

Exhibit D

After The Appeal... The System Responded: Escalation, Narrowing, And Dismissal.

Description: This exhibit documents actions taken after the appeal was filed, not the original denial. Retaliation escalated, and due process collapsed.

Branch 1 — Retaliation

Retaliation Overview

After the appeal was filed and objections were formally preserved, ESA did not correct the original denial or address the merits. Instead, **enforcement escalated. New restrictions were imposed, reimbursements were denied, and additional purchases were rejected under standards that either did not exist or were inconsistently applied.**

What follows documents how financial retaliation was triggered by the appeal itself.

Exhibit D1

Second Rower Denial (504 Student)

April 14, 2025

Description: This denial occurred after the appeal was filed and objections were preserved, marking the first retaliatory escalation. New restrictions were imposed without statutory authority, affecting a student with a documented 504 plan.



Lodge [redacted] lishing [redacted]

Order Rejected

ClassWallet Team <help@classwallet.com>
Re | -To: zkari.thomas_azed. ov
To: [redacted]

Tue, Apr 22, 2025 at 3:24 PM

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

[View this email in your browser](#)



CLASSWALLET

Order Rejected

Zkari Thomas has rejected your order for the following reason:

“Unfortunately, the following item(s) Hydrow Core Rowing Machine exceeds the \$1k threshold for computers implemented by the Department of Education. ESA has made the administrative decision to pay up to \$1,000 for this item. This order is now rejected and will need to be resubmitted within the ClassWallet platform. You may choose to appeal the decision to the Arizona State Board of Education (SBE) pursuant to A.R.S § 15-2403(D). Website: <https://azsbe.az.gov/parents/empowerment-scholarship-account-esa-program> ****however, please note that some of the item may be approved for qualified students with a disability and must be accompanied with a letter from a specialist. ”

Please respond by sending an email to your admin zkari.thomas@azed.gov.

Funds have been moved back into your account and are available for future purposes.

Order Details

Order No: [redacted]
Date: 4-19-2025
Title: Amazon Inc. Order

User Name: [redacted]
Address: [redacted]
City: [redacted]

Vendor:	Amazon Inc.	State:	AZ
		Zip:	85388

Item Summary

Description	Price	Qty	Subtotal	Allowable?
Hydrow Under Machine Mat for Exercise Equipment, Non-Slip Exercise Mat for Stability and Floor Protection, Suitable for Rowing Machine, Treadmill, Bike and Home Workout (3'L x 7.5'W X 0.125' Thick)	\$90.00	1	\$90.00	Allowed
Hydrow Core Rowing Machine - No Membership Required Immersive 22" HD Rotating Screen - Stows Upright 30 Self-Guided Scenic Rows Included	\$1,995.00	1	\$1,995.00	Not Allowed

Sub Total: \$2,085.00
Shipping: \$0.00
Tax: \$189.74
Total: **\$2,274.74**

-  Facebook
-  Twitter
-  Website
-  LinkedIn

Copyright © 2025 Kleo Inc., All rights reserved.

Our mailing address is:
6100 Hollywood Blvd, Suite 108 Hollywood FL 33024

[unsubscribe from this list](#) [update subscription preferences](#)

Exhibit D2

\$5,400 Computer Reimbursement Denial Asserting \$2,000 Cap
April 14, 2025

Description: This denial followed the appeal and imposed a **fabricated \$2,000 reimbursement cap with no statutory or handbook basis**. The cap was applied retroactively to deny reimbursement for an otherwise allowable educational expense... **a computer used for homeschooling.**



Your transaction is not approved

ClassWallet Team <help@classwallet.com>
Re: | -To: hel classwallet.com
To: 

Mon, Apr 14, 2025 at 8:30 AM

[View this email in your browser](#)



CLASSWALLET

Action Required

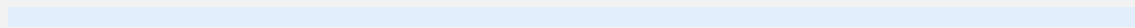
Your order is incomplete

Comments:

The following comments were left: Unfortunately, the following item(s) exceeds the \$2,000.00 threshold for . ESA will reimburse up to \$2,000.00 for this item. Please upload additional documentation with a signature to confirm you are accepting this one-time reimbursement for this item. After 15 calendar days of no action, your order will be rejected and you will need to resubmit your order in Class Wallet.

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

Order Details



User Name:



Order No:



Date:

4-6-2025

Title:

Reimbursement

Vendor:

Apple

CW000RIM230636470 Apple (1) \$5453.91

Requested Amount: \$5,453.91

Subtotal: \$5,453.91

Shipping: \$0.00

Tax: \$0.00

Total: \$5,453.91

PLEASE WHITE-LIST US TO ENSURE YOU RECEIVE YOUR TRANSACTIONAL EMAILS.



Facebook



Twitter



Website



LinkedIn

Copyright © 2025 Kleo Inc., All rights reserved.

Our mailing address is:

6100 Hollywood Blvd, Suite 108 Hollywood FL 33024

[unsubscribe from this list](#) [update subscription preferences](#)

Branch 2 — Procedural Shutdown / Administrative Law Violations

Procedural Shutdown Overview

After the appeal was initiated and objections were formally preserved, the tribunal did not resolve those objections or reach the merits of the case. Instead, the administrative process progressively narrowed. **Objections were tabled or barred, the scope of the record was restricted, previously denied motions were reintroduced through procedural filings, and the case was ultimately dismissed with prejudice while unresolved issues remained pending.**

What follows documents how the appeals process was systematically shut down to prevent review.

Exhibit D3

Governing Appeals Rule (A.A.C. R7-2-1511) Appeals Rule in Effect During Proceedings

Description: This exhibit establishes the binding procedural rules governing objections, evidence, and the administrative record during ESA appeals.

