



OFFICE OF THE ARIZONA ATTORNEY GENERAL

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GOVERNMENT ACCOUNTABILITY UNIT

Government Accountability Unit  
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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 nexus<sup>1</sup> 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)

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<sup>1</sup> 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 documentation<sup>2</sup> 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.

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<sup>2</sup> 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.

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

Sincerely,

/s/ Kathryn Boughton

Kathryn Boughton  
Assistant Attorney General