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15 **R7-2-1501. Definitions**

16 In this Article, unless the context otherwise specifies:

17 1. "Administratively complete" means an ESA application that contains all components
18 required by statute or this Article.

19 2. "Board" means the State Board of Education.

20 3. "Curriculum" means a course of study for content areas or grade levels, including any
21 supplemental materials required or recommended by the curriculum, approved by the department.

22 4. "Department" means the Arizona Department of Education.

23 5. "Eligible postsecondary institution" means a community college as defined in A.R.S. § 15-
24 1401, a university under the jurisdiction of the Arizona board of regents, or an accredited private
25 postsecondary institution.

26 6. "Empowerment scholarship account" or "ESA" means an account administered by the
27 Department and funded by the state to provide options for the education of qualified students
28 pursuant to A.R.S. § 15-2401 et seq.

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- 1 7. "Misuse of funds" means the use of ESA funds on goods or services not permitted by
2 A.R.S. § 15-2402, this Article or the Department pursuant to R7-2-1507.
- 3 8. "OAH" means the Arizona Office of Administrative Hearing.
- 4 9. "Parent" means a resident of this state who is the parent, stepparent or legal guardian of a
5 qualified student.
- 6 10. "Program" means the Empowerment Scholarship Account Program.
- 7 11. "Qualified school" means a nongovernmental primary or secondary school or a preschool
8 for pupils with disabilities that is located in this state or, for qualified students who reside within
9 the boundaries of an Indian reservation in this state, and that is located in an adjacent state and that
10 is within two miles of the border of the state in which the qualified student resides, and that does
11 not discriminate on the basis of race, color or national origin.
- 12 12. "Qualified student" means a resident of this state who:
- 13 a. Is any of the following:
- 14 i. Identified as having a disability under section 504 of the rehabilitation act
15 of 1973 (29 United States Code section 794);
- 16 ii. Identified by a school district or by an independent third party pursuant to
17 A.R.S. § 15-2403(I) as a child with a disability as defined in A.R.S. § 15-731 or § 15-761;
- 18 iii. A child with a disability who is eligible to receive services from a school
19 district under A.R.S. § 15-763;
- 20 iv. Attending a school or school district that has been assigned a letter grade of
21 D or F pursuant to A.R.S. § 15-241 or who is currently eligible to attend kindergarten and
22 who resides within the attendance boundary of a school that has been assigned a letter grade
23 of D or F pursuant to A.R.S. § 15-241;
- 24 v. A previous recipient of a scholarship issued pursuant to A.R.S. § 15-891 or
25 this section, unless the qualified student's parent has been removed from eligibility in the
26 Program for failure to comply pursuant to A.R.S. § 15-2403(C);
- 27 vi. A child of a parent who is a member of the armed forces of the United States
28 and who is on active duty or was killed in the line of duty. A child who meets the
29 requirements of this subsection is not subject to R7-2-1501(12)(b);

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1 vii. A child who is a ward of the juvenile court and who is residing with a
2 prospective permanent placement pursuant to A.R.S. § 8-862 and the case plan is adoption
3 or permanent guardianship;

4 viii. A child who was a ward of the juvenile court and who achieved permanency
5 through adoption or permanent guardianship;

6 ix. A child who is the sibling of a current or previous ESA recipient or of an
7 eligible qualified student who accepts the terms of and enrolls in an ESA;

8 x. A child who resides within the boundaries of an Indian reservation in this
9 state as determined by the Department or a tribal government; or

10 xi. A child of a parent who is legally blind or deaf or hard of hearing as defined
11 in A.R.S. § 36-1941.

12 b. And, except as provided in R7-2-1501(12)(a)(vi), who meets any of the following
13 requirements:

14 i. Attended a governmental primary or secondary school as a full-time student
15 as defined in A.R.S. § 15-901 for at least the first 100 days of the prior fiscal year and who
16 transferred from a governmental primary or secondary school under a contract to
17 participate in an ESA. First, second and third grade students who are enrolled in Arizona
18 online instruction must receive 400 hours of logged instruction to be eligible pursuant to
19 this subsection. Fourth, fifth and sixth grade students who are enrolled in Arizona online
20 instruction must receive 500 hours of logged instruction to be eligible pursuant to this
21 subsection. Seventh and eighth grade students who are enrolled in Arizona online
22 instruction must receive 550 hours of logged instruction to be eligible pursuant to this
23 subsection. High school students who are enrolled in Arizona online instruction must
24 receive 500 hours of logged instruction to be eligible pursuant to this subsection;

25 ii. Previously participated in an ESA;

26 iii. Received a scholarship under A.R.S. § 43-1505 and who continues to attend
27 a qualified school if the student attended a governmental primary or secondary school as a
28 full-time student as defined in A.R.S. § 15-901 for at least 90 days of the prior fiscal year
29 or one full semester before attending a qualified school;

30 iv. Was eligible for an Arizona scholarship for pupils with disabilities and
31 received monies from a school tuition organization pursuant to A.R.S. § 43-1505 or
32 received an Arizona scholarship for pupils with disabilities but did not receive monies from
33 a school tuition organization pursuant to A.R.S. § 43-1505 and who continues to attend a
34 qualified school if the student attended a governmental primary or secondary school as a

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1 full-time student as defined in A.R.S. § 15-901 for at least 90 days of the prior fiscal year
2 or one full semester prior to attending a qualified school;

3 v. Has not previously attended a governmental primary or secondary school
4 but is currently eligible to enroll in a kindergarten program in a school district or charter
5 school in this state or attended a program for preschool children with disabilities; or

6 vi. Has not previously attended a governmental primary or secondary school
7 but is currently eligible to enroll in a program for preschool children with disabilities in
8 this state.

