

## **ESA ARIZONA ADMINISTRATIVE CODE**

*Opened September 26, 2022*

*Changes Approved - January 23, 2023*

### **R7-2-1501. Definitions**

In this Article, unless the context otherwise specifies:

1. “Administratively complete” means an ESA application that contains all components required by statute or this Article.
2. “Board” means the State Board of Education.
3. “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.
4. “Department” means the Arizona Department of Education.
5. “Eligible postsecondary institution” means a community college as defined in A.R.S. § 15-1401, a university under the jurisdiction of the Arizona Board of Regents, or an accredited private postsecondary institution.
6. “Empowerment scholarship account” or “ESA” means an account administered by the Department and funded by the state to provide options for the education of qualified students pursuant to A.R.S. § 15-2401 et seq.
7. “Hearing Officer” means a non-partial representative with either at least three years of verified experience in the practice of law or at least one year of verified experience in conducting hearings, who oversees hearings pursuant to this Article.
8. “Informal Settlement Conference” means a meeting between the Department and the Parent in an attempt to settle the appeal prior to an appeal hearing. The Board and the Hearing Officer do not attend.
9. “Misuse of funds” means the use of ESA funds on goods or services not permitted by A.R.S. § 15-2402, this Article or the Department pursuant to R7-2-1507.
10. “Parent” means a resident of this state who is the parent, stepparent, legal guardian, or account holder of a qualified student.
11. “Program” means the Empowerment Scholarship Account Program.
12. “Qualified school” means a nongovernmental primary or secondary school or a preschool for pupils with disabilities that is located in this state or, for qualified students who reside within the boundaries of an Indian reservation in this state, and that is located in an adjacent state and that is within two miles of the border of the state in which the qualified student resides, and that does not discriminate on the basis of race, color or national origin.
13. “Qualified student” means a resident of this state who:
  - a. Is any of the following:
    - i. Identified as having a disability under section 504 of the rehabilitation act of 1973 (29 U.S.C. 794);
    - ii. Identified by a school district or by an independent third party pursuant to A.R.S. § 15-2403(J) as a child with a disability as defined in A.R.S. § 15-731 or § 15-761;
    - iii. A child with a disability who is eligible to receive services from a school district under A.R.S. § 15-763;

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- iv. Attending a school or school district that was assigned a letter grade of D or F pursuant to A.R.S. § 15-241 for the most recent year in which letter grades were assigned or is currently eligible to attend kindergarten and who resides within the attendance boundary of a school that was assigned a letter grade of D or F pursuant to A.R.S. § 15-241 for the most recent year in which letter grades were assigned. A child who meets the requirements of this item and who meets the income eligibility requirements for free and reduced-price lunches under the National School Lunch and Child Nutrition Acts (42 U.S.C. 1751 through 1793) is not subject to R7-2-1501(12)(b);
  - v. A previous recipient of a scholarship issued pursuant to A.R.S. § 15-891 or this Section, unless the qualified student's parent has been removed from eligibility in the Program for failure to comply pursuant to A.R.S. § 15-2403(C);
  - vi. A child of a parent who is a member of the armed forces of the United States and who is on active duty or was killed in the line of duty. A child who meets the requirements of this subsection is not subject to R7-2-1501(12)(b);
  - vii. A child who is a ward of the juvenile court and who is residing with a prospective permanent placement pursuant to A.R.S. § 8-862 and the case plan is adoption or permanent guardianship;
  - viii. A child who was a ward of the juvenile court and who achieved permanency through adoption or permanent guardianship;
  - ix. A child who is the sibling of a current or previous ESA recipient or of an eligible qualified student who accepts the terms of and enrolls in an ESA;
  - x. A child who resides within the boundaries of an Indian reservation in this state as determined by the Department or a tribal government; or
  - xi. A child of a parent who is legally blind or deaf or hard of hearing as defined in A.R.S. § 36-1941.
- b. And, except as provided in R7-2-1501(12)(a)(iv) and R7-2-1501(12)(a)(vi), who meets any of the following requirements:
- i. Attended a governmental primary or secondary school as a full-time student as defined in A.R.S. § 15-901 for at least 45 days of the current or prior fiscal year and who transferred from a governmental primary or secondary school under a contract to participate in an ESA. Kindergarten students who are enrolled in Arizona online instruction must receive 100 hours of logged instruction to be eligible pursuant to this subsection. First, second and third grade students who are enrolled in Arizona online instruction must receive 200 hours of logged instruction to be eligible pursuant to this subsection. Fourth, fifth and sixth grade students who are enrolled in Arizona online instruction must receive 250 hours of logged instruction to be eligible pursuant to this subsection. Seventh and eighth grade students who are enrolled in Arizona online instruction must receive 275 hours of