Purpose:

To establish the procedural requirements governing final administrative decisions and to document the absence of those requirements in this proceeding.

Context Annotation (Author Added):

The governing rules require the hearing officer to **issue a written recommendation within 20 days after the hearing concludes, including findings of fact, conclusions of law, and a concise explanation of the reasons supporting the decision.**

No such written recommendation was issued in this case. No findings of fact were provided. No conclusions of law were entered. No explanation addressing the preserved objections was given. Instead, objections were acknowledged but never ruled on, the record was narrowed, and the proceeding was terminated with prejudice without the procedural decision required by rule.

This was not discretionary case management. It was a failure to comply with mandatory procedural requirements imposed by the governing appeals rule itself.

ESA ARIZONA ADMINISTRATIVE CODE

Opened September 26, 2022

Changes Approved - January 23, 2023

R7-2-1511. Appeals

- A. A parent may appeal to the Board any administrative decision the Department makes pursuant to A.R.S. Title 15, Chapter 19, Article 1, including determinations of allowable expenses, removal from the Program or enrollment eligibility.
- B. Stay
1. Pending the resolution of an appeal during which an account is suspended, a parent may request a stay on the account suspension.
 - a. Included in the request for a hearing filed pursuant to R7-2-1511(F), a parent may file a request to the Board to stay an account suspension. Such request shall be in writing and shall address the matters stated in the Department's notice in R7-2-1511(E).
 - b. The Department may file a response to the parent's request to stay the suspension of the account. Such response shall be filed with the Board within five business days of receipt of the parent's request to stay the suspension. Such response shall be in writing and shall address the matters stated in the parent's request.
 - c. Within 10 business days after receipt of the Department's response, the executive director of the Board or the executive director's designee shall make a written determination to either:
 - i. Proceed with suspension of the account, or
 - ii. Stay all or part of the suspension of the account if there is a reasonable probability that the appeal will be upheld or that the stay is in the best interest of the State. If a stay is issued, the Department may not withhold funding or contract renewal for the account holder on account of the appealed administrative decision during the stay unless directed by the Board to do so.
 - d. The executive director or the executive director's designee shall provide the parent and the Department with a written copy of the stay determination including the basis for the determination.
 - C. Notwithstanding any other Section, the Department may, with the agreement of the account holder on the resolution, informally resolve a disputed administrative action at any time without a formal appeal pursuant to this Article.
 - D. The Department, on its website and in the parent handbook, shall provide information on the Board's appeals process.
 - E. The Department shall provide parents with written notice of an appealable action taken by the Department. Such written notice shall inform the parents of his/her right to request a hearing on the action and shall include the following:
 1. The statute or rule that is alleged to have been violated or on which the action is based;
 2. Identify, with reasonable particularity, the nature of any alleged violation or action;
 3. Include a description of the parent's right to request a hearing on the appealable agency action; and
 4. Include a description of the parent's right to request an informal settlement conference.

ESA ARIZONA ADMINISTRATIVE CODE

Opened September 26, 2022

Changes Approved - January 23, 2023

- F.** Within 30 days after being served with notice of an appealable action, a parent may file a request for a hearing. The notice must be in writing and shall state the following:
1. The identity of the party requesting the hearing,
 2. The mailing address of the party requesting the hearing,
 3. The agency that rendered the decision related to the appealable action,
 4. Identification of the action being appealed,
 5. A concise statement of the reasons for the request for hearing,
 6. A copy of the administrative decision issued by the Department, and
 7. Any other information or documentation requested by the Board applicable to the appeal process.
- G.** If good cause is submitted, the Board may accept a request for a hearing that is not filed in a timely manner. Such request must be made in writing and state the basis for not filing the request on time.
- H.** If a parent requests a hearing pursuant to R7-2-1511(F) and includes all of the items listed in R7-2-1511(F)(1) through (7), the Board shall schedule a hearing.
- I.** The Board shall provide all parties with a written notice at least 20 days prior to the date set for the hearing. The notice shall include:
1. A statement of the time, place and nature of the hearing;
 2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 3. A reference to the particular sections of the statutes and rules involved; and
 4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.
- J.** All notices shall be served via personal delivery or certified mail, return receipt requested or by any other method reasonably calculated to effect actual notice on the agency and all parties to the action at each party's last address of record.
- K.** A hearing on the appealable action shall be held after a complete appeal is filed and may be advanced or delayed on the agreement of the parties or on a showing of good cause.
- L.** Informal Settlement Conference
1. A parent may request an informal settlement conference be held with the Department. The request shall be in writing and shall be filed with the Department, and a copy provided to the Board, no later than 10 days after the Board provides notice that the appeal is complete. The Department shall hold an informal settlement conference within seven days after receiving the request. The Department shall notify the Board of the result of the informal settlement conference within five days of the conclusion of the informal settlement conference or prior to the hearing date, whichever is first. The request for an informal settlement conference does not alter the date the hearing is to be held.

ESA ARIZONA ADMINISTRATIVE CODE

Opened September 26, 2022

Changes Approved - January 23, 2023

2. If an informal settlement conference is held, a person with the authority to act on behalf of the Department must represent the Department at the conference. The Department representative shall notify the parent in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing.

M. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

N. Hearing Process

1. All hearings shall be conducted before a hearing officer pursuant to this Section.
2. The parties to the appealable agency action have the right to be represented by legal counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.
 - a. Pursuant to A.R.S. § 15-2403(E), a parent may designate a representative, not necessarily an attorney, before any hearing held pursuant to this Section. Any designated representative who is not an attorney admitted to practice may not charge for any services rendered in connection with such a hearing.
 - b. The fact that a representative participated in the hearing or assisted the account holder is not grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
3. The Board shall schedule a prehearing conference on request of any party. A prehearing conference may be held for the following purposes:
 - a. Clarify or limit procedural, legal or factual issues;
 - b. Consider amendments to any pleading;
 - c. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
 - d. Obtain stipulations or rulings regarding testimony, exhibits, facts or law;
 - e. Schedule deadlines, hearing dates and locations if not previously set; or
 - f. Allow the parties opportunity to discuss settlement.
4. The record in a contested case shall include:
 - a. All pleadings, motions and interlocutory rulings.
 - b. Evidence received or considered.
 - c. A statement of matters officially noticed.
 - d. Objections and offers of proof and rulings thereon.
 - e. Proposed findings of fact and conclusions of law and exceptions thereto.
 - f. Any decision, opinion, recommendation or report of the hearing officer.
 - g. All staff memoranda, other than privileged communications, or data submitted to the hearing officer in connection with its consideration of the case.
5. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
6. A participant of record shall not communicate, either directly or indirectly, with the Hearing Officer about any substantive issue in a pending matter unless:

ESA ARIZONA ADMINISTRATIVE CODE

Opened September 26, 2022

Changes Approved - January 23, 2023

- a. All participants of record are present;
 - b. Communication is during a scheduled proceeding, where an absent participant of record fails to appeal after proper notice; or
 - c. Communication is by written motion with copies to all participants of record.
 7. The Hearing Officer may postpone, continue, or cancel a hearing for good cause upon the written request of either party. The participant of record must establish good cause for the written request.
 8. For good cause shown, the hearing officer may grant continuances and extensions of time for filing notices or other documents.
 9. The Hearing Officer may direct a party to submit additional memorandum or information within a reasonable period of time. The Hearing Officer shall grant the opposing party a reasonable period of time to respond to the additional memorandum or information.
 10. Upon written request, any party may request an opportunity to compare a document copy with the original. The Hearing Officer may grant the request if the record establishes good cause.
- O. Conduct of Hearing**
1. All hearings shall be recorded. The Board shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding.
 2. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
 3. The parties may submit proposed findings of fact and conclusions of law prior to the hearing. The hearing officer may require that the parties submit proposed findings of fact and conclusions of law prior to the hearing or at the close of evidence.
 4. All interested parties shall be ready and present with all witnesses and documents at the time and place specified in the notice of hearing and shall be prepared at such time to dispose of all issues and questions involved in the appeal. An interested party shall arrange for the presence of that party's witnesses at a hearing.
 5. If a party fails to appear at a hearing, the hearing body may proceed with the presentation of the evidence of the appearing party.
 6. The Hearing Officer conducting the hearing may close the hearing to other than interested parties to the extent necessary to protect the interests and rights of the interested parties, within the requirements of A.R.S. §§ 38-431.01, and 38-431.03.
 7. The Hearing Officer may conduct all or part of the hearing by telephone other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.

Context Annotation (Author Added):

The governing rule requires a written recommendation with findings of fact and conclusions of law within 20 days after the hearing conclude. No such recommendation, findings, or conclusions were issued in this case before the proceeding was dismissed with prejudice.

ESA ARIZONA ADMINISTRATIVE CODE

Opened September 26, 2022

Changes Approved - January 23, 2023

8. Conduct at any hearing that is disruptive or shows contempt for the proceeding shall be grounds for exclusion from further participation.

P. Evidence

1. All witnesses shall testify under oath or affirmation. The hearing officer shall administer oaths and affirmations.
2. The hearing officer shall afford interested parties an opportunity either to present oral or documentary evidence, or both, and to conduct such cross-examination as may be required for a full and fair disclosure of the facts. The hearing officer may limit the time of oral argument.
3. The hearing officer may choose to admit evidence, a witness' deposition, or a witness' affidavit and determine evidentiary weight of all submitted evidence. The party taking a witness' deposition or affidavit shall bear all deposition-related or affidavit-related costs. The hearing officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning, to exclude evidence the hearing officer determines to be irrelevant, immaterial or unduly repetitious, and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.

- Q. Stipulations.** Parties to any contested case may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the hearing officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. No substantive matter agreed to by the parties shall be binding upon the Board unless incorporated into the decision of the Board.

R. Final Administrative Decision

1. The hearing officer shall issue a written recommendation within 20 days after the hearing is concluded. The written recommendation shall contain a concise explanation of the reasons supporting the recommendation, including the findings of fact and conclusions of law.
2. The hearing officer shall serve a copy of the recommendation on the Board. On request of the Board, the hearing officer shall also transmit to the Board the record of the hearing as described in A.R.S. § 12-904.
3. At one of the following two regularly scheduled meetings of the Board after the hearing officer sends a copy of the recommendation to the Board, the Board may review the recommendation and accept, reject or modify it.
 - a. If the Board declines to review the hearing officer's recommendation, the Board shall serve a copy of the recommendation on all parties.
 - b. If the Board rejects or modifies the recommendation, the Board shall serve on all parties, a copy of the hearing officer's recommendation with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law.

