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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.

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1. This lawsuit is a challenge to Defendants' refusal to allow families to use Empowerment Scholarship Account ("ESA") funds to buy supplementary materials for their children's education. That refusal violates Arizona statute and Defendants' own regulations.

2. Arizona's ESA program is designed to ensure that families have the flexibility and financial support to pursue the highest quality education possible for their children. Yet recently attempts have been made to legislatively curtail these opportunities for the more than 75,000 students now served by the program.

3. Following these unsuccessful legislative attempts, the office of Arizona Attorney General Kris Mayes initiated a new effort in July 2024 to dramatically limit the use of ESA funds, calling for a prohibition on the purchase of basic educational materials, including books, workbooks, and other "supplementary materials" unless parents could

1 provide an explicit “curricular” document justifying the use of each specific book title or
2 material for their child.

3 4. Using the position of her office, Attorney General Mayes issued legal threats
4 to State Superintendent Tom Horne and the Arizona Department of Education demanding
5 that parents no longer be allowed to use ESA funds to purchase such “supplementary
6 materials” outside of pre-established curricula. The Department has complied with her
7 demand and is now rejecting parents’ purchases of even the most self-evidently
8 educational items including books and copies of the periodic table of elements.

9 5. Arizona law expressly allows the purchase of such materials with ESA
10 funds, however. A.R.S. § 15-2402(B)(4). In fact, state lawmakers added clarifying
11 language in 2020 with the explicit purpose of ensuring that such purchases would not be
12 denied, following the actions by former State Superintendent Kathy Hoffman that had
13 restricted the purchase of many such items. The State Board of Education has likewise
14 approved rules for the program explicitly permitting the purchase of these materials
15 without additional documentation.

16 6. Already, parents are required to submit expense receipts for all items
17 purchased with ESA funds for their children. The addition of this new requirement
18 violates state law and state regulations, needlessly exacerbates a backlog of tens of
19 thousands of purchase orders awaiting review, and senselessly burdens and limits parents
20 in their ability to provide for the education of their children.

21 **PARTIES, JURISDICTION, AND VENUE**

22 7. Plaintiff Velia Aguirre is a resident of Maricopa County, a participant in the
23 ESA program, and the mother of three children, all of whom she educates with funding
24 from ESA awards. She is a former public school special education teacher and holds a
25 Master’s Degree in Special Education.

26 8. Plaintiff Rosemary McAtee is a resident of Pinal County, a participant in the
27 ESA program, and the mother of nine children, seven of whom she educates with funding
28 from ESA awards.

1 9. Defendant State of Arizona is one of the states of the United States of
2 America. Defendant State of Arizona is bound by its own laws and constitution. It acts
3 through and is responsible for the acts of its agencies, including the Arizona Department
4 of Education, and its officers, including Defendant Thomas Horne.

5 10. Defendant Thomas Horne is the Arizona Superintendent of Public
6 Instruction and is sued in his official capacity only.

7 11. Jurisdiction over this action and all claims herein is proper pursuant to
8 A.R.S. §§ 12-123, 12-1831, and 41-1034(A).

9 12. Venue is proper pursuant to A.R.S. §§ 12-401 and 41-1034(A).

10 **FACTS COMMON TO ALL CLAIMS**

11 ***Ms. Aguirre***

12 13. Plaintiff Velia Aguirre is a mother of three children, whom she educates with
13 funding from ESA awards.

14 14. Ms. Aguirre models her children’s education on the Charlotte Mason
15 philosophy, which “views the child [as] a whole person” and involves tailoring
16 educational approaches to each individual student, recognizing that “each child’s
17 personhood and personality deserves respect, regardless of whatever type of intelligence
18 he [or she] might lean toward.” *See* Sonya Shafer, *How to Choose a Homeschooling*
19 *Style*, Simply Charlotte Mason (last visited Sept. 17, 2024).¹

20 15. In educating her children, Ms. Aguirre draws heavily on her experience and
21 expertise as a former public school special education teacher with an advanced degree in
22 Special Education, and as a parent advocate who helps parents of special-needs children
23 navigate traditional school environments.

24 16. Ms. Aguirre constantly monitors her children’s abilities, interests, strengths,
25 and weaknesses, and strives to tailor each child’s lessons, activities, and goals to their
26 unique learning abilities and pedagogical needs, particularly in light of her children’s
27 various disabilities, which include dyslexia, dysgraphia, dyscalculia, attention-

28 ¹ <https://simplycharlottesmason.com/blog/how-to-choose-a-homeschooling-style/>.

1 deficit/hyperactivity disorder, autism, developmental delays, communication disorders,
2 visual impairments, and medical conditions that impact or impede learning.

3 17. Ms. Aguirre spends approximately six hours a week working on curricula
4 and planning lessons for her children.

5 18. Ms. Aguirre recently purchased several educational materials for two of her
6 children.

7 19. For one child, Ms. Aguirre purchased a Montessori-style “Time Activity
8 Set” for teaching children how to tell time, a set of wooden puzzles, a set of “Feeling &
9 Emotions Puzzle Cards” for “[s]ocial [e]motional learning,” a phonics activity, a box of
10 pencils, and a box of erasers. She also purchased the following books: *I Spy School Days*:
11 *A Book of Picture Riddles* by Jean Marzollo, *I Spy A to Z: A Book of Picture Riddles* by
12 Jean Marzollo, an activity book (*Brain Games—Sticker by Letter: Ocean Fun*) and a
13 workbook set (*Learning Resources Skill Builders! First Grade Flipbook Library, First*
14 *Grade Learning Activities*, and *Math and Spelling Activities for Kids*).

15 20. For her other child, Ms. Aguirre purchased a periodic table of elements, a
16 pack of markers, a set of pencil grips, a pack of “white-out” tape, a set of educational
17 placemats (U.S. presidents, periodic table, U.S. Constitution, and constellations), and a
18 novel (*Where the Red Fern Grows* by Wilson Rawls).

19 21. In light of her experience as an educator and a mother, as well as her
20 professional education as a special education teacher, Ms. Aguirre determined that the
21 materials listed above were necessary and appropriate for her children’s educations.

22 22. None of these items are specifically listed on any curriculum documents Ms.
23 Aguirre uses.

24 23. Ms. Aguirre routinely buys materials that are not specifically listed on any
25 curriculum documents but that, in her knowledge and experience, she determines are
26 necessary and appropriate supplements to her children’s educational needs. She also
27 anticipates continuing to do so in the future.

1 24. On or about August 15, 2024, Ms. Aguirre submitted to the Department both
2 sets of expenses for reimbursement—i.e., seeking reimbursement for the items listed in
3 ¶¶ 19–20 above—pursuant to the ESA program.

4 25. On or about August 23, 2024, the Department denied both of Ms. Aguirre’s
5 reimbursement requests. A true and correct copy of the Department’s notice of denial is
6 attached hereto as Exhibit 1.

