendent and ten other members appointed to four-
26 year terms by the Governor, with the consent of the Senate. Ariz. Const. art. XI § 3. The
Attorney General is not a member. *See id.*

27 ³ The letter cited A.R.S. Section 35-212 as the basis for the investigation. That statute
28 empowers the Attorney General to bring actions against public officials, agencies, and
“[a]ny person who received [an] illegal payment” of “public monies.” It authorizes
formidable penalties, including disgorgement, attorneys’ fees, interest, and additional
monetary damages. *See* A.R.S. § 35-212.

1 only supplementary materials a parent may buy with ESA funds are those submitted with
2 specific documentation explicitly tying them to a particular curriculum.

3 In the face of an Attorney General investigation and potential actions against
4 Department employees, and even against ESA parents, for using ESA funds to buy items
5 like pencils, erasers, and books without a documented “curriculum nexus,” the
6 Department capitulated. On July 3, 2024, the Department emailed all ESA families,
7 explaining that “ADE has no choice but to comply with the [Attorney] General’s
8 determination,” and that it would no longer approve “supplementary material”
9 expenditures unless parents provided a “curriculum” specifically listing the materials.
10 Compl. ¶ 71.

11 **IV. This Lawsuit**

12 Plaintiff Velia Aguirre is a mother of three and a former public school special
13 education teacher. *Id.* ¶¶ 13, 15. She educates all three of her children at home with
14 funding from ESA awards. *Id.* Plaintiff Rosemary McAtee is a mother of nine, seven of
15 whom she educates at home with funding from ESA awards. *Id.* ¶ 27. Both mothers
16 devote significant time to planning and implementing curricula and lesson plans for their
17 children. Both mothers often purchase materials that they deem necessary and appropriate
18 for their children’s education, but which are not specifically listed on any particular
19 curriculum document. *Id.* ¶¶ 23, 33.

20 Most recently, Ms. Aguirre purchased several books (including *I Spy A to Z: A*
21 *Book of Picture Riddles* for one child and *Where the Red Fern Grows* for another), a
22 Montessori-style “Time Activity Set” for teaching children to tell time, a set of wooden
23 puzzles, a set of “Feeling & Emotions Puzzle Cards” for “social emotional learning,” a
24 phonics activity, a set of educational placemats, a box of pencils, a box of erasers, a pack
25 of markers, a set of pencil grips, and a pack of “white-out” tape. *Id.* ¶¶ 19, 20.

26 Ms. McAtee recently purchased four books: (1) *Brown Bear, Brown Bear, What Do*
27 *You See?* by Bill Martin, Jr., (2) *Mouse Paint* by Ellen Stoll Walsh, (3) *Catholic*
28

1 *Encyclopedia for Children* by Ann Ball and Julianne M. Will, and (4) *Little People Who*
2 *Became Great* by Laura Antoinette Large. *Id.* ¶ 30.

3 Both Plaintiffs timely submitted the expenses for reimbursement, and both had
4 their requests denied on the grounds that:

5 To receive approval one of the following must be submitted pursuant to
6 ARS 15-2401(2): 1. Formal curriculum with a material list that requires or
7 recommends the requested item(s). OR 2. Proof of enrollment in a course of
8 study AND a material list that requires or recommends the requested
item(s). If providing curriculum (highlighting or indicating with screenshots
or page numbers), it should show that the requested item(s) are required or
recommended.

9 *Id.* ¶¶ 24–26, 34–36.

10 Plaintiffs filed this lawsuit on September 23, 2024, asserting that the Curriculum
11 Nexus Policy violates Section 15-2402(B)(4)(e) and the ESA Handbook, and seeking
12 declaratory and injunctive relief against the Department, the Superintendent, and the State.
13 The Department and the Superintendent filed an Answer admitting all the allegations in
14 Plaintiffs’ Verified Complaint except one,⁴ and affirmatively requesting declaratory and
15 injunctive relief against the State similar to that requested by Plaintiffs. Defendant State of
16 Arizona moved to dismiss for failure to state a claim.

17 DISCUSSION

18 I. Legal Standards

19 A complaint may be dismissed only “if ‘as a matter of law [] plaintiffs would not
20 be entitled to relief under any interpretation of the facts susceptible of proof.’” *Coleman v.*
21 *City of Mesa*, 230 Ariz. 352, 356 ¶ 8 (2012) (citation omitted). “[C]ourts must assume the
22 truth of all well-pleaded factual allegations and indulge all reasonable inferences,” relying
23 on the complaint and any “exhibits” or “public records” referenced in the complaint. *Id.* at
24 356 ¶ 9.