ESA ARIZONA ADMINISTRATIVE CODE

Opened September 26, 2022

Changes Approved - January 23, 2023

4. The Board shall provide all parties with at least 20 days written notice of the date, time and location of the public meeting at which the Board will consider the hearing officer's recommendation.
- S. Rehearing and review of decisions
 1. A party may file a motion for rehearing or review within 10 days after service of the final administrative decision. The motion shall be in writing and state the basis upon which the rehearing or review is requested. The motion shall be filed with the Board and a copy provided to the opposing party. When a motion of rehearing is based on new evidence, the new evidence shall be served to the Board with the written motion.
 2. The opposing party may file a response to the motion for rehearing within 15 days after the date the motion for rehearing is filed. The response shall be in writing and address the basis upon which the rehearing or review is requested. The motion shall be filed with the Board and a copy provide to the moving party.
 3. A rehearing of a final administrative decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:
 - a. Except as provided for in R7-2-1511(O)(2), irregularity in the administrative proceedings of the hearing, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - b. Misconduct of the hearing officer; or
 - c. Newly discovered materials which could not with reasonable diligence have been discovered and produced at the hearing.
 4. The filed motion shall be considered at one of the following two regularly scheduled meetings of the Board.
 5. Service is complete on personal service or five days after the date the final administrative decision is mailed to the party's last known address.
 6. After a hearing has been held and a final administrative decision has been entered a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

Section R7-2-1511 Appeals, becomes effective from and after January 1, 2023

Exhibit D4

Tribunal Ruling / Objections Tabled
June 27, 2025

Description: Formal objections were acknowledged by the tribunal, then sidelined and never substantively resolved before dismissal.

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 M.L., STUDENT BY AND THROUGH
4 PARENT G.L.,
5 APPELLEE,

No. 25C-ESA-006-SBE

Minute Entry

6 v.

7 ARIZONA DEPARTMENT OF
8 EDUCATION,
9 APPELLANT.

10 The Empowerment Scholarship Account (“ESA”) program is an account
11 administered by the Arizona Department of Education (“Department”) that is funded by
12 state tax dollars to provide educational options for qualified Arizona students. By opting
13 out of the public school system, parents can seek a range of alternative educational
14 services, such as private school or home-based education. The ESA program grants
15 parents the ability to pursue flexible options for customizing their student's education.
16 For an applicant to be a qualified student they must be a resident of the state and satisfy
17 at least one statutory requirement each from Arizona Revised Statutes (“ARIZ. REV.
18 STAT.”) § 15-2401 *et seq.* If an ESA application is approved, a contract is issued to the
19 parent of the student applicant. Once the contract is signed and returned to the
20 Department, the ESA account is funded.

21 On March 25, 2025, the Arizona State Board of Education (“Board”) issued a
22 NOTICE OF HEARING ON APPEALABLE AGENCY ACTION (“NOTICE OF HEARING”) in the above-
23 captioned matter, to determine whether grounds exist for the Board to uphold the
24 Department’s March 06, 2025, DENIAL OF EXPENSES DECISION (“DECISION”) regarding
25 Appellee’s \$1,998.97 supplementary material request for a Spirit CRW800 Rower, 94 x
26 18 x 38 Inches received March 03, 2025. The matter was forwarded to the Office of
27 Administrative Hearings, and independent state agency, for adjudication on June 04,
28 2025.

29 On April 30, 2025, Appellee submitted a 4-part subpoena request that was denied
30 in part, and granted in part. On May 12, 2025, Appellee submitted a MOTION FOR

1 RECONSIDERATION regarding the portions of his subpoena request that had been denied
2 by the Tribunal.

3 On May 19, 2025, the Department submitted a MOTION TO DISMISS. In its motion
4 the Department explained that on or around July 01, 2024, the Arizona Attorney General's
5 Office ("AGO") brought action against the ESA program and the Department under ARIZ.
6 REV. STAT. § 35-212(F) to require that program participants provide a parent-prepared
7 curriculum for supplementary materials.¹ In turn, on or about July 03, 2024, the
8 Department issued correspondence to program participants, including Appellee, that it
9 would follow the AGO's directive. On or about July 22, 2024, the Department provided
10 program participants, including Appellee, with a template to use for supplementary
11 material requests. Per the Department, although Appellee's \$1,998.97 request had been
12 denied for failure to provide a curriculum, the decision was conditionally overturned on
13 May 12, 2025. Specifically, Appellee was advised that his request would be approved if
14 he submitted a curriculum "demonstrating an educational purposes" as directed by AGO.
15 Appellee allegedly refused.

16 On May 23, 2025, the Department submitted a MOTION TO QUASH SUBPOENA
17 pursuant to Arizona Administrative Code ("ARIZ. ADMIN. CODE") R2-19-113 for Appellee's
18 alleged service requirement noncompliance, federal law considerations, and grounds of
19 irrelevance.

20 On May 27, 2025, the Tribunal issued an Order denying Appellee's MOTION FOR
21 RECONSIDERATION and specifically noted that he was prohibited from attempting to
22 produce evidence and/or argumentation outside the limited scope of these proceedings.²

23 On June 02, 2025, the Tribunal granted Appellant's MOTION TO CONTINUE for the
24 sole purpose of granting additional time for compliance with Appellee's extensive
25 subpoena duces tecum, signed May 01, 2025.

26
27 ¹ Administrative Notice is taken that there is currently a pending class action suit in Superior Court, *Aguirre*
28 *v. State of Arizona*, Civil No. CV2024-026463, regarding whether AGO has legal authority to require ESA
29 program participants to provide a parent-prepared curriculum for supplementary materials.

30 ² The sole issues for hearing are whether Appellee knew that a parent-prepared curriculum was
required when he submitted his March 03, 2025, reimbursement request, and if so, whether
Appellant's March 06, 2025, denial of Appellee's \$1,800.00 reimbursement request for physical
education equipment was proper and otherwise lawful? Additional issues may be addressed in a
competent court of jurisdiction.

**THEY DOCUMENTED THE OBJECTIONS. ORDERED THEM IGNORED.
THEN CREATED THE OPENING TO REVIVE THE DISMISSAL.**

1 On June 13, 2025, Appellee submitted a 5-point OBJECTION to the Tribunal's May
2 27, 2025, Order, arguing, overall, a "continuous narrowing of the record," "obstruction,"
3 and "unfairness." Appellee further objected to Appellant's June 02, 2025, MOTION TO
4 CONTINUE.