7 26. In its notice to Ms. Aguirre that it was denying her reimbursement requests,
8 the Department stated:

9 To receive approval one of the following must be submitted pursuant to
10 ARS 15-2401(2): 1. Formal curriculum with a material list that requires or
11 recommends the requested item(s). OR 2. Proof of enrollment in a course of
12 study AND a material list that requires or recommends the requested
item(s). ... Curriculum should contain: Scope/Overview of the course AND
Lesson Plans with a Materials list requiring the item(s) being requested.

13 ***Ms. McAtee***

14 27. Plaintiff Rosemary McAtee is a mother of nine children, seven of whom she
15 educates with funding from ESA awards.

16 28. Ms. McAtee devotes significant time to planning and implementing
17 curricula and lesson plans for her children.

18 29. As her children’s mother and primary educator, Ms. McAtee is uniquely
19 positioned to judge what kinds of lessons, materials, and activities each child needs,
20 depending on that child’s abilities, interests, strengths, and weaknesses.

21 30. Ms. McAtee recently bought four books to use in educating her children: (1)
22 *Brown Bear, Brown Bear, What Do You See?* by Bill Martin, Jr., (2) *Mouse Paint* by Ellen
23 Stoll Walsh, (3) *Catholic Encyclopedia for Children* by Ann Ball and Julianne M. Will,
24 and (4) *Little People Who Became Great* by Laura Antoinette Large.

25 31. In light of her experience as an educator and a mother, Ms. McAtee
26 determined that the materials listed above were necessary and appropriate for her
27 children’s educations.
28

1 32. None of these items are specifically listed on any curriculum documents Ms.
2 McAtee uses.

3 33. Ms. McAtee routinely buys materials that are not specifically listed on any
4 curriculum documents but that, in her knowledge and experience, she determines are
5 necessary and appropriate supplements to her children's educational needs. She also
6 anticipates continuing to do so in the future.

7 34. On or about July 3, 2024, Ms. McAtee submitted the expenses to the
8 Department for reimbursement—i.e., seeking reimbursement for the items listed in ¶ 30
9 above—pursuant to the ESA program.

10 35. On or about August 20, 2024, The Department denied Ms. McAtee's
11 reimbursement request. A true and correct copy of the Department's notice of
12 denial is attached hereto as Exhibit 2.

13 36. In its notice to Ms. McAtee that it was denying her reimbursement
14 requests, the Department stated:

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

22 ***Plaintiffs' Exhaustion of Remedies***

23 37. Plaintiffs each timely appealed the denials of their reimbursement requests
24 to the State Board of Education pursuant to A.R.S. § 15-2403(D).

25 38. The Board denied Ms. Aguirre's appeals on or about August 29, 2024, and
26 denied Ms. McAtee's appeals on or about September 3, 2024. True and correct copies of
27 these denials are attached hereto as Exhibits 3 and 4, respectively.

28 39. No further appeal or other remedy is available to Plaintiffs before the
Department or the Board.

 40. Plaintiffs have exhausted all administrative remedies.

1 ***Eligibility of ESA Funds for Supplementary Material Expenses***

2 41. A.R.S. § 15-2402(B)(4)(e) entitles families participating in the ESA
3 program to use their ESA funds for “[c]urricula *and* supplementary materials” (emphasis
4 added).

5 42. Section 15-2402(B)(4) therefore entitles participants in the ESA program to
6 reimbursement when they purchase appropriate supplementary materials to serve the
7 educational needs of their children, regardless of whether those supplementary materials
8 are expressly called for by any pre-approved curriculum.

9 43. In 2020, the Legislature amended Section 15-2402(B)(4)(e) to add the
10 phrase “and supplementary materials,” and did so for the specific purpose of ensuring that
11 ESA program participants would be entitled to reimbursement for “supplementary
12 materials” *outside* of those that are specifically listed in or called for by curriculum.

13 44. For example, on February 26, 2020, when discussing these amendments in
14 the Committee of the Whole, Senator Sylvia Allen (the bill’s sponsor) stated: “We’re
15 redefining curriculum more broadly by changing the definition to allow rather than require
16 supplemental materials to be part of established curriculum. This allows parents to use the
17 learning materials that are right for their children.”²

18 45. Senator Allen further affirmed that the addition of the phrase “and
19 supplementary materials” was an intentional, substantive change, saying of the
20 amendment: “It also ... allows ... ESA monies to be used for goods and supplementary
21 materials.”³

22 46. Answering questions about the amendments, Senator Allen elaborated that
23 the new language was specifically intended to ensure parents *could* buy materials that they
24 deemed appropriate, without having to justify their expenditures by documenting a
25 specific curriculum nexus: “For the last probably three or four years there’s been an effort
26 to reform the program’s language so that there is clarity with parents on the materials they

27 ² <https://www.azleg.gov/videoplayer/?eventID=2020021274&startStreamAt=808> at
28 16:49.

³ *Id.* at 18:40–19:15.

1 can use. *Anything that is allowed to use in a classroom--any kinds of teaching*
2 *instructional materials that is provided in our public school classrooms should be*
3 *provided for a student under an ESA.* Why should a parent not be allowed to have
4 flashcards?”⁴

5 47. Senator Allen also explained that these amendments were in direct response
6 to program administrators at the time adopting an overly restrictive interpretation of state
7 law: “This is all somebody sitting somewhere looking at the original language which was
8 very narrow and interpreting it—especially since it’s a hostile administration now that is
9 managing this program and not managing it to help parents be successful, but managing it
10 in the opposite direction by making it very restrictive and very difficult for parents to
11 manage their education for their child. So this reform that we’re proposing in this
12 amendment is very much needed for these parents so they can go forward and teach their
13 children.”⁵

14 48. On March 11, 2020, Senator Allen made additional statements at a House
15 Appropriations Committee meeting indicating that the addition of “supplementary
16 materials” to Section 15-2402(B)(4) was meant to ensure parents had the same level of
17 flexibility to “design[] the unique education for their child” under the ESA program that
18 “a teacher in a regular classroom is allowed to use.”⁶

19 49. Senator Allen referred to specific instances in the past of the Department
20 denying educational expenses:

21 Recently an elementary social studies curriculum about cultures was not
22 allowed because it contained a few flesh-colored crayons. Or a middle
23 school science curriculum was not allowed because it included materials for
experiments containing balloons_..._.

24 I had a mother write me about her child who is blind partially, has huge
25 hearing loss, and has motor skill problems. She’s highly disabled. As she
26 was saying her frustration in trying to find manipulatives, ***because the***
current statute the way it’s written just says curricula, and they won’t
allow manipulatives and things like that, and she needs that. That little girl

27 ⁴ *Id.* at 24:55 (emphasis added).

28 ⁵ *Id.* at 25:10.

⁶ <https://www.azleg.gov/videoplayer/?eventID=2020031349> at 12:25.