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logged instruction to be eligible pursuant to this subsection. High school students who are enrolled in Arizona online instruction must receive 250 hours of logged instruction to be eligible pursuant to this subsection. For the purposes of this subsection, students may accumulate days of enrollment and hours of instruction in the current or prior fiscal year, or a combination thereof;

- ii. Previously participated in an ESA;
  - iii. Received a scholarship under A.R.S. § 43-1505 and who continues to attend a qualified school if the student attended a governmental primary or secondary school as a full-time student as defined in A.R.S. § 15-901 for at least 90 days of the prior fiscal year or one full semester before attending a qualified school;
  - iv. Was eligible for an Arizona scholarship for pupils with disabilities and received monies from a school tuition organization pursuant to A.R.S. § 43-1505 or received an Arizona scholarship for pupils with disabilities but did not receive monies from a school tuition organization pursuant to A.R.S. § 43-1505 and who continues to attend a qualified school if the student attended a governmental primary or secondary school as a full-time student as defined in A.R.S. § 15-901 for at least 90 days of the prior fiscal year or one full semester prior to attending a qualified school;
  - v. Attended a nonpublic school for pupils with disabilities in the prior year if placement at the school was approved by the Department and contracted for by a public school district.
  - vi. Has not previously attended a governmental primary or secondary school but is currently eligible to enroll in a kindergarten program in a school district or charter school in this state or attended a program for preschool children with disabilities. For the purposes of this item, a child is eligible to enroll in a kindergarten program if the child is at least five years of age on January 1 of the current school year, is under seven years of age, and has not already completed a kindergarten program and is not enrolled in grade one of a private or governmental school in the current year; or
  - vii. Has not previously attended a governmental primary or secondary school but is currently eligible to enroll in a program for preschool children with disabilities in this state.
14. “Stay” means a Parent may have access to a terminated ESA account pending the resolution of their appeal.
  15. “Substantively complete” means an ESA application that meets all substantive criteria required by statute or this Article.
  16. “Supplemental materials” referenced in A.R.S. § 15-2401(2), means relevant materials directly related to the course of study for which they are being used that introduce content

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and instructional strategies or that enhance, complement, enrich, extend or support the curriculum.

17. “Treasurer” means the Office of the State Treasurer.

18. Unless otherwise specifically defined herein, all defined terms shall have the same meaning as those ascribed to them in the A.R.S., Title 41.

### **R7-2-1501.01. Expanded Qualified Student Definition**

Notwithstanding A.R.S. § 15-2401 and R7-2-1501, beginning in the 2022-2023 school year, unless the context otherwise requires, “Qualified Student” includes a resident of this state who both:

1. Is eligible to enroll in a public school in this state in any of the following:
  - a. A preschool program for children with disabilities,
  - b. A kindergarten program, or
  - c. Any of grades 1 through 12.
2. Does not otherwise qualify for an Arizona Empowerment Scholarship Account pursuant to this Article.

### **R7-2-1502. General Provisions**

- A. This Section is adopted pursuant to A.R.S. § 15-2403.
- B. The Department and the Treasurer shall administer and provide general supervision and oversight of the Program pursuant to A.R.S. § 15-2401 et seq and this Article.
- C. The Department and the Board shall include intermediate Saturday, Sundays, and legal holidays when computing days under this Article. If the final day of a deadline established pursuant to this Article falls on a Saturday, Sunday or legal holiday, the next business day is the final day of the deadline.
- D. Unless otherwise specified, the Department shall serve a notice or decision that removes a parent from the Program, through personal delivery, first class mail, or certified mail to the parent’s last address with the Department, and also by any other method or methods that are reasonably determined to give actual notice to the parent, including electronic mail, text message, phone call, or through an online portal. Each parent shall provide the Department with the parent’s mailing address, home address, phone number and email and shall inform the Department of any change of mailing address, home address, phone number or email within 30 days of the change. For all other communications that do not contain notice of removal from the Program, the Board and the Department may communicate through any method or methods, including first class mail, certified mail, electronic mail, text message, phone call or through an online portal.
- E. A document is filed with the Board or the Department on the date it is received by the Board or the Department, as established by the Board’s or the Department’s date stamp on the face

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of the document. A notice or decision containing an appealable action issued by the Board or the Department pursuant to this Article is served on a party as follows:

1. On the date it is personally served,
2. Five days after it is mailed by first class mail, or
3. On the date of the return receipt if it is mailed by certified mail.