5 On June 17, 2025, Appellee submitted a 5-point ADDENDUM TO OBJECTION, which
6 argued, essentially, that prohibiting Appellee from expanding the scope of the hearing
7 was improper and amounted to procedural injustice.

8 In light of the foregoing,

9 **IT IS ORDERED** that the Tribunal will not respond to further objections and/or
10 objection addendums by Appellee regarding its May 27, 2025, and/or June 02, 2025,
11 Orders. Appellant shall not reply to any such future filings by Appellee regarding these
12 subjects.

13 **IT IS FURTHER ORDERED** that the Tribunal's June 13, 2025, Order setting a
14 Status Update for August 01, 2025, remains in full force and effect. At such time the
15 undersigned shall determine whether the above-captioned matter is able to be reset to
16 an earlier continued hearing date.

17 Done this day, June 27, 2025.

18 Office of Administrative Hearings

19
20 /s/ Jenna Clark
21 Administrative Law Judge

22 Transmitted by either mail, e-mail, or facs

**Multiple formal objections were filed challenging:
narrowing of the record,
procedural unfairness,
and obstruction during the appeal process.**

25 Sean Ross, Executive Director
26 c/o Katherine Ruiz, ESA Project Director
27 State Board of Education
28 1700 W. Washington St.
29 Executive Tower, Ste. 300
30 Phoenix, AZ 85007
katherine.ruiz@azsbe.az.gov

**After the objections were formally preserved...
Jenna Clark ordered that no further objections or
responses would be considered on those issues.**

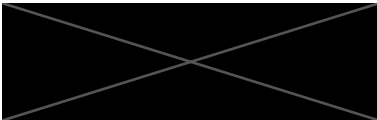
**The objections were shut down.
The hearing was pushed into a later "status update."
During that status update, the previously denied
dismissal motion returned through the same
procedural opening ... and gets approved anyway.**

1 Bruce DuPlanty, Deputy Director
2 Arizona Board of Education
3 1700 W. Washington St.
4 Executive Tower, Ste. 300
5 Phoenix, AZ 85007
6 esafeedback@azsbe.az.gov

7 John Ward, ESA Executive Director
8 Christine Sbarcea, ESA Deputy Director
9 Karen McCue, Executive Assistance to John Ward
10 Hannah McCarthy, Purchase Review Specialist
11 Arizona Department of Education
12 Attn: ESA Appeals 1535 W. Jefferson St., Bin # 41
13 Phoenix, AZ 85007
14 john.ward@azed.gov
15 christine.sbarcea@azed.gov
16 karen.mccue@azed.gov
17 hannah.mccarthy@azed.gov

18 Maria Syms, Associate Superintendent/Director of Legal Services
19 Caitlyn Castle, Legal Assistant
20 Arizona Department of Education
21 Attn: ESA Appeals 1535 W. Jefferson St., Bin # 50
22 Phoenix, AZ 85007
23 maria.syms@azed.gov
24 caitlyn.castle@azed.gov

25 Gu Lod e



26 By: OAH Staff

Exhibit D5

“Status Update” Used to Re-urge Previously Denied Motion
July 31, 2025

Description: A tribunal-mandated **“status update”** was used to **re-urge a previously denied motion to dismiss** without resolving outstanding objections.

**THEY SHUT DOWN THE OBJECTIONS.
THEN REVIVED THE DISMISSAL.**

1 THOMAS C. HORNE
2 ARIZONA DEPARTMENT OF EDUCATION

3 Maria Syms No. 023019
4 Associate Superintendent/Director of Legal Services
5 Arizona Department of Education
6 1535 W. Jefferson Street
7 Phoenix, Arizona 85007
8 Telephone: (602) 542-5240
9 E-mail: Maria.Syms@azed.gov
10 Attorney for the Respondent

11 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

12 In the Matter of:

13 **M.L., STUDENT BY AND THROUGH
14 PARENT G.L.,**

15 Appellant,

16 v.

17 **ARIZONA DEPARTMENT OF EDUCATION**

18 Respondent.

19 Case No. 25C-ESA-006-SBE
20 (SBE Case Number 00017)

21 **RESPONDENT ARIZONA
22 DEPARTMENT OF EDUCATION'S
23 STATUS UPDATE**

24 **Hearing: To Be Determined**

25 Respondent Arizona Department of Education (ADE) respectfully submits this Status Update
26 pursuant to the Court's June 13, 2025, Order. On May 27, 2025, **the Court limited the scope of the**
Subpoena to "information regarding ESA program participants whose reimbursement requests were
denied July 3, 2024, through March 3, 2025, for their alleged failure to provide an accompanying parent-
prepared curriculum." In addition, the Court ordered disclosure of **"only those instances where**
reimbursement was requested for physical education equipment totaling \$1800 or more...." See *M.L., et*

ADE repeatedly tried to reduce the dispute to a single rowing machine reimbursement... while broader objections, withheld reimbursements, and procedural inconsistencies remained unresolved.

The “status update” reframes the denial as a routine reimbursement issue... while while treating a still-disputed policy as settled authority.

1 *al. v. Arizona Department of Education*, OAH No. 25C-ESA-006-SBE, May 27, 2025. On July 31,
2 2025, ADE provided Appellant with a list of more than 600 rejected ESA ClassWallet order requests for
3 the period July 3, 2024, to March 3, 2025. ADE worked with its outside vendor ClassWallet to see if it
4 could run a search that complies with the Court Order. ClassWallet was able to conduct a search and
5 generate a list of all physical education items rejected from July 3, 2024, to March 3, 2025, and due to
6 the limitations of their search capability¹, it appears they also included items rejected for lack of
7 curriculum during that period. **ADE was able to identify two rowing machines** that were rejected during
8 that time and ADE highlighted those denials for Appellant. In those cases, the parents did provide a
9 curriculum, but other items included in the order were not reimbursable expenses and as a result the
10 entire order was rejected. **Had the parent resubmitted just the rowing machine for reimbursement**, along
11 with the curriculum provided, **ADE would have approved the expense**, just as we are offering to do in
12 this case.