1 needs to have things in her hands, and things that this mother feels she needs
2 to buy for her, so the mother buys it with her own money. And you wonder
3 why the money is building up in these accounts. There is so much fear about
4 what is allowed, and what you have to buy, and there needs to be clarity for
5 these parents.⁷

6 50. In addition to these statements of the legislative sponsor herself
7 confirming the intent of the plain language, the official House of Representatives
8 legislative summary of the 2020 ESA statutory revisions corroborates this
9 understanding. That document notes that the legislation both “[e]xpands the
10 definition of curriculum to include recommended supplemental materials” and,
11 separately, under “allowable uses for ESA monies,” adds “[s]upplementary
12 materials.”⁸

13 51. Similarly, the official Senate fact sheet of the 2020 ESA statutory
14 revisions lists under “Program Modifications”: “Allows ESA monies to be used for
15 goods and supplementary materials[,]” while separately listing under additional
16 “Miscellaneous” changes: “Modifies the definition of curriculum to include
17 recommended supplemental materials.”⁹

18 52. These 2020 legislative changes continued a legislative history of
19 sustained expansion in the allowable uses of ESA funds. The original 2011 ESA
20 law listed only “curriculum” among the allowable expenses in Section 15-2402,
21 with no mention of supplemental materials. (Laws 2011, Chapter 75.) In 2012, the
22 Legislature added a narrow definition of “curriculum” to Section 15-2401:
23 “[c]urriculum’ means a complete course of study for a particular content area or
24 grade level, including any supplemental materials required by the curriculum.”
25 (Laws 2012, Chapter 360).

26 53. The 2020 legislative changes that further broadened the definition of
27 curriculum also for the first time added “supplementary materials” as a separate
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⁷ *Id.* (emphasis added).

⁸ <https://tinyurl.com/42shc2bf> at 2.

⁹ https://www.azleg.gov/legtext/54leg/2R/summary/S.1224ED_ASPASSED_COW.pdf at 3.

1 category of allowable expense outside the definition of “curricula.” If the
2 Legislature had intended to limit the expansion of allowable purchases to only
3 those supplemental materials required or recommended by a curriculum, there
4 would have been no need to separately add the phrase “and supplementary
5 materials” to the allowable expenditure types listed in Section 15-2402, because
6 “required and recommended” supplemental materials would already have been
7 encompassed by the revised definition of “curriculum.”

8 54. In contrast, while the legislature did not restrict “supplementary materials”
9 to a particular definition, the broadened definition of *curriculum* provided at least an
10 additional broader *floor* of supplementary materials.

11 55. The contrast between the legislature’s actions in 2012 and 2020 further
12 affirm the Legislature’s intent to allow participants in the ESA program to purchase
13 supplementary materials outside of curricula beginning in 2020 and obtain
14 reimbursement. The 2012 ESA legislation had added reference to supplemental materials
15 under the definition of curriculum *without* separately listing “supplementary materials” as
16 an allowable expense in Section 15-2402. The legislature’s decision to do differently in
17 2020 reveals that adding “and supplementary materials” was a meaningful, substantive
18 change.

19 ***The Department’s Own Rules Permit Reimbursement for Supplementary Materials***
20 ***That Are Not Specified in a Curriculum***

21 56. Prior to July 2024, consistent with the 2020 ESA amendments, the
22 Department and the Board did not require parents to justify every expenditure on
23 supplementary materials by demonstrating that each specific material is expressly called
24 for by or listed on a curriculum.

25 57. In fact, the current edition of the *ESA Program Parent Handbook* includes a
26 section titled, “Supplementary Materials (no documentation needed),” featuring a non-
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1 exhaustive “list of approved supplemental materials” as a “brief example of items that *do*
2 *not require curriculum.*” *ESA 2023-24 Parent Handbook* at 17 (emphasis added).¹⁰

3 58. This list includes “[b]ooks,” “[c]oloring books,” “[e]ducational workbooks,”
4 “[e]ducational flashcards,” “[w]riting utensils,” “[s]chool supplies” (including “tape,”
5 “white out,” “eraser,” and “pencil grips”), “[p]eriodic tables,” “[e]ducational kits,”
6 “[m]anipulatives,” “[p]uzzles,” and “[c]locks.”

7 59. Many educational materials are *not* specifically enumerated in, or expressly
8 called for by, curricula, but rather, are “generally known to be educational items,” *id.* at
9 19, and by their nature are plainly appropriate for a child’s education.

10 60. This approach gave parents the ability to use their ESA funds on appropriate
11 materials while still allowing the Department to require additional documentation to
12 verify the appropriateness of other expenditures that on their face might not be as
13 obviously educational. *See id.* at 19–20 (requiring additional documentation for
14 “[s]upplemental materials that are not generally known to be educational items”).

15 61. All of the materials for which Plaintiffs sought reimbursement are included
16 in the list referred to in ¶ 58 above, and therefore, by the Department’s and the Board’s
17 own rules, “do not require curriculum.”

18 ***The Mayes Letter and Defendants’ Response***

19 62. On July 1, 2024, however, Assistant Attorney General Kathryn Boughton,
20 acting on behalf of Attorney General Kris Mayes, sent the Department a letter regarding
21 “Alleged public monies violations under the [ESA] Program.” A true and correct copy of
22 this letter, referred to hereafter as the “Mayes Letter,” is attached hereto as Exhibit 5.

23 63. The Mayes Letter announced that Attorney General Mayes’ office had
24 “opened an investigation” of the Department for “illegal payment of public monies.”
25 *Id.* at 1.

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28 ¹⁰ <https://www.azed.gov/sites/default/files/2023/05/ESA-2023-24-Parent-Handbook-FINAL-PROOF.pdf>.

1 64. According to the Mayes Letter, this alleged “illegal payment of public
2 monies” consisted of the Department allowing Arizona parents to receive reimbursement
3 from their own ESA funds for “expenses for supplemental materials ... without any
4 documentation of a curriculum nexus.” *Id.* at 2.

5 65. The Mayes Letter claimed that this “curriculum nexus” is required because
6 Section 15-2401(2) defines the term “[c]urriculum” as “a course of study for content areas
7 or grade levels, including any supplemental materials required or recommended by the
8 curriculum, approved by the department,” and therefore the only supplementary materials
9 a parent may be reimbursed for are those that are “required or recommended by a
10 curriculum approved by the department.”

11 66. The Mayes Letter’s analysis is incorrect as a matter of law because Section
12 15-2401(2) does not purport to limit what reimbursements an ESA participant is entitled
13 to, but merely to define the word “curriculum,” an issue that is irrelevant to the ESA
14 participant’s right to reimbursement. Rather, the operative language of the statute (i.e.,
15 Section 15-2042(B)(4)(e) provides that participants are entitled to reimbursement for
16 “[c]urricula *and* supplementary materials,” a phrase added (as detailed in ¶¶ 52–55 above)
17 specifically to permit participants to purchase materials *not* called for by a “curriculum.”