25
26 ⁴ Regarding paragraph 76, Defendants denied that the Superintendent’s “compliance with
27 the Attorney General’s legally erroneous demands was ... based on a fear of the Attorney
28 General’s threats to hold him and Department employees personally liable.” Ans. ¶ 5.
Instead, it “was based on a concern that ... the Attorney General might claw back funds
from ESA parents if those funds were distributed without compliance with the Attorney
General’s demands.” *Id.*

1 With “issues of statutory interpretation,” courts “interpret statutory language in
2 view of the entire text, considering the context and related statutes on the same subject.”
3 *Ariz. Ch. of Assoc. Gen. Contractors of Am. v. City of Phoenix*, 247 Ariz. 45, 47 ¶ 7 (2019)
4 (citation omitted). While “court[s] will not inflate, expand, stretch or extend a statute to
5 matters not falling within its expressed provisions,” MTD at 13 (quoting *Roberts v. State*,
6 253 Ariz. 259, 266 ¶ 20 (2022)), neither will they “give the words of the statute a
7 constricted or unnatural meaning.” *State ex rel. Ariz. Dep’t of Revenue v. Phoenix Lodge*
8 *No. 708, Loyal Order of Moose, Inc.*, 187 Ariz. 242, 247 (App. 1996). Instead, courts
9 “give the language its ‘full meaning,’” “constru[ing] the statute as a whole, and
10 consider[ing] its context, language, subject matter, historical background, effects and
11 consequences, and its spirit and purpose.” *Id.* (citations omitted).

12 **II. Plaintiffs have the right to spend ESA funds on supplementary materials.**

13 To clarify at the outset: this lawsuit’s purpose is *not* to dictate how the Department,
14 the Board, or the Superintendent regulate “supplementary material” expenditures for ESA
15 participants. Those entities have significant discretion over how to do so, provided they
16 exercise that discretion consistently with Arizona law.

17 The ESA law, as well as the Board’s own regulations, give parents the *right* to
18 spend ESA funds on “supplementary materials.” See A.R.S. § 15-2402(B)(4)(e); A.A.C.
19 R7-2-1501(16); *ESA 2023-24 Parent Handbook* at 17-19.⁵ Defendants’ Curriculum Nexus
20 Policy, and their denials of Plaintiffs’ reimbursement requests pursuant to that policy,
21 violate that right and are thus unlawful.

22 The State objects that “[i]f supplementary materials encompass anything ‘generally
23 known to be educational,’ that begs the question: generally known by whom?” MTD at
24 16. But the State misunderstands Plaintiffs’ claims, as well as the Department’s and
25 Board’s own longstanding policy on supplementary materials. While the Department has
26 authority to administer the ESA program, the touchstone for whether something is an
27

28 ⁵ <https://www.azed.gov/sites/default/files/2023/05/ESA-2023-24-Parent-Handbook-FINAL-PROOF.pdf>.

1 “allowable expense” is the statute itself—where the Legislature provided a list of
2 expenditure categories for which participants have a right to make purchases—and the
3 rules promulgated in accordance with that statute by the Board. If a participant disagrees
4 with a decision or rule of the Department or the Board, he or she may challenge that
5 decision in court, and the court will determine whether the decision was consistent with
6 statute. *See, e.g., San Carlos Apache Tribe v. State*, 550 P.3d 1096, 1103 ¶ 32 (Ariz. 2024)
7 (“We do not defer to the agency’s interpretation of a rule or statute.” (citation omitted)).

8 That is what Plaintiffs are doing here. Defendants have denied Plaintiffs their
9 statutory right to use ESA funds on supplementary materials in accordance with statute
10 and regulation, because some of those supplementary materials (pencils, reading books,
11 and other educational materials) are not listed by name on a curriculum as Defendants’
12 new Curriculum Nexus Policy requires. While the Department, the Board, and the
13 Superintendent have discretion over *how* to administer the ESA program, Defendants have
14 no authority to decide *whether* to let participants use the funds as authorized by statute.