### **R7-2-1503. Department Responsibilities**

The Department shall:

1. On or before March 1 of each year, provide the Board with a handbook, developed in consultation with parents of children on the Program, that includes information relating to policies and processes of ESAs and complies with A.R.S. § 15-2401 et seq and this Article. The Board shall adopt the handbook on or before May 1 of each year. The Board shall limit substantive changes to the handbook to once every three years. The Board may approve changes to the handbook more frequently than every three years to conform and comply with changes to statute or this Article or at the Board's discretion. The handbook shall be posted on the Department's website and distributed to parents and shall clearly identify changes from the prior version, and include the date and time the new handbook was changed;
  - a. the yearly handbook, when adopted, shall become effective July 1st of each fiscal year.
  - b. If the yearly handbook is adopted after July 1st, the newly adopted handbook would become effective immediately following adoption.
2. Establish a dedicated call center for exclusive use for the ESA Program that works in conjunction with the Exceptional Student Services division of the Department or its successor division. Subject to review and approval by the Board, the Department may contract with a third party to operate the call center;
3. Implement customer service performance management policies, procedures, and metrics;
4. Provide training to parents who use the private financial management firm contracted to assist with financial management of the program;
5. Provide a quarterly report to the Board on the ESA Program, including:
  - a. The number of students in the program disaggregated by eligibility, grade level and the school district or charter school associated with each student;
    - i. The total number of special needs students by grade level,
    - ii. The number of special needs students by disability category, and
  - b. The annual award amount associated with each student;
  - c. The number of ESA applications received, approved and denied in the preceding quarter, including the justification for the denied applications;
  - d. The number of applications processed within 30 days of receipt and the number of administratively incomplete applications. Provide the reasons the administratively incomplete applications were not approved;

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- e. A summary of any parent input or feedback collected pursuant to R7-2-1503(6) and how the Department is responding to concerns submitted as part of the process;
- f. Information on the private financial management firm contracted to assist with financial management of the Program, including:
  - i. The number and eligibility type of accounts utilizing the firm,
  - ii. The number of providers and vendors on the firm's platform,
  - iii. Communications and training provided to parents,
  - iv. Concerns from parents submitted to the Department, the Treasurer and the private financial management firm and how the Department, Treasurer and private financial management firm are addressing the concerns, and
- g. Information regarding appeals filed with the Board that were resolved prior to a hearing;
- h. Information related to the audits completed, including:
  - i. scope of the audit(s),
  - ii. data and narratives on audit findings from the Quarter,
  - iii. data and narratives of finding outcomes from the Quarter, and
- i. Summary of all outages within the Department, private financial management firm, Department of Treasury, GAO, ADOA, etc. that cause a delay of the ESA program s
- j. Information related to MCC Codes, including:
  - i. Cumulative list of all MCC code expansions requested and specific reason for each denial,
  - ii. Cumulative list of all MCC code expansions and exceptions granted by the Department, and
- k. Data related reimbursement submissions, including:
  - i. The average number of days it takes a reimbursement submission to be assigned to a Department staffer,
  - ii. The average number of days it takes a reimbursement submission to be reviewed by a Department staffer,
  - iii. The average number of days it takes a reimbursements submission to be approved by a Department staffer, and
- l. Provide data related to Help Desk Tickets, including:
  - i. The quantity of help desk tickets not responded to within three business days,
  - ii. The quantity of help desk tickets prematurely closed and reopened, and
- m. Provide data related to the escalation of Help Desk Tickets, including:
  - i. The quantity of escalated helpdesk tickets by category type,
  - ii. The average number of days to resolution,
  - iii. A summary of resolutions, and
- n. Provide updates on the bidding process for all eligible Department contracts, including:

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- i. A.R.S. §15-2403(A): The treasurer may contract with private financial management firms to manage Arizona empowerment scholarship accounts,
  - ii. A.R.S. §15-2403(B): The Department shall conduct or contract for annual audits of Arizona empowerment scholarship accounts to ensure compliance with section § 15-2402, subsection B, paragraph 4,
  - iii. A.R.S. §15-2403(B): The Department shall also conduct or contract for random, quarterly and annual audits of Arizona empowerment scholarship accounts as needed to ensure compliance with section § 15-2402, subsection B, paragraph 4,
  - iv. A.R.S. §15-2403(J): The Department shall contract with an independent third party for the purposes of determining whether a qualified student is eligible to receive educational therapies or services pursuant to section § 15-2402, subsection B, paragraph 4, subdivision (c),
  - v. R7-2-1503(2): Subject to review and approval by the Board, the Department may contract with a third party to operate the call center,
  - vi. Any other eligible Department contracts, and
  - o. The date of the most recent update to the online database of approved expenses and disallowed expenses. A summarization of the changes made;
  - p. An approximation of the most common award amount. Provide the method(s) and formula(s) utilized to calculate award amounts; and
  - q. Any other information the Board requests.
6. Establish and provide to the Board a process to collect parent input and feedback regarding the Program.

### **R7-2-1504. Application and Account Activation**

- A. The Department shall accept applications to participate in the Program between July 1 and June 30 of each year.
- B. The Department shall provide information for prospective applicants on eligibility.
- C. The Department shall enroll and issue an award letter to eligible applicants within 30 days after receipt of a completed application and all required documentation. The award letter shall include information on how to activate the account and the amount of ESA funding the student will receive.
- D. Within 30 days of issuing the award letter, the Department shall issue the contract to eligible applicants.
- E. Prior to issuing a notice of a denied application, the Department shall provide notice describing the administrative or substantive incompleteness of the application and provide the applicant 30 days to provide the missing documentation or information. The Department shall include

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the justification for the denial and, if the application was substantively incomplete, the Department shall include the applicant's right to appeal.

- F. Pursuant to R7-2-1511, a person who has had an application denied due to being substantively incomplete may file a written request for a hearing within 30 days after being served the notice of denial. Administratively incomplete applications are not appealable.
- G. If the Board finds in favor of a parent who appealed a denied application, the Department shall expedite the contract and funding to the parent to the extent possible.

### **R7-2-1505. Contract Between Parent and Department**

- A. To enroll a qualified student in an ESA, a parent of the qualified student shall sign a contract with the Department. The parent:
  - 1. Shall use a portion of the ESA monies allocated annually to provide an education for the qualified student in at least the subjects of reading, grammar, mathematics, social studies and science, unless the ESA is allocated monies according to a transfer schedule other than quarterly transfers pursuant to A.R.S. § 15-2403(F). This subsection does not require a parent to spend a portion of ESA monies on each subject every quarter;
  - 2. Shall not enroll the qualified student in a school district or charter school, and shall release the school district from all obligations to educate the qualified student. This subsection does not:
    - a. Relieve the school district or charter school that the qualified student previously attended from the obligation to conduct an evaluation pursuant to A.R.S. § 15-766, or
    - b. Require a qualified student to withdraw from a school district or charter school before enrolling for an ESA if the qualified student withdraws from the school district or charter school before receiving any monies in the qualified student's ESA.
    - c. Prevent a qualified student from applying in advance for an ESA to be funded beginning the following school year.
  - 3. Shall not accept a scholarship from a school tuition organization pursuant to A.R.S., Title 43 concurrently with an ESA for the qualified student in the same year a parent signs the contract pursuant to this Section;
  - 4. Shall use the monies deposited in the qualified student's ESA only for the expenses listed in A.R.S. § 15-2402(B)(4);
  - 5. Shall not file an affidavit of intent to homeschool pursuant to A.R.S. § 15-802(B)(2) or (3);
  - 6. Shall not use monies deposited in the qualified student's account for any of the following:
    - a. Computer hardware or other technological devices, except as provided in R7-2-1505(B) and § 15-2402(B)(4)(p); or
    - b. Transportation of the pupil, except for transportation services described A.R.S. § 15-2402(B)(4)(o).
  - 7. Shall submit expenses and documentation as required in R7-2-1508.