18 67. In short, Section 15-2402(B)(4)(e) contains no “curriculum nexus”
19 requirement, which was wholly manufactured by the Mayes Letter.

20 68. The Mayes Letter cited A.R.S. § 35-212 as the basis for the Attorney
21 General’s action; that statute authorizes the Attorney General to bring actions against
22 public officials, agencies, and “[a]ny person who received [an] illegal payment” of “public
23 monies.” That section specifies formidable consequences for those who illegally pay or
24 receive “public monies,” including personal liability, attorneys’ fees, interest, and
25 additional penalties.

26 69. The Mayes Letter raised the possibility that Attorney General Mayes might
27 bring actions against Department employees, and even ESA parents, for using ESA funds
28 to buy items like pencils, erasers, and books without documenting a “curriculum nexus.”

1 70. The Mayes Letter demanded that the Department confirm it would
2 “promptly cease approving supplementary material expenses without the requisite
3 documentation of a curriculum nexus.” Ex. 5 at 3.

4 71. The Department complied with the Attorney General’s demand. In a July 3,
5 2024 letter to Ms. Boughton, it stated that “[s]upplemental materials ... without
6 supporting documentation will no longer be allowed.” A true and correct copy of that
7 letter is attached hereto as Exhibit 6.

8 72. The Department’s action constitutes a decision, guideline, enforcement
9 policy, and procedure of the Department.

10 73. Defendants’ new policy of refusing to reimburse parents for pencils, books,
11 and other materials that are “generally known to be educational items,” unless parents can
12 point to a curriculum that specifically calls for those items, violates Arizona law and the
13 rules set forth in the *ESA Handbook*, as detailed above, in ¶¶ 57–60.

14 74. Defendant Horne has publicly stated that he “do[es] not believe that parents
15 should have to tie supplementary materials to curriculum, and it was [his] department that
16 drafted the handbook adopted by the state board that did not do so.” Ariz. Dep’t of Educ.,
17 A Message from Supt. Horne about supplemental curriculum (last visited Sept. 20,
18 2024).¹¹

19 75. Nevertheless, Defendant Horne has stated that the Department will continue
20 to comply with Attorney General Mayes’ demands.

21 76. On information and belief, Defendant Horne’s compliance with these legally
22 erroneous demands from the Attorney General stems from his fear that if he does not
23 comply, Attorney General Mayes will follow through on her threat to hold him,
24 Department employees, and possibly even parents, personally liable for “illegal [use] of
25 public monies.” Mayes Letter, *supra* at 1.

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¹¹ <https://www.azed.gov/esa>.

1 ***Plaintiffs' Injuries***

2 77. Plaintiffs are harmed by Defendants' refusal to let them use their ESA funds
3 on supplemental materials not specifically identified by curriculum, because that refusal
4 limits Plaintiffs' ability to use their ESA funds as they are entitled to both by statute and
5 by the Department's own regulations as approved by the Board.

6 78. Plaintiffs are additionally harmed by Defendants' refusal because they are
7 forced to spend time and resources attempting to justify expenses by producing some type
8 of curriculum document that specifically refers to those items.

9 79. In many instances, the procurement of such a curriculum is an impossible
10 task, as the available curricula do not enumerate every necessary or appropriate material.

11 80. On information and belief, the new policy contributes significantly to
12 delayed processing times for reimbursement requests, which frequently extend to two
13 months or more. This prolongs the time parents must bear educational expenses out-of-
14 pocket, and it contributes to parents' uncertainty about whether expenses will ultimately
15 be reimbursed at all.

16 81. On information and belief, as a result of the new policy, the Department
17 currently has over 50,000 submitted reimbursement requests that are pending the
18 Department's review, the vast majority of which pertain to reimbursements for
19 supplementary materials.

20 82. On information and belief, the new policy has created an administrative
21 burden for the Department that has slowed the processing of reimbursement requests for
22 ESA recipients.

23 **COUNT ONE**
24 **(VIOLATION OF A.R.S. § 15-2402)**

25 83. Plaintiffs incorporate all allegations in the preceding paragraphs.

26 84. Defendants' administration of the ESA program is governed by Arizona
27 statute, and Defendants are bound to administer that program consistent with statutory
28 requirements.

85. A.R.S. § 15-2402(B)(4)(e) entitles participants in the program to use their ESA funds for “[c]urricula *and* supplementary materials” (emphasis added).

86. The plain and ordinary meaning of the term “supplementary materials,” the statutory structure and context, legislative history, and common sense all indicate that the “supplementary materials” parents may use ESA funds on are not confined to those items specifically identified or expressly called for by a curriculum, but that this phrase instead refers to any items reasonably necessary and appropriate to supplement a child’s education.

87. By refusing to allow the use of ESA funds on expenditures for supplementary materials generally known to be educational without documenting a “curriculum nexus,” Defendants have violated, and are violating, Arizona law.

88. The Defendants refusal to allow Plaintiffs to use ESA funds on expenditures for supplementary materials generally known to be educational without documenting a “curriculum nexus” is not authorized by state statute.

89. Defendants' violation of Arizona law harms Plaintiffs because it denies them the right to use their ESA funds in accordance with Arizona law to educate their children.

COUNT TWO
(VIOLATION OF THE ESA HANDBOOK)

90. Plaintiffs incorporate the allegations in the preceding paragraphs.

91. “[A]s a general principle of administrative law, ‘an agency must follow its own rules and regulations; to do otherwise is unlawful.’” *McKesson Corp. v. Ariz. Health Care Cost Containment Sys.*, 230 Ariz. 440, 443 ¶ 9 (App. 2012) (citation omitted).

92. “[T]he general rules and regulations of an administrative board or commission[] have the effect of law and are binding on [Defendants] and must be followed by [them] so long as they are in force and effect.” *Gibbons v. Ariz. Corp. Comm’n*, 95 Ariz. 343, 347 (1964).

93. The *ESA Handbook* was promulgated by the Board pursuant to administrative rulemaking procedures and its provisions are rules and regulations of the Board and the Department.

94. The *ESA Handbook* currently in force includes a “list of approved supplemental materials,” which are items that are “generally known to be educational” and “do not require curriculum.” *ESA 2023-24 Parent Handbook* at 17, 19.¹²

95. All of the items for which Plaintiffs were denied reimbursement appear on this list, and they are all items that are “generally known to be educational.” *Id.* at 19.

96. Defendants have violated, and are continuing to violate, their own rules and regulations by refusing to allow ESA expenditures for the items set forth herein and other items that appear on the “list of approved supplemental materials.”

97. Accordingly, Defendants' practice of refusing to allow ESA expenditures for such items is unlawful.

COUNT THREE (DECLARATORY JUDGMENT)

98. Plaintiffs incorporate the allegations in the preceding paragraphs.

99. A real and substantial controversy exists between Plaintiffs and Defendants, as Plaintiffs maintain that they are entitled to use ESA funds on expenditures for supplementary materials generally known to be educational without documenting a “curriculum nexus,” while Defendants maintain the opposite.