13
14
15 ADE also respectfully informs the Court that on July 10, 2025, the Superior Court in *Aguirre v.*
16 *State of Arizona*, Civil No. CV2024-026463, denied Plaintiffs’ Motion for Summary Judgment on their
17 contention that a curriculum is not required for ESA reimbursement requests for supplemental materials.
18 The Court held it “cannot find, as a matter of law, based upon plaintiffs’ motion and the record before it
19 that the new documentation policy violates state law or that plaintiffs have a right under state law or
20 contract to use scholarship funds without providing documentation.” A true and correct copy of the
21 Order is attached hereto. **Based on this ruling, ADE is required to continue to follow the Attorney**
22 **General’s curriculum documentation policy.** **As a result, ADE respectfully requests the Court to**
23
24
25
26

¹ ClassWallet had to search more than 50,000 order rejections in order to compile a list for that time period.

**First the objections were cut off.
Then the hearing was delayed.
Then the dismissal returned through the opening created by that delay.**

1 reconsider its denial of ADE's Motion to Dismiss. ADE remains ready to reimburse Appellant's
2 requested expense as soon as he provides a curriculum.

3 DATED this 31ST day of July, 2025.
4

5 /s/ Maria Syms

6 Maria Syms, Associate Superintendent/
7 Director of Legal Services
8 Arizona Department of Education

8 ORIGINAL electronically mailed to
9 Office of Administrative Hearings

10 this 31st day of July, 2025.

11 COPIES of the foregoing sent by electronic mail
12 this 31st day of July, 2025, to:

13 Appellant G.L.
14 email of record

15 Katherine Ruiz, ESA Project Director
16 Arizona State Board of Education
17 1700 W. Washington Street
18 Executive Tower, Suite 300
19 Phoenix, AZ 85007
20 esafeedback@azsbe.az.gov

19 Arizona State Board of Education
20 1700 W. Washington St., Ste. 300
21 Phoenix, Arizona 85007

22 /s/ Hannah McCarthy
23 Hannah McCarthy

**ADE repeatedly enforced the curriculum policy as settled authority...
even while the governing standards remained disputed, evolving, and
actively being litigated.**

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-026463

07/09/2025

HONORABLE DAVID MCDOWELL

CLERK OF THE COURT
K. Tiero
Deputy

VELIA AGUIRRE, et al.

JOHN N THORPE

v.

STATE OF ARIZONA, et al.

SYREETA AMESHA TYRELL

MARIA SYMS
JUDGE MCDOWELL

RULING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

DISMISSAL DATE SET

Pending before the Court is Velia Aguirre and Rosemary McAtee's February 24, 2025 *Plaintiffs' Motion for Summary Judgment*; the State's Response in Opposition to Plaintiffs' Motion for Summary Judgment filed May 30, 2025, and Plaintiff's Reply in Support of Motion for Summary Judgment filed June 30, 2025.

Plaintiffs' are two recipients of Empowerment Scholarship Account awards which permit them to use funds, which would otherwise be allocated to the recipient's school district, for non-public schooling. Plaintiffs seek to have this Court declare, as a matter of law, that the new documentation policy developed by the Arizona Department of Education violates their right to use scholarship funds without providing documentation to the Department of Education. They also seek an Order directing the State to stop enforcing its new documentation policy. The State of Arizona opposes the request arguing Plaintiffs and other scholarship award recipients are bound by contract, state law, and regulations adopted by the Board, which in Plaintiffs' case includes the July 1, 2024 policy requiring documentation of expenses incurred.

The Court cannot find, as a matter of law, based upon plaintiffs' motion and the record before it that the new documentation policy violates state law or that plaintiffs have a right under state law or contract to use scholarship funds without providing documentation. The Court finds plaintiffs'

**The court did not conclusively uphold the policy.
The dispute remained active and unresolved.**

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-026463

07/09/2025

motion fails to set forth sufficient authority or facts for the Court to determine, as a matter of law, that the Handbook applicable to the 2024-2025 school year, the contract between the Department and the plaintiffs for the 2024-2025 school year, and rules adopted by the Board applicable to the 2024-2025 school year preclude the State from enforcing the new documentation policy.

IT IS ORDERED denying plaintiffs' February 24, 2025 *Motion for Summary Judgment*.

The parties March 2025 Scheduling Order does not contain a dismissal date. On the Court's own motion,

IT IS ORDERED setting a dismissal date for **October 30, 2025**. After that date this matter will be dismissed without further notice to the parties **unless** prior to that date they (1) submit a Stipulation and proposed order resolving all issues in this action, or (2) file a Motion to Set and Certificate of Readiness indicating all discovery/disclosure is complete and the parties have attended some form of facilitated settlement discussion (the Court's ADR program, private mediation, or arbitration).

The litigation ADE repeatedly relied upon was still ongoing — yet the curriculum policy continued being enforced as settled authority throughout the appeal process.

Exhibit D6

Dismissal With Prejudice
August 4, 2025 (**Final Dismissal**)

Description: The case was dismissed with prejudice while the objections acknowledged and barred in Exhibit D4 remained unresolved on the record, preventing any decision on the merits.

THE BACKDOOR DISMISSAL.