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- B.** If a qualified student meets any of the criteria specified in A.R.S. § 15-2401(7)(a)(i), (ii), or (iii), as determined by a school district or by an independent third party under A.R.S. § 15-2403(J), the qualified student may use the following additional services:
1. Educational therapies from a licensed or accredited practitioner or provider including and up to any amount not covered by insurance if the expense is partially paid by a health insurance policy for the qualified students,
  2. A licensed or accredited paraprofessional or educational aide,
  3. Tuition for vocational and life skills education approved by the department, and
  4. Associated goods and services that include, but are not limited to, educational and psychological evaluations, assistive technology rentals and braille translation goods and services approved by the Department. Associated goods as described in this subsection may include computer hardware or technological devices that assist in accessing educational materials or services and that are associated with the qualified student's needs. Parents that are seeking to use Program funds for an associated good or service pursuant to this subsection shall provide to the Department the special education course of study, service or educational need that the good or service is associated with or may provide the Department with the most current individualized education program, evaluation, or a letter from a qualified service provider. Parents are not advised to contact their districts seeking to update or change their students' individualized education programs or request special education reevaluations in order to make ESA purchases.
  5. Pursuant to A.R.S. §15-2403(J)(2), the Department shall accept independent educational evaluations that are obtained by the parent of a student and performed by a qualified examiner. A "qualified examiner" is defined in A.R.S. §15-2403(J)(2). A "parent" is defined in R7-2-1501. Such evaluations shall not be denied based solely on the age of the evaluation.

### **R7-2-1506. Contract Renewal**

- A.** A parent is eligible to renew an ESA if:
1. Pursuant to R7-2-1508, the parent submitted expenses and documentation or submitted quarterly attestations;
  2. If required, the Department approved expenses pursuant to R7-2-1508;
  3. The parent spent monies to provide an education in at least reading, grammar, mathematics, social studies, and science for the contract year pursuant to R7-2-1505(A)(1); and
  4. The parent does not owe the Department monies for disallowed expenses. A parent remains eligible to renew an ESA if the parent has an unresolved appeal regarding a disallowed expense.
- B.** A student with a disability as defined in A.R.S. § 15-2401(7)(a)(i), (ii), or (iii), as determined by a school district or by an independent third party under A.R.S. § 15-2403(J), may continue

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on the Program until the end of the school year in which the student reaches the age of 22, if the student or the parent provides documentation to the Department that demonstrates the student has not finished high school.

- C. A parent shall renew ESAs on an annual basis as follows:
1. The Department shall provide renewal contracts on or before May 1 to each parent who meets R7-2-1506(A) of this Section;
  2. Each parent shall submit the renewal contract to the Department on or before June 30; and
  3. Within 30 days of receipt, the Department shall notify each parent of the renewal of the contract. The Department may provide notification through an online portal.
- D. If a parent does not submit a renewal contract pursuant to R7-2-1506(C), the Department shall temporarily close the account and cease funding to the ESA until the parent submits the appropriate signed renewal contract. During the temporary closure, funding shall remain in the account until the parent signs the appropriate renewal contract in a format provided by the Department or the Department closes the ESA pursuant to R7-2-1506(E).
- E. After an ESA has been temporarily closed for non-renewal pursuant to R7-2-1506(D), a parent may submit the appropriate signed renewal contract in a format provided by the Department to reactivate the ESA. If a parent does not submit a renewal contract for a period of three academic years, the Department shall provide notice through certified mail, email and telephone, if applicable, that the ESA will be closed. To renew the ESA, the parent shall submit a renewal contract within 60 days of receipt of the notification. If the parent does not submit a renewal contract within 60 days, the Department shall close the ESA and return any remaining monies in the ESA to the state general fund. Notwithstanding R7-2-1506(C)(1) and (2), a parent may submit the appropriate signed renewal contract between July 1 and June 30 for the purposes of this subsection.
- F. Notwithstanding R7-2-1506(E), on the qualified student's graduation from a postsecondary institution or after any period of four consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary institution, but not before this time as long as the account holder continues using a portion of account monies for eligible expenses each year and is in good standing, the qualified student's Arizona empowerment scholarship account shall be closed and any remaining monies shall be returned to the state general fund.
- G. Pursuant to R7-2-1511, a parent whose contract was not renewed by the Department may file a written request for a hearing within 30 days after being served the notice of the non-renewal.
- H. At the written request of a parent, the Department shall extend the renewal contract timeframe for up to 30 days from the deadline prescribed in this Section if the parent demonstrates hardship, including an act of God or similar circumstance that prevented the parent from responding by the deadline.