100. Plaintiffs have no plain, speedy, and adequate remedy at law.

101. Accordingly, Plaintiffs are entitled to declaratory relief stating that they are entitled to use ESA funds on expenditures for supplementary materials generally known to be educational without documenting a “curriculum nexus.”

¹² <https://www.azed.gov/sites/default/files/2023/05/ESA-2023-24-Parent-Handbook-FINAL-PROOF.pdf>.

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For their relief, Plaintiffs respectfully request that this Court take the following

- A. Enter a judgment declaring that A.R.S. § 15-2402 and the *ESA Handbook* authorize the use of ESA funds for supplementary materials that are generally known to be educational items without identifying a specific curriculum or other document listing those materials, and that Plaintiffs, and all ESA participants, may use ESA funds for supplementary materials that are generally known to be educational items without identifying a specific curriculum or other document listing those materials.
- B. Permanently enjoin Defendants from requiring parents to provide curriculum documentation specifically listing supplementary materials where those materials are generally known to be educational items.
- C. Award Plaintiffs their costs pursuant to A.R.S. § 12-341, and attorney fees pursuant to the private attorney general doctrine and A.R.S. § 12-348; and
- D. Award such other and further relief as may be just and equitable.

RESPECTFULLY SUBMITTED this 23rd day of September 2024.

GOLDWATER INSTITUTE

/s/ John Thorpe
Jonathan Riches (025712)
John Thorpe (034901)
Scharf-Norton Center for
Constitutional Litigation at the
GOLDWATER INSTITUTE
500 E. Coronado Rd.
Phoenix, Arizona 85004

Attorneys for Plaintiffs

VERIFICATION

I, Velia Aguirre, being duly sworn upon my oath, state that I am familiar with the allegations in the foregoing complaint and verify that the allegations contained therein are true and correct, except for those counts alleged upon information and belief, which I reasonably believe to be true.

Dated this 10 day of September 2024,

By:  _____

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VERIFICATION

I, Rosemary McAtee, being duly sworn upon my oath, state that I am familiar with the allegations in the foregoing complaint and verify that the allegations contained therein are true and correct, except for those counts alleged upon information and belief, which I reasonably believe to be true.

Dated this 21st day of September 2024,

By: Rosemary McAtee

From: ClassWallet Team help@classwallet.com 🇺🇸
Subject: Reimbursement Rejected
Date: August 23, 2024 at 1:21 PM
To: Joaquin Quihuis vaguirre4@yahoo.com

CT

ClassWallet...brought to you by Kleo, Inc.

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CLASSWALLET

ClassWallet Reimbursement Rejected

Your reimbursement has been **REJECTED**.

Title: Arizona – ESA

Requested amount: \$126.17

Comments: 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). Item(s): All Supplemental Materials (Curriculum needed) Curriculum should contain: Scope/Overview of the course AND Lesson Plans with a Materials list requiring the item(s) being requested. *** Please refer to page 20 of the 2023-24 Parent Handbook for guidance on parent created curriculum. Please upload one of the above listed items within 5 days and our team will be happy to review. If we do not receive any additional documentation within 5 days, the order will be rejected and will need to be resubmitted. ****Please DO NOT Email Your Attachments. Upload all documents to your ClassWallet account.****

Rejected by: Jessica Glass (jessica.glass@azed.gov)

*** This is an automatically generated email – please do not reply to it. If you have any questions related to this order, please contact your program administrator. ****

Order Details

Order No: 18392455
Date: 08/15/2024 22:41:01 PM UTC
Title: Reimbursement
Vendor: Amazon

User Name: Joaquin Quihuis
Address: 2848 W Sunrise Dr
City: Laveen
State: AZ
Zip: 85339

Item ID: CW000RIM183924550
Description: Amazon
Quantity: 1
Price: \$126.17

Exhibit 1

Sub Total: \$126.17
Shipping: \$0.00
Tax: \$0.00

**Requested
Amount:** \$126.17



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From: ClassWallet Team help@classwallet.com 
Subject: Reimbursement Rejected
Date: August 23, 2024 at 1:21 PM
To: Guillermo Quihuis vaguirre4@yahoo.com

CT

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CLASSWALLET

ClassWallet Reimbursement Receipt

The following distributions have been **REJECTED**.

Title: Arizona – ESA

Requested amount: \$76.37

Comments: 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). Item(s): All Supplemental Materials (Curriculum needed) Curriculum should contain: Scope/Overview of the course AND Lesson Plans with a Materials list requiring the item(s) being requested. *** Please refer to page 20 of the 2023-24 Parent Handbook for guidance on parent created curriculum. Please upload one of the above listed items within 5 days and our team will be happy to review. If we do not receive any additional documentation within 5 days, the order will be rejected and will need to be resubmitted. ****Please DO NOT Email Your Attachments. Upload all documents to your ClassWallet account. ****

Rejected by: Jessica Glass (jessica.glass@azed.gov)

Please respond by sending an email to your admin jessica.glass@azed.gov.

Order Details

Order No: 18392371
Date: 08/15/2024 22:36:17 PM UTC
Title: Reimbursement
Vendor: Amazon

User Name: Guillermo Quihuis
Address: 2848 W Sunrise Dr
City: Laveen
State: AZ
Zip: 85339

Item ID: CW000RIM183923710
Description: Amazon
Quantity: 1
Price: \$0.00

RECEIVED

By Katherine Ruiz at 3:59 pm, Aug 28, 2024

Requested

requested Amount:	\$76.37
Sub Total:	\$0.00
Shipping:	\$0.00
Tax:	\$0.00
Total:	\$0.00

- Your ClassWallet Team



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RECEIVED

By Katherine Ruiz at 3:59 pm, Aug 28, 2024

Re: Reimbursement Rejected

From Rose <tmacsrose@protonmail.com>

To sarah.baker@azed.gov

Date Friday, August 23rd, 2024 at 7:28 AM

This order was submitted before rule changes and should not need a curriculum. Please approve it.

Thank you,
Rosemary

Sent with [Proton Mail](#) secure email.

On Tuesday, August 20th, 2024 at 10:55 AM, ClassWallet Team <help@classwallet.com> wrote:

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[View this email in your browser](#)



ClassWallet Reimbursement Rejected

Your reimbursement has been **REJECTED**.

Title: Arizona – ESA

Requested
amount: \$41.84

Comments: This order is incomplete because additional documentation is needed. ***ALL FILES *** 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 providing curriculum (highlighting or indicating with screenshots or page numbers), it should show that the requested item(s) are required or recommended. Please be advised that reading books (including how to books) and blogs are not necessarily considered curriculum. Please refer to page 20 of the 2023-24 Parent Handbook for guidance on parent created curriculum. For assistance with uploading documents to ClassWallet, please

follow this link: <https://kleo.force.com/classwallet/s/article/Uploading-additional-documents> Please upload one of the above listed items within 5 days and our team will be happy to review. If we do not receive any additional documentation within 5 days your order may be rejected.

