

## **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**

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- 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**

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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**

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*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.

## **ESA ARIZONA ADMINISTRATIVE CODE**

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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**

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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*