### **R7-2-1507. Use of Funds**

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- A. The Department shall establish and maintain a database of approved expenses and disallowed expenses for the current and upcoming fiscal years pursuant to A.R.S. § 15-2401 et seq, and this Article. The Department shall make the database available to parents online and disaggregate the approved expenses by eligibility category.
- B. The Department shall establish a process to review an expense before making an administrative decision to deny the expense. The Department shall provide a copy of the process to the Board and include the process in the handbook adopted pursuant to R7-2-1503.
- C. The Department shall not request repayment for an expense it has approved for a specific ESA. The Department shall treat similar expenditures by similarly situated account holders in the same manner. This Section does not create authorization for an account holder to expend funds in a manner not permitted by statute.
- D. The Department shall consider all account holder requests for MCC Code expansions. Any MCC code exceptions granted to one parent, shall be extended to all parents within 5 business days.
- E. Pursuant to R7-2-1511, a parent who has had an expense disallowed by the Department may file a written request for a hearing within 30 days after being served the notice of the disallowed expense.

### **R7-2-1508. Review of Expenses**

- A. The Department may conduct or contract for random or annual audits as needed to ensure monies are used only for expenses that were approved or allowed at the time the expense was made. The Department shall use record retention requirements that were in place at the time the expense was made to determine compliance. The Department may only audit account activity from the last two fiscal years, including the current fiscal year.
- B. The Department shall provide annual notice to each parent of when and how the Department will conduct reviews of expenses and audits. The notice may be provided in the handbook adopted pursuant to R7-2-1503. Notwithstanding any other Section, the Department may review expenses less frequently using a risk-based approach, if the Department provides notice to parents and the Board pursuant to this Section.
- C. Parents shall submit expenses that shall include, but are not limited to, the following:
  - 1. Invoices for each vendor, individual or product;
  - 2. Invoices for private schools, which shall include the following:
    - a. The name of the qualified student,
    - b. The name of the private school,
    - c. The transaction date,
    - d. Tuition or fee amounts, and
    - e. Total charged to the card, and for reimbursements, proof of method of payment;
  - 3. Invoices for tutors, paraprofessionals, service type or therapists which shall include:

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- a. Name of the qualified student,
  - b. The name of one of the following: the vendor, facility, therapist or tutor,
  - c. A description of the services,
  - d. The transaction date,
  - e. The rate amounts,
  - f. Any processing fees, and
  - g. Total charged to the card, and for reimbursements, proof of method of payment.
- D.** For debit card transactions, a parent shall submit all debit card transaction expense receipts to the Department as follows:
1. On or before October 31 for quarter one,
  2. On or before January 31 for quarter two,
  3. On or before April 30 for quarter three, and
  4. On or before July 31 for quarter four.
- E.** The Department shall review and approve expenses and make its next quarterly disbursement of funds within 30 days of the deadlines prescribed in R7-2-1508(D).
- F.** On receipt and approval of debit card transaction expense receipts or reimbursements, the Department shall notify the parent through electronic mail or through an online portal. The Department shall not withhold funds for a subsequent quarter if it fails to review expenses, debit card transaction expense receipts or reimbursements within 30 days of the deadline. A parent may submit corrected debit card transaction expense receipts any time prior to the quarterly submission deadline.
- G.** If a parent fails to submit debit card transaction expense receipts, if required, by the deadlines prescribed in R7-2-1508(D) or submits incomplete debit card transaction expense receipts or reimbursements, the Department shall:
1. Serve notice to the parent of the deficiencies,
  2. Provide the parent 15 days from the date of receipt of the notice to submit complete debit card transaction expense receipts or reimbursements, and
  3. Review debit card transaction expense receipts or reimbursements submitted pursuant to this subsection within five days of receipt from the parent.
- H.** Following the 15 day period provided in R7-2-1508(G)(2), the Department may remove a parent from the Program for failing to submit required debit card transaction expense receipts or failing to correct the deficiencies of a debit card transaction expense receipt.
- I.** Pursuant to R7-2-1511, a parent that has been removed from the Program may file a written request for a hearing within 30 days after being served the notice of removal. Except in cases in which the Board has found misuse of funds or fraud pursuant to R7-2-1509, the Department shall not withhold funding to one qualified student's ESA due to deficiencies in the expense reporting of a sibling's account.
- J.** At the written request of a parent, the Department shall extend the deadlines prescribed in R7-2-1508(D) for up to 30 days from the deadlines prescribed in this Section if the parent

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demonstrates hardship, including an act of God or similar circumstance that prevented the parent from responding by the deadline.