15 **III. The Curriculum Nexus Policy Violates Section 15-2402(B)(4)(e).**

16 Section 15-2402(B)(4)(e) authorizes participants to use ESA funds for “[c]urricula
17 and supplementary materials.” The statutory language makes clear, and legislative history
18 confirms, that “supplementary materials” include expenditures *in addition* to “curriculum”
19 purchases, *not* (as the Curriculum Nexus Policy dictates) just those materials explicitly
20 required or recommended *by* a curriculum document.

21 **A. The Statute’s Plain Language Authorizes Expenditures Not Listed on** 22 **Curriculum Documents.**

23 Section 15-2402(B)(4)(e) authorizes both “[c]urricula” *and* “supplementary
24 materials.” “Supplementary materials,” then, must refer to something more than simply
25 “curriculum.” *See In re Riggins*, 544 P.3d 64, 69 ¶ 29 (Ariz. 2024) (“A cardinal principle
26 of statutory interpretation is to give meaning, if possible, to every word and provision so
27 that no word or provision is rendered superfluous.” (citation omitted)).
28

1 Elsewhere, the statute defines “curriculum” as “a course of study for content areas
2 or grade levels, including any supplemental materials required or recommended by the
3 curriculum, approved by the department.” A.R.S. § 15-2401(2). The State argues that
4 supplemental materials must “supplement a curriculum” as defined in Section 15-2401(2).
5 See MTD at 8–9. But the “supplementary materials” authorized by Section 15-
6 2402(B)(4)(e) are distinct from the “supplemental materials” included in the definition of
7 “curriculum.”⁶ They must be, or else Section 15-2402(B)(4)(e) would be redundant.
8 Replacing the word “curriculum” with its statutory definition, “curricula and
9 supplementary materials” would read: “courses of study for content areas or grade levels,
10 *including any supplemental materials* required or recommended by the curriculum,
11 approved by the department *and supplementary materials*” (emphasis added). Reading
12 Section 15-2402(B)(4)’s reference to “supplementary materials” as redundant and
13 superfluous is highly disfavored. See *Riggins*, 544 P.3d at 67 ¶ 12; see also *Redhair v.*
14 *Kinerk, Beal, Schmidt, Dyer & Sethi, P.C.*, 218 Ariz. 293, 295 ¶ 6 (App. 2008) (“[Courts]
15 give effect to each ‘word, phrase, clause, and sentence ... so that no part of the statute will
16 be void, inert, redundant, or trivial.’” (citation omitted)).

17 One solution lies in recognizing that the word “curriculum,” in common usage, has
18 two distinct meanings. A curriculum is, principally, “a regular course of study or training,
19 as at a school or university.” *Curriculum*, Oxford English Dictionary (July 2023 ed.).
20 But the word is also frequently used to mean not simply a course of study itself, but a
21 *document* or *materials* that describe or outline that course of study. Section 15-2401(2)
22 refers to this latter meaning when it refers to “supplemental materials required or
23 recommended by the curriculum, approved by the department.” In other words, these
24 “supplemental materials” are items specifically connected to a curriculum *document*, such
25 as lesson plans, worksheets, outlines, and other teaching materials referenced in the
26 curriculum document.

27 ⁶ There does not appear to be any difference in meaning between the words
28 “supplementary” and “supplemental,” although the use of two distinct (if semantically
similar) words further militates against an interpretation where one subsumes the other.

1 Section 15-2402(B)(4)(e)’s “supplementary materials,” in contrast, do not merely
2 supplement curriculum *documents*, or else (as explained above) the term would be
3 redundant. Instead, they supplement “a course of study” itself—that is, they supplement a
4 child’s education. Thus, the Board’s own regulations define these materials as “relevant
5 materials directly related to the course of study for which they are being used that
6 introduce content and instructional strategies or that enhance, complement, enrich, extend
7 or support the curriculum.” A.A.C. R7-2-1501(16).

8 The State’s approach likewise reads the word “supplementary” out of the law. The
9 State recognizes that “a supplementary material must supplement something else.” MTD
10 at 12. A “supplement” is “something that completes or makes an addition”; “added to
11 something else to make it complete.” MTD at 13 (citation omitted).⁷ If the Legislature
12 meant for ESA funds only to be used on items explicitly included or called for in a
13 curriculum document, it wouldn’t have gone further and authorized materials that are
14 “supplementary” to a curriculum.

15 In sum, the State’s interpretation of the law conflates two distinct references to
16 supplementary materials, confuses the two meanings of “curriculum,” and ignores the
17 word “supplementary.” And it effectively denies Plaintiffs their right under state law to
18 purchase any supplementary materials, including those not listed by name on a curriculum
19 document.