Rejected by: Sarah Baker (sarah.baker@azed.gov)

*** This is an automatically generated email – please do not reply to it. If you have any questions related to this order, please contact your program administrator. ****

Order Details

Order No:	17605581	User Name:	Patrick McAtee
Date:	07/03/2024 15:02:22 PM UTC	Address:	481 W Kaniksu St
Title:	Reimbursement	City:	Apache Junction
Vendor:	Thrift Books	State:	AZ
		Zip:	85120

Item ID:	CW000RIM176055810
Description:	Thrift Books
Quantity:	1
Price:	\$41.84

Sub Total:	\$41.84
Shipping:	\$0.00
Tax:	\$0.00

Requested Amount:	\$41.84
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From: ESAFEEDBACK - AZSBE <esafeedback@azsbe.az.gov>
Date: August 29, 2024 at 9:11:47 AM MST
To: Velia Aguirre <VAGUIRRE4@yahoo.com>
Subject: Re: JPQ Appeal

Good Morning,

Pursuant to Arizona Revised Statute A.R.S. [§ 15-2403\(D\)](#), a Parent/Guardian may appeal an administrative decision by the Department (ADE). It is the State Board of Education's (SBE) understanding that the Parent/Guardian/Account Holder is attempting to appeal an ADE procedure vs. an ADE administrative decision. The SBE cannot process appeals of ADE procedure.

Please be aware that the ADE Rejection email from August 23, 2024 is not an ADE administrative decision. As this is not an administrative decision, an appeal cannot be processed at this time.

Thank you kindly.

Katherine Ruiz, MSA
ESA Project Director
Arizona State Board of Education
1700 W Washington Street
Executive Tower, Suite 300
Phoenix, AZ 85007
Fax: 602.542.3046
Website: azsbe.az.gov



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On Wed, Aug 28, 2024 at 4:12 PM Velia Aguirre <vaguirre4@yahoo.com>

wrote:

On Aug 28, 2024, at 4:07 PM, ESAFEEDBACK - AZSBE
<esafeedback@azsbe.az.gov> wrote:

Good Afternoon,

The emailed Appeal Form pdf cannot be opened.

Thank you kindly.

Katherine Ruiz, MSA
ESA Project Director
Arizona State Board of Education
1700 W Washington Street
Executive Tower, Suite 300
Phoenix, AZ 85007
Fax: 602.542.3046
Website: azsbe.az.gov



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On Wed, Aug 28, 2024 at 3:33 PM Velia Aguirre
<vaguirre4@yahoo.com> wrote:

From: [Velia Aguirre](#)
To: [John Thorpe](#); [Matt Beienburg](#)
Subject: Fwd: GPQ Appeal
Date: Thursday, August 29, 2024 9:45:17 AM
Attachments: [08-28-2024 Appeal Form - Case 00255.pdf](#)
[08-23-2024 ADE Decision - Case 00255.pdf](#)

Sent from my iPhone

Begin forwarded message:

From: ESAFEEDBACK - AZSBE <esafeedback@azsbe.az.gov>
Date: August 29, 2024 at 9:09:34 AM MST
To: Velia Aguirre <VAGUIRRE4@yahoo.com>
Subject: Re: GPQ Appeal

Good Morning,

Pursuant to Arizona Revised Statute A.R.S. [§ 15-2403\(D\)](#), a Parent/Guardian may appeal an administrative decision by the Department (ADE). It is the State Board of Education's (SBE) understanding that the Parent/Guardian/Account Holder is attempting to appeal an ADE procedure vs. an ADE administrative decision. The SBE cannot process appeals of ADE procedure.

Please be aware that the ADE Rejection email from August 23, 2024 is not an ADE administrative decision. As this is not an administrative decision, an appeal cannot be processed at this time.

Thank you kindly.

Katherine Ruiz, MSA
ESA Project Director
Arizona State Board of Education
1700 W Washington Street
Executive Tower, Suite 300
Phoenix, AZ 85007
Fax: 602.542.3046
Website: azsbe.az.gov



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On Wed, Aug 28, 2024 at 3:33 PM Velia Aguirre <vaguirre4@yahoo.com>
wrote:

From: Rose <tmacsrose@protonmail.com>
Sent: Tuesday, September 3, 2024 3:58 PM
To: Matt Beienburg <mbeienburg@goldwaterinstitute.org>
Subject: Fw: Re: Appeal

I just received this.

Sent with [Proton Mail](#) secure email.

----- Forwarded Message -----

From: ESAFEEDBACK - AZSBE <esafeedback@azsbe.az.gov>
Date: On Tuesday, September 3rd, 2024 at 3:55 PM
Subject: Re: Appeal
To: Rose <tmacsrose@protonmail.com>

Good Afternoon,

Pursuant to Arizona Revised Statute A.R.S. [§ 15-2403\(D\)](#), a Parent/Guardian may appeal an administrative decision by the Department (ADE). It is the State Board of Education's (SBE) understanding that the Parent/Guardian/Account Holder is attempting to appeal an ADE procedure vs. an ADE administrative decision. The SBE cannot process appeals of ADE procedure.

Please be aware that the ADE Rejection email from Tuesday, August 20th, 2024 is not an ADE administrative decision. As this is not an administrative decision, an appeal cannot be processed at this time.

Thank you kindly.

Katherine Ruiz, MSA
ESA Project Director
Arizona State Board of Education
1700 W Washington Street
Executive Tower, Suite 300
Phoenix, AZ 85007
Fax: 602.542.3046
Website: azsbe.az.gov



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On Tue, Sep 3, 2024 at 1:18 PM Rose <tmacsrose@protonmail.com> wrote:

I have attached the appeals form and the rejection that I received from the ADE. I have requested 4 times to know if this is the final administrative decision, but the ADE will not respond.

Thank you,
Rosemary McAtee

Sent with [Proton Mail](#) secure email.



OFFICE OF THE ARIZONA ATTORNEY GENERAL

KRIS MAYES
ARIZONA ATTORNEY
GENERAL

SOLICITOR GENERAL'S OFFICE
GOVERNMENT ACCOUNTABILITY UNIT

Government Accountability Unit
(602) 542-3333

July 1, 2024

VIA EMAIL

Associate Superintendent John Ward
Empowerment Scholarship Account Program
Arizona Department of Education
1535 W. Jefferson St.
Phoenix, AZ 85007

Re: Alleged public monies violations under the Empowerment Scholarship Account Program
Public Monies Investigation No. PM2024-0008

Dear Mr. Ward,

The Attorney General's Office is aware of guidance published by the Arizona Department of Education's ("ADE") Empowerment Scholarship Account ("ESA") Program which indicates that the Program may be authorizing expenses beyond the statutory framework provided in A.R.S. § 15-2402(B)(4). Because funds provided under the ESA Program are public monies, allowance of expenses beyond statutory authority constitutes an illegal payment of public monies. *See* A.R.S. § 35-212(F); *see also Cain v. Horne*, 220 Ariz. 77, 82 ¶ 23 (2009). Therefore, pursuant to the Attorney General's authority under A.R.S. § 35-212, the Government Accountability Unit has opened an investigation into these allegations. We are writing to notify you of our investigation, as well as to provide you with an opportunity to respond.