1 THOMAS C. HORNE
2 ARIZONA DEPARTMENT OF EDUCATION

3 Maria Syms No. 023019
4 Associate Superintendent/Director of Legal Services
5 Arizona Department of Education
6 1535 W. Jefferson Street
7 Phoenix, Arizona 85007
8 Telephone: (602) 542-5240
9 E-mail: Maria.Syms@azed.gov
10 Attorney for the Respondent

11 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

12 In the Matter of:

13 **M.L., STUDENT BY AND THROUGH**
14 **PARENT G.L.,**

15 Appellant,

16 v.

17 **ARIZONA DEPARTMENT OF EDUCATION**

18 Respondent.

19 Case No. 25C-ESA-006-SBE
20 (SBE Case Number 00017)

21 **RESPONDENT ARIZONA**
22 **DEPARTMENT OF EDUCATION'S**
23 **MOTION TO DISMISS**

24 **Hearing: June 4th, 2025, 9:00 a.m.**

25 Respondent Arizona Department of Education respectfully requests the instant appeal be
26 dismissed for the following reasons:

- 27 (1) The Arizona Attorney General has opened an investigation of the Empowerment Scholarship
28 Account (ESA) program and directed ADE to require ESA parents to submit a curriculum for
29 supplemental materials, including the rowing machine currently sought by Appellant, or face

1 statutory liability for misspent state funds. ADE is following that directive by requiring a
2 curriculum;

3 (2) ADE has offered to reimburse Appellant for the full amount of the rowing machine provided
4 Appellant submits a curriculum showing its educational purpose as directed by the Attorney
5 General. Appellant has repeatedly declined this offer, choosing to proceed with the appeal;
6 and
7

8 (3) There is currently a case pending in Arizona Superior Court brought by ESA families seeking
9 a declaration that curricula are not required for the reimbursement of supplemental materials.
10 *Aguirre v. State of Arizona*, Civil No. CV2024-026463. Appellant has the option of litigating
11 the merits of the Attorney General's authority to require such curricula in that action – this is
12 not the appropriate forum. A motion for summary judgment is currently pending in that case
13 and ADE will abide by the Court's judicial declaration in that case with respect to this issue.
14

15 II. FACTUAL BACKGROUND

16 On September 13, 2024, parent M.L. entered a contract with the ADE for an ESA for their
17 universal student. As per the terms of the contract, Appellant agreed to use the funds for an educational
18 purpose in accordance with A.R.S. § 15-2402 and the current 2023-2024 ESA Parent Handbook. See
19 paragraphs 4, 5, and 9 of the contract, dated September 13, 2024, attached to the Exhibit List as Exhibit
20 "A".
21

22 On July 1, 2024, the Arizona Attorney General sent a letter to ADE stating it was opening an
23 investigation, claiming that ADE was violating Arizona law in covering ESA expenses for
24 supplementary materials without requiring parents to submit a curriculum showing a nexus with those
25 materials. In that letter, the Attorney General stated this may have resulted in an "illegal payment of
26

The motion repeatedly relies on the Attorney General’s directive... but the governing handbook language at issue was not formally revised until June 23, 2025... after objections had already been preserved on the record.

1 public monies” and threatened to hold ADE and ESA parents liable, which included a potential claw
2 back of ESA expended funds from parents and the program. A true and correct copy of the Attorney
3 General’s letter to ADE dated July 1, 2024, is attached to the Exhibit list as Exhibit “B”. The Attorney
4 General relies on ARS § 35-212(F), which purportedly allows her to bring action against Superintendent
5 Horne and ESA leadership for causing alleged “illegal payments”. More importantly, the same law
6 indicates that she can bring action against anyone who received “illegal payments”, which in this case
7 would be ESA parents, including Appellant if he receives the relief sought.
8

9 Because ADE is charged with administering the ESA program and ensuring its continued fiscal
10 and legal viability, on July 3, 2024, ADE informed parents that going forward, it would follow the
11 Attorney General’s directive and require a curriculum for supplementary materials. A true and correct
12 copy of the email to ESA families, including Appellant, from ESA Executive Director John Ward to
13 ESA families, dated July 3, 2024, is attached to the Exhibit List as Exhibit “C”. Thereafter, on July 22,
14 2024, ADE followed up with ESA parents providing guidance on the curriculum now required by the
15 Attorney General and even provided an updated template of the “Parent-Prepared Curriculum” to submit
16 with requests for supplemental materials. A true and correct copy of the email to ESA families,
17 including Appellant, from ESA Executive Director John Ward dated July 22, 2024, is attached to the
18 Exhibit List as Exhibit “D”. ADE was doing everything it could to inform and assist families in
19 providing the Attorney General’s demanded curriculum. ADE attempted to make it as turnkey a process
20 as possible.
21

22 Notwithstanding the information provided by ADE with respect to supplementary materials, on
23 March 3, 2025, Appellant submitted a request to Class Wallet, the ESA payment vendor, for a Spirit
24 CRW800 Rower 94x18x38 inches in the amount of \$1998.97. That Order was rejected for lack of a
25 curriculum. A true and correct copy of the Order and Rejection dated March 3, 2025, is attached to the
26

Acceptance of reimbursement for a single rowing machine would not have resolved the preserved objections, withheld reimbursements, procedural inconsistencies, or retaliation concerns already raised throughout the appeal.

1 Exhibit List as Exhibit “E”. On March 7, 2025, Appellant filed the instant appeal contending that the
2 rowing machine is for physical education and allowable.