20 **B. Legislative History Confirms the Legislature Intended to Authorize**
21 **Expenditures Not Listed on Curriculum Documents.**

22 If there were any ambiguity in the statutory text, the legislative history makes clear
23 why the Legislature enacted S.B. 1224 in 2020 and broadened the language of Section 15-
24 2402(B)(4)(e) to include not just “curriculum,” but “curriculum *and supplementary*
25 *materials*” (emphasis added).

26 ⁷ The Attorney General’s citations to other states’ definitions of “supplementary
27 materials” reinforce this conclusion. If supplementary materials are those that “reinforce,
28 enrich, or enhance ... core instructional material,” then they add to, or go beyond, that
core material; they’re not necessarily included within it. 6 N.M. Admin. Code
6.75.2.7(W).

1 “[W]hen the sponsors of a bill and the very committees considering that bill tell
2 [the Legislature] and the public what they intended to accomplish with a specific
3 provision of that bill, such expressed intentions can be useful to clarify any ambiguity in
4 the meaning of the enacted legislation.” *Hernandez-Gomez v. Leonardo*, 185 Ariz. 509,
5 513 (1996); *see also* *Munroe v. Galati*, 189 Ariz. 113, 118 (1997), *abrogated on other*
6 *grounds by Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000) (“If there is any textual
7 ambiguity, we believe statements of those individuals and committees that managed and
8 heard the bill provide clear indication of their intent.”).

9 Senator Sylvia Allen, the prime sponsor of S.B. 1224, repeatedly addressed the
10 reason for the 2020 amendments in both committee and floor testimony. Discussing the
11 amendments in the Committee of the Whole, she stated: “We’re redefining curriculum
12 more broadly by changing the definition to allow rather than require supplemental
13 materials to be part of the established curriculum. This allows parents to use the learning
14 materials that are right for their children.” *See* S.B. 1224, COW at 16:49 (Feb. 26, 2020).⁸

15 She also explained:

16 For the last probably three or four years there’s been an effort to reform the
17 program’s language so that there is clarity with parents on the materials they
18 can use. ***Anything that is allowed to be used in a classroom--any kinds of***
19 ***teaching instructional material that is provided in our public school***
20 ***classrooms should be provided for a student under an ESA.*** Why should a
21 parent not be allowed to have flashcards?

22 *Id.* at 24:55 (emphasis added).

23 She also described instances where the Department had disallowed educational
24 purchases like “crayons” and “manipulatives” simply because “the current statute the way
25 it’s written just says curricula, and they won’t allow” these additional materials. S.B.
26 1224, House Appropriations Committee at 12:25 (Mar. 11, 2020).⁹ The definition of
27 “curricula” at the time already included an allowance for supplemental materials that were
28 explicitly connected to a curriculum, so her statement that the statute “just says curricula”

⁸ <https://www.azleg.gov/videooplayer/?eventID=2020021274&startStreamAt=808> at 16:49.

⁹ <https://www.azleg.gov/videooplayer/?eventID=2020031349>.

1 makes clear that S.B. 1224’s amendments were indeed expanding the allowable use of
2 ESA funds listed in Section 15-2402(B)(4)(e) to include a broader universe of
3 “supplementary materials” not explicitly connected to a curriculum.

4 Other legislative history confirms that the amendments were specifically designed
5 to broaden the class of eligible materials, to address the problem of government officials
6 “looking at the original language [and] making it very restrictive and very difficult for
7 parents to manage their education for their child.” *See* Compl. ¶¶ 44–53 (detailing
8 legislative history including statements by Sen. Allen, Senate fact sheet, and House
9 legislative summary).

10 Defendants minimize this history as merely “certain legislative comments by S.B.
11 1224’s sponsor,” MTD at 14, but it’s far more extensive than that. And it’s directly on
12 point: Plaintiffs are challenging Defendants’ refusal to reimburse expenditures on
13 materials, like reading books, workbooks, and pencils, that patently *are* “connected to
14 what [Plaintiffs’ children are] learning,” *id.*, simply because those materials are not
15 specifically listed on a curriculum document. As the legislative history confirms, that
16 situation is just what the Legislature intended to prevent by broadening Section 15-
17 2402(B)(4)(e) to include “curricula *and* supplementary materials” (emphasis added).¹⁰

18 The extensive, uncontradicted testimony from the bill’s prime sponsor is not by
19 itself “controlling,” MTD at 14 n.4. But it is highly corroborative of the statute’s plain
20 meaning and common-sense application, particularly because it directly addresses the
21 same issue that this lawsuit presents.