ESA Program guidance, including the 2023-2024 School Year ESA Parent Handbook ("Parent Handbook") and the document titled "Allowable Expenses for All ESA Students" ("Allowable Expenses List"), indicates that the Program may be allowing expenses beyond those authorized under A.R.S. § 15-2402(B)(4) in the following situations:

1. Approval of supplementary materials without documentation of a curriculum nexus.

A.R.S. § 15-2402(B)(4)(e) authorizes parents to spend ESA funds on "curricula and supplementary materials." A.R.S. § 15-2401(2) defines "curriculum" as "a course of study for content areas or grade levels, including any supplemental materials required or recommended by the curriculum, approved by the department." "Supplemental materials" is not defined by statute.

But the State Board of Education adopted a rule defining the term to mean “relevant materials directly related to the course of study for which they are being used that introduce content and instructional strategies or that enhance, complement, enrich, extend or support the curriculum.” A.A.C. R7-2-1501(16).

Read together, the statutes and regulations authorize ESA funds for “curricula” expenses, meaning “a course of study for content areas or grade levels . . . approved by the department,” and “supplemental material” expenses, meaning “materials required or recommended by the curriculum” or materials that “directly relate[. . . , enhance, complement, enrich, extend or support the curriculum.” § 15-2401(2); R7-2-1501(16).

The 2023-2024 Parent Handbook and the Allowable Expenses List, however, state that many “supplementary materials” “do not require curriculum” and the Program will approve these expenses without any documentation of a curriculum nexus. *See* Parent Handbook at 17; Allowable Expenses List at 2.

The acceptance of expenses for supplemental materials as described in the Parent Handbook and Allowable Expenses List—without any documentation of a curriculum nexus—provides no method for ADE to confirm that the materials are “required or recommended by [a] curriculum” as required by § 15-2401(2), or that such materials are “directly related to the course of study for which they are being used that introduce content and instructional strategies or that enhance, complement, enrich, extend or support the curriculum” as directed by R7-2-1501(16).

Expense approval without documentation of a curriculum nexus also prevents ADE from fulfilling its statutory duty to approve the requisite curriculum under § 15-2401(2) (“Curriculum” means a course of study for content areas or grade levels, including any supplemental materials required or recommended by the curriculum, *approved by the department*.” (emphasis added)). That statute plainly contemplates that ADE “approve” curricula, which necessitates that ADE receive curricula and review that documentation to make an approval determination.

The Allowable Expenses List also states that some supplemental materials “not generally known to be educational items” require documentation of a curriculum nexus, including proof of class registration (or home-education attestation) and a “[f]ormal curriculum where the item is listed on the materials list, within the curriculum.” Allowable Expenses List at 3. Similarly, the Parent Handbook states that for supplemental materials where documentation is required, that it must “clearly demonstrate[] that the item is recommended or required by a curriculum or course of study, though the specific words ‘recommended’ or ‘required’ need not be present.” Parent Handbook at 19. Neither document, however, describes the ESA Program’s curriculum approval process nor indicates that the ESA Program confirms the curriculum prompting the purchase of the item is (1) appropriate for the qualified student as indicated by grade level or course of study and (2) is being studied by the student.

Approving ESA funds for materials that have no nexus to the student’s actual curricular needs contradicts the intent of the program and constitutes a payment of funds made without authorization of law in violation of § 35-212. *See also Findings of Fact, Conclusions of Law and Recommendation, Student J.S., by and through Parent E.S., v. Ariz. Dept. of Educ.*, No. 2023C-

ESA-004-SBE (No. 00057), at *2 (Ariz. State Board of Educ. Dec. 13, 2023) (explaining that limiting Program approval to items which “further [an] educational purpose . . . is consistent with A.R.S. § 15-2402[.]”). Furthermore, the absence of requirement for documentation of a curriculum nexus may enable account holders or vendors to engage in fraudulent behavior, such as purchasing items with ESA funds solely for the purpose of resale.

Please provide this Office with confirmation that the ESA Program will promptly cease approving supplementary material expenses without the requisite documentation of a curriculum nexus and the ESA Program’s plans for doing so. Additionally, please provide the following information and documentation within thirty (30) days of the date of this letter:

- 1) Identify the amount of ESA funds expended on supplementary materials for each school year from the 2019-2020 school year through the 2023-2024 school year to date.
- 2) Identify the amount of ESA funds expended on supplementary materials without documentation of a curriculum nexus¹ for each school year from the 2019-2020 school year through the 2023-2024 school year to date.
- 3) Identify every item approved as a supplementary material without documentation of a curriculum nexus in the 2022-2023 school year.
- 4) Identify every item approved as a supplementary material without documentation of a curriculum nexus in the 2023-2024 school year to date.
- 5) When documentation is required, explain how the ESA Program confirms that the curriculum prompting the purchase of the item is (1) appropriate for the qualified student as indicated by grade level or course of study and (2) is being studied by the student and that the supplementary material complies with the requirements of § 15-2401(2) or R7-2-1501(16).

2. Approval of certain curriculum materials without curriculum documentation.

A.R.S. § 15-2402(B)(4)(e) authorizes parents to spend ESA funds on “curricula and supplementary materials.” Section 15-2401(2) defines “curriculum” to mean “a course of study for content areas or grade levels, including any supplemental materials required or recommended by the curriculum, approved by the department.”

The ESA Program’s Allowable Expenses List lists three types of expenses allowable as curricula: “(1) curricula for all educational subjects; (2) textbooks (including audio/digital/USB); (3) supplemental materials.” Allowable Expenses List at 3. With the exception of some class enrollment fees, neither the List nor the Parent Handbook indicates what documentation (if any)

¹ For clarity, documentation of a curriculum nexus in this context means documentation demonstrating that the materials are “required or recommended by [a] curriculum” or are “directly related to the course of study for which they are being used that introduce content and instructional strategies or that enhance, complement, enrich, extend or support the curriculum.”

is required to ensure that items approved under these categories are themselves an ADE-approved curriculum or are otherwise directly required by an ADE-approved curriculum that is both appropriate for the student's grade level or course of study and being studied by the student. Further, without a clear requirement for curriculum documentation, it is unclear if the Program is meeting the statutory duty to approve the requisite curriculum under § 15-2401(2).

Approving ESA funds under § 15-2402(B)(4)(e) on items which are not curricula constitutes a payment of funds without authorization of law in violation of § 35-212.