- K.** If a parent does not make any expenses in a quarter, the parent shall submit attest to that fact in a format provided by the Department.

### **R7-2-1509. Misuse of Funds**

- A.** Based on a finding that a parent knowingly misuses funds, the Department shall temporarily suspend the account and provide notice to the parent. The notice shall:
1. Include the reason for the temporary suspension and a detailed description of the disallowed expense; and
  2. Provide the parent 15 days, not including weekends, to either:
    - a. Present documentation that demonstrates the expense is allowable or that the parent was victim to identity theft or fraud; or
    - b. Agree to repay the amount.
- B.** The Department shall review the documentation submitted pursuant to R7-2-1509(A)(2)(a) within five days of receipt to determine if the expense is allowable or if the parent was victim to identity theft or fraud. If the Department determines the expense is allowable or that the parent was victim to identity theft or fraud, the Department shall lift the temporary suspension, reinstate the account and make any disbursements that were withheld during the suspension.
- C.** If the Department determines the documentation fails to demonstrate the expense is allowable or that the parent was victim to identity theft or fraud, the Department shall provide notification to the parent that the amount must be repaid. The Department shall withhold the disbursement of any additional ESA funds until repayment is made. The Department may agree to a gradual repayment plans at the request of the parent and shall reinstate additional ESA funding once repayment has begun. The Department may remove a parent from the Program that fails to repay an amount or agree to a repayment plan.
- D.** Once a parent agrees to a gradual repayment plan or repays an amount pursuant to R7-2-1509(A)(2)(b) or R7-2-1509(C), the Department shall lift the temporary suspension, reinstate the account and make any disbursements that were withheld during the suspension as follows:
1. Within one day, if the repayment is made by cashier's check or money order; or
  2. Within seven days, if repayment is made by personal check.
- E.** Except in cases which the Attorney General determines that a parent or account holder has committed fraud, any expenditure from an Arizona Empowerment Scholarship Account for a purchase that is deemed ineligible pursuant to A.R.S. § 15-2402 and that is subsequently repaid by the parent or account holder shall be credited back to the Arizona Empowerment Scholarship Account balance within 30 days after the receipt of payment.

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- F. Pursuant to R7-2-1511, a parent who has been removed from the Program pursuant to this Section may file a written request for a hearing within 30 days after being served the notice of removal.
- G. The Department shall refer a case to the Board if a parent does not file an appeal pursuant to R7-2-1511 and either:
  - 1. Fails to repay the amount of a disallowed expense, or
  - 2. Fails to make a payment on a gradual repayment plan.
- H. On a finding of misuse of monies, the Board may refer the case to the Attorney General who may bring an action to recover the monies. Upon obtaining evidence of fraudulent use of an account, the Board may refer the case to the Attorney General for the purpose of a criminal investigation.
- I. A parent or qualified student is not eligible to enroll a qualified student in the ESA Program if that parent was an account holder on an account that was referred to the Attorney General for misuse of monies unless the parent's expense was subsequently found to be allowable or the parent was the victim of identity theft or fraud.
- J. If a parent commits fraud, the Department shall withhold funds from all accounts in the parent's name and close the accounts.

### **R7-2-1510. Corrective Action**

- A. Except for misuse of funds or failing to submit debit card transaction expense receipts pursuant to R7-2-1508, if the Department finds that a parent violated A.R.S. § 15-2401 et seq, this Article or the terms and conditions set forth by the Department in the contract signed by the parent, the Department shall:
  - 1. Temporarily suspend the account;
  - 2. Provide notice to the parent of the violation, including an explanation of the violation; and
  - 3. Provide the parent 15 days to correct the violation.
- B. The Department may remove a parent or qualified student from the Program for failing to correct a violation pursuant to this Section.
- C. Pursuant to R7-2-1511, a parent or qualified student who has been removed from the Program pursuant to this Section may file a written request for a hearing within 30 days after being served the notice of removal.

### **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

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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.
- 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,

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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.
  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.



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### **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:
  - 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.

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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.
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.

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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.
  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

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- 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*