22 **IV. The Gift Clause Does Not Apply Here.**

23 The State claims that dropping the Curriculum Nexus Policy “would raise serious
24 questions under the Gift Clause,” *see* Ariz. Const. art. IX, § 7, because it “would result in
25 the state buying [families] household items ... that have no discernible connection to their
26

27 ¹⁰ Defendants suggest that some of Senator Allen’s testimony may have been addressing
28 the addition of “associated goods” to subsection (c), not the addition of “supplementary
materials” to subsection (e). In context, both provisions make clear that the Legislature
was repudiating precisely the kind of restrictive approach the State now advocates.

1 children’s education.” MTD at 15. On the contrary, it does not violate the Gift Clause to
2 let families use their own, already-awarded ESA funds on educational materials without
3 providing explicit curriculum documentation.

4 As an initial note, none of the items the State lists (“pianos, telescopes, passes to
5 trampoline gyms, or expensive gardening or kitchen equipment,” MTD at 15) appears on
6 the Handbook’s list of items “generally known to be educational.” Such items *may* be
7 allowed if the Department and/or Board determine that they are supplementary to a child’s
8 education or course of study. But Plaintiffs are not demanding blanket approval for items
9 like pianos or kitchen equipment. They’re simply challenging Defendants’ blanket *denial*
10 of materials (e.g. pencils and reading books) that are plainly educational, based on an
11 arbitrary, across-the-board requirement that *every* supplementary material must be
12 explicitly called for in a curriculum.

13 More fundamentally, even assuming the Gift Clause applies to state-funded
14 educational scholarships after they are disbursed, it would not require recipients to justify
15 every educational expenditure with explicit references in curriculum documents. “The
16 Gift Clause is triggered only when the chosen arrangement either serves no public purpose
17 or the public is disproportionately short-changed.” *Neptune Swimming Found. v. City of*
18 *Scottsdale*, 542 P.3d 241, 251 ¶ 36 (Ariz. 2024). Funding the education of Arizona
19 children is a public purpose. *Cf.* Ariz. Const. art. XI, § 1. And the scholarship amounts—
20 flat sums statutorily set as a proportion of the funding that would otherwise have been
21 paid to a student’s school district—are not “grossly disproportionate” to the value of
22 educating that student.¹¹ Neither the public purpose nor proportionality prong of the Gift
23 Clause analysis requires parents to justify educational expenses with curriculum
24 documentation.

25 Just as the Gift Clause does not require fixed-price public works contractors to
26 justify every expense by submitting architectural drawings that call for nails, shovels, or

27 ¹¹ This is particularly true given that an ESA recipient must “release the school district
28 from all obligations to educate the qualified student,” thus *saving* the government money.
A.R.S. § 15-2402(B)(2).

1 caution cones, it also does not require ESA recipients to document expenditures on pencils
2 or reading books with a “curriculum nexus.” Such a requirement *does*, however, violate
3 Section 15-2404(B)(4) by preventing ESA recipients from using their scholarships on
4 expenditures authorized by statute.

5 **V. The Curriculum Nexus Policy Violates the Handbook.**

6 Notably, the State does not dispute that as a general matter the Handbook is
7 binding on Defendants. Nor does it dispute that the Curriculum Nexus Policy violates the
8 Handbook’s policy on supplementary materials. It simply asserts that “policies within the
9 Handbook that violate either statute or rule are invalid,” and that the Handbook’s policy
10 on supplementary materials is therefore invalid for all the reasons the State details
11 elsewhere in its brief. MTD at 17. But those arguments are all misplaced for the reasons
12 Plaintiffs have already explained.

13 The Handbook’s approach to supplementary material expenditures is consistent
14 with Section 15-2402 and all other applicable laws, and it is binding on Defendants.
15 Because the Curriculum Nexus Policy and Defendants’ refusal to reimburse Plaintiffs’
16 supplementary material expenses violate the Handbook, Plaintiffs are entitled to judgment
17 in their favor.

18 **CONCLUSION**

19 For the foregoing reasons, the Court should deny the Motion to Dismiss.

20 **RESPECTFULLY SUBMITTED** this 2nd day of December 2024.

21 **GOLDWATER INSTITUTE**

22 /s/ John Thorpe

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