Please provide the following information and documentation within thirty (30) days of the date of this letter:

- 1) Identify the amount of ESA funds expended on curricula materials for each school year from the 2019-2020 school year through the 2023-2024 school year to date.
- 2) Identify the amount of ESA funds expended on curricula materials without supporting curriculum documentation² for each school year from the 2019-2020 school year through the 2023-2024 school year to date.
- 3) Identify each expense approved as curricula without supporting curriculum documentation in the 2022-2023 school year.
- 4) Identify each expense approved as curricula without supporting curriculum documentation in the 2023-2024 school year to date.
- 5) Identify what documentation (if any) is necessary for an item to be approved as either "curricula for all educational subjects" or "textbooks (including audio/digital/USB)."
- 6) Explain how the Department confirms that all approved curricula expenses relate to an ADE-approved curriculum that is both appropriate for the student's grade level or course of study and being studied by the student.
- 7) The ESA Parent Handbook instructs that fees for in-person classes and sports and educational camps will be approved as "curricula" "when curriculum or proof of the course of study is provided. Registration or proof of enrollment is acceptable as the proof for the course of study." Parent Handbook at 21. Explain the Program's approval process for these types of expenses, including its process to determine whether a requested in-person class, sport, or educational camp is appropriate for the qualified student as indicated by grade level or course of study.

² For clarity, curriculum documentation in this context means documentation that demonstrates the item is itself an ADE-approved curriculum or is otherwise directly required by an ADE-approved curriculum that is both appropriate for the student's grade level or course of study and being studied by the student.

3. Approval of textbook expenses without documentation demonstrating the item is required by a qualified school or an eligible postsecondary institution.

A.R.S. § 15-2402(B)(4)(b) authorizes the use of ESA funds on “[t]extbooks required by a qualified school.” Similarly, A.R.S. § 15-2402(B)(4)(i) authorizes ESA funds for “[t]extbooks required by an eligible postsecondary institution.”

Neither the Parent Handbook nor the Allowable Expenses List lists a documentation requirement to demonstrate that a textbook is required by a qualified school (as defined by A.R.S. § 15-2401(6)) or by an eligible postsecondary institution (as defined by A.R.S. § 15-2401(4)) that the participating student is attending. Approving ESA funds under §§ 15-2402(B)(4)(b) and -(i) for items which are not required by a qualified school or eligible postsecondary institution that the participating student is attending constitutes payment of funds without authorization of law in violation of § 35-212.

Please provide the following information and documentation within thirty (30) days of the date of this letter:

- 1) Identify the amount of ESA funds expended on textbooks required by a qualified school for each school year from the 2019-2020 school year through the 2023-2024 school year to date and note for each year the portion of funds expended on textbooks lacking documentation that the item was required by a qualified school.
- 2) Identify the amount of ESA funds expended on textbooks required by an eligible postsecondary institution for each school year from the 2019-2020 school year through the 2023-2024 school year to date and note for each year the portion of funds expended on textbooks lacking documentation that the item was required by an eligible postsecondary institution.
- 3) Identify every textbook expense approved without documentation that it was required by a qualified school or eligible postsecondary institution in the 2022-2023 school year.
- 4) Identify every textbook expense approved without documentation that it was required by a qualified school or eligible postsecondary institution in the 2023-2024 school year to date.
- 5) Explain the Program’s approval process for textbooks required by a qualified school or an eligible postsecondary institution, including whether the Program verifies that the participating student attends the school which requires the textbook.

We appreciate your cooperation with this matter and look forward to receiving your prompt response.

Sincerely,

/s/ Kathryn Boughton

Kathryn Boughton
Assistant Attorney General



ARIZONA DEPARTMENT OF EDUCATION

July 3, 2024

VIA EMAIL

Kathryn Boughton, Assistant Attorney General
Office of Arizona Attorney General
Solicitor General's Office
2005 North Central Ave.
Phoenix, Az 85004-1592

Dear Ms. Boughton,

I have received your letter dated July 1, 2024 pertaining to Public Monies Investigation No. PM2024-008.

Solicitor General's claims

In the letter, the Solicitor General's Office makes 2 primary claims regarding Empowerment Scholarship Account (ESA) program practices based on information included in the ESA Program's Parent Handbook and "Allowable Expenses for all ESA Students" document posted on the Arizona Department of Education's (ADE) website. Specifically, the Solicitor General is critical of the ESA program's practice of:

- allowing ESA Holders to use their Empowerment Scholarships to purchase supplemental materials without curricula that justifies the purchase of such materials.
- not identifying for ESA Holders what documentation they are required to submit when purchasing curricula and textbooks so that the Arizona Department of Education can evaluate the items under its authority to approve or reject curricula.

The Solicitor General states that these practices contradict the intent of the Program and constitute a payment of funds without authorization of law. The letter also states that it is unclear whether the ESA program meets its statutory duty to approve

curriculum, as well as to verify whether textbooks are required by qualifying schools and post-secondary institutions.

Solicitor General's directives

As a result of the claims, the Solicitor General has directed the Arizona Department of Education to promptly cease approving supplemental materials and textbooks without curricula and other supporting documentation and provide the Program's plan for compliance. ADE was also directed to answer a series of 17 questions posed by the Solicitor General within 30 days.

ADE will comply with Solicitor General's directives

Supplemental materials without curricula and textbooks without supporting documentation will no longer be allowed—The 2023-2024 ESA Parent Handbook, which is the current Handbook in force, continued the preexisting practice of allowing ESA Holders to purchase supplemental materials without curricula—a practice begun in the prior ADE administration. The current ESA Parent Handbook and the practice in question, which preceded my tenure, were adopted by the State Board of Education (SBE) on April 24, 2023. ADE will promptly implement this directive to ensure compliance with Arizona Revised Statutes §§ 15-2401 and 15-2402.

The ESA program will communicate to ESA Holders that this practice will no longer continue and will provide guidance for compliance. ADE will also work with the SBE to ensure that this practice is removed from the 2023-2024 ESA Parent Handbook. Additionally, ADE will ensure that all parts of the Handbook will be revised as necessary to reflect this directive.

ADE will provide responses to the 17 questions posed by the Solicitor General—ADE will carefully respond to the Solicitor General's questions and work with ClassWallet, the State's financial solutions vendor, to produce the data requested in the questions.

Given the number of questions, the level of data requested, and the complexity in pulling some of the data, ADE will need 60 days to provide the data.

Conclusion

The Arizona Department of Education will review its practices and procedures to ensure compliance with the Solicitor General's directives. When ADE provides responses to the questions posed to it, along with the associated data, we will provide a status update on the changes the ESA program has made to ensure compliance.

Respectfully,

John Ward

Executive Director
Empowerment Scholarship Account Program
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Copy emailed to:

Art Harding, Chief Operations Officer

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Tom Horne, Superintendent of Public Instruction