3 On May 12, 2025, ESA Accountability Liaison Hannah McCarthy informed Appellant that ADE
4 would approve payment of the rowing machine in full if Appellant submit the curriculum demonstrating
5 an educational purpose as directed by the Attorney General. A true and correct copy of the email
6 correspondence from Hannah McCarthy to Appellant dated May 12, 2025, is attached hereto as Exhibit
7 “F”. Appellant rejected that offer several times and ultimately stated that he would not be submitting a
8 curriculum and preferred to proceed with the instant appeal. In fact, he states that if the appeal does not
9 go his way, he will continue to seek “justice” as follows:

11
12 **As I stated in the opening, "injustice anywhere is a threat to justice everywhere." Therefore, if the ALJ**
13 **in this case chooses to prioritize protecting her position over delivering justice, or shielding the system**
14 **instead of serving it, as some ALJ's have been known to do, I will escalate this expeditiously through**
every available channel: Superior Court, the Arizona Supreme Court, and beyond. I guarantee you, this
will not go away quietly.

15 **Furthermore, if that is the case, her name will be added to the growing list of individuals who are**
16 **complicit in the injustices being imposed on parents simply trying to secure the best for their children.**
17 **I will expose them for what they are—unqualified, unapologetic, undeserving of the positions they**
18 **hold, and complicit in a system designed to grind parents into silence.**

19 **That list includes Katherine Ruiz, Bridget Henke, and of course you, Maria Syms as the chief legal**
20 **advisor for the ADE.**

21 A true and correct copy of emails between Appellant and Hannah McCarthy dated May 16, 2025, and
22 May 19, 2025, are attached to the Exhibit List as Exhibit “G”. Appellant further states that he is now
23 seeking full reimbursement for the rowing machine and seeking a total of [REDACTED] as his damages.
24 *Id.*

25 On September 10, 2024, ESA parents filed an action for declaratory relief in Maricopa County
26 Superior Court, *Aguirre v. State of Arizona*, Civil No. CV2024-026463. A true and correct copy of the

The motion extensively quotes escalation language... while dedicating little analysis to the unresolved objections preserved throughout the appeal.

1 Verified Complaint for Declaratory and Injunctive Relief is attached hereto as Exhibit “H”. The *Aguirre*
2 plaintiffs allege there is no legal basis for the Attorney General to require a curriculum for ESA
3 supplemental materials and seek a declaration to that effect from the Court. That case is ongoing, and
4 Plaintiffs have a motion for summary judgment pending for the Court’s consideration. In the meantime,
5 discovery is ongoing in that case. The decision in that case will have a direct impact on whether the
6 Attorney General has the legal authority to require a curriculum for supplemental materials – including
7 the rowing machine at issue in this case.¹ While that is pending, ADE is continuing to follow the
8 Attorney General’s demand that we require curricula.
9

10 III. ARGUMENT

11 The Arizona Attorney General is the chief law enforcement officer of the State. Based on the
12 Attorney General’s July 1, 2024, directive and threat to hold Superintendent Horne, ADE staff and even
13 parents, including Appellant if ADE reimburses without a curriculum, statutorily liable for alleged
14 misspent funds, ADE rightfully started requiring ESA parents to supply curricula for all supplemental
15 materials. ADE will continue to do so on the directive of the Attorney General while the *Aguirre case* is
16 pending and will then abide by the judicial declaration in that case. In the meantime, ADE has
17 attempted to reach a compromise with Appellant by offering to pay for the rowing machine in full so
18 long as Appellant provides the required curriculum. Appellant knew the curriculum was required when
19 he submitted his order but chose to forego reimbursement to use the judicial system to make a statement.
20 ADE further informed Appellant of the pending *Aguirre* case and its impact on supplemental materials,
21 but he chose to move forward with the pending appeal, expending judicial, SBE, and ADE resources
22
23
24

25 ¹ Appellant claims in his email correspondence that the rowing machine is not a “supplemental” item requiring a curriculum.
26 Contrary to this assertion, sports equipment and gym memberships are specifically identified as “supplemental” in the ESA
Parent Handbook. Furthermore, Arizona law does not expressly say that physical education equipment is a covered ESA
expense.

Notice, the appeal itself becomes characterized as abuse.



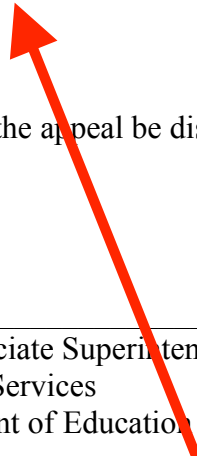
with this appeal. This misuse of the administrative appeal system should not be rewarded. Should Appellant seek to litigate his rights with respect to the Attorney General and the ESA program, he has the option of joining in the *Aguirre* lawsuit.

IV. CONCLUSION

Based on the foregoing, ADE respectfully requests that the appeal be dismissed.

DATED this 19TH day of May 2025.

/s/ Maria Syms
Maria Syms, Associate Superintendent/
Director of Legal Services
Arizona Department of Education



ORIGINAL electronically mailed to
Office of Administrative Hearings

this 19th day of May 2025.

COPIES of the foregoing sent by electronic mail
this 19th day of May 2025, to:

Appellant G.L.
email of record

Katherine Ruiz, ESA Project Director
Arizona State Board of Education
1700 W. Washington Street
Executive Tower, Suite 300
Phoenix, AZ 85007
esafeedback@azsbe.az.gov

Arizona State Board of Education
1700 W. Washington St., Ste. 300
Phoenix, Arizona 85007

/s/ Hannah McCarthy
Hannah McCarthy

Acceptance of reimbursement for a single rowing machine would not have resolved the preserved objections, withheld reimbursements, procedural inconsistencies, or retaliation concerns already raised throughout the appeal.

**Notice the shift:
the motion no longer focuses primarily on resolving the preserved objections.

Instead, persistence itself is reframed as improper...
turning a protected challenge to shifting standards, procedural inconsistencies, and unresolved objections into an alleged "misuse" of the appeal system.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26