9 13. “Substantively complete” means an ESA application that meets all substantive criteria
10 required by statute or this Article.

11 14. “Supplemental materials” referenced in A.R.S. § 15-2401(2), means relevant materials
12 directly related to the course of study for which they are being used that introduce content and
13 instructional strategies or that enhance, complement, enrich, extend or support the curriculum.

14 15. “Treasurer” means the office of the state treasurer.

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

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

18 **A.** This rule is adopted pursuant to A.R.S. § 15-2403.

19 **B.** The Department and the Treasurer shall administer and provide general supervision and
20 oversight of the Program pursuant to A.R.S. § 15-2401 et seq and this Article.

21 **C.** The Department and the Board shall include intermediate Saturday, Sundays, and legal
22 holidays when computing days under this Article. If the final day of a deadline established pursuant
23 to this Article falls on a Saturday, Sunday or legal holiday, the next business day is the final day
24 of the deadline.

25 **D.** Unless otherwise specified, the Board and the Department shall serve a notice or decision
26 that contains an appealable action under R7-2-1511, through personal delivery, first class mail, or
27 certified mail to the parent’s last address with the Department. Each parent shall provide the
28 Department with the parent’s address and shall inform the Department of any change of address
29 within 30 days of the change of address. In addition to service through one of the methods
30 described, the Department shall also issue notices or decisions that contain an appealable action
31 by any other method or methods that are reasonably determined to give actual notice to the parent,
32 including electronic mail, text message, phone call, or through an online portal. For all other
33 communications that do not contain appealable actions, the Board and the Department may

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1 communicate through any method or methods, including first class mail, certified mail, electronic
2 mail, text message, phone call or through an online portal.

3 E. A document is filed with the Board or the Department on the date it is received by the
4 Board or the Department, as established by the Board's or the Department's date stamp on the face
5 of the document. A notice or decision containing an appealable action issued by the Board or the
6 Department pursuant to this Article is served on a party as follows:

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

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

11 The Department shall:

12 1. On or before March 1 of each year, provide the Board with a handbook, developed
13 in consultation with parents of children on the Program, that includes information relating to
14 policies and processes of ESAs and complies with A.R.S. § 15-2401 et seq and this Article. The
15 Board shall adopt the handbook on or before May 1 of each year. The Board shall limit substantive
16 changes to the handbook to once every three years. The Board may approve changes to the
17 handbook more frequently than every three years to conform and comply with changes to statute
18 or this Article or at the Board's discretion. The handbook shall be posted on the Department's
19 website and distributed to parents and shall clearly identify changes from the prior version, and
20 include the date and time the new handbook was changed;

21 2. Establish a dedicated call center for exclusive use for the ESA Program that works
22 in conjunction with the Exceptional Student Services division of the Department or its successor
23 division. Subject to review and approval by the Board, the Department may contract with a third
24 party to operate the call center;

25 3. Implement customer service performance management policies, procedures, and
26 metrics;

27 4. Provide training to parents who use the private financial management firm
28 contracted to assist with financial management of the program;

29 5. Beginning with the first regular Board meeting of 2021, provide a quarterly report
30 to the Board on the ESA Program, including:

31 a. The number of students in the program disaggregated by eligibility, grade
32 level and the school district or charter school associated with each student;

33 b. The annual award amount associated with each student;

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1 c. The number of ESA applications received, approved and denied in the
2 preceding quarter, including the justification for the denied applications;

3 d. The number of applications processed within 45 days of receipt and the
4 number of administratively incomplete applications;

5 e. A summary of any parent input or feedback collected pursuant to R7-2-
6 1503(6) and how the Department is responding to concerns submitted as part of the process;

7 f. Information on the private financial management firm contracted to assist
8 with financial management of the Program, including:

9 i. The number and eligibility type of accounts utilizing the firm,

10 ii. The number of providers and vendors on the firm's platform,

11 iii. Communications and training provided to parents,

12 iv. Concerns from parents submitted to the Department, the Treasurer
13 and the private financial management firm and how the Department, Treasurer and private
14 financial management firm are addressing the concerns, and

15 v. Any other information the Board requests.

16 6. Establish and provide to the Board a process to collect parent input and feedback
17 regarding the Program.

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

19 **A.** The Department shall accept applications to participate in the Program between July 1 and
20 June 30 of each year.

21 **B.** The Department shall provide information for prospective applicants on eligibility.

22 **C.** The Department shall enroll and issue an award letter to eligible applicants within 45 days
23 after receipt of a completed application and all required documentation. The award letter shall
24 include information on how to activate the account and the amount of ESA funding the student
25 will receive.

26 **D.** Within 30 days of issuing the award letter, the Department shall issue the contract to
27 eligible applicants.

28 **E.** Prior to issuing a notice of a denied application, the Department shall provide notice
29 describing the administrative or substantive incompleteness of the application and provide the
30 applicant 30 days to provide the missing documentation or information. The Department shall
31 include the justification for the denial and, if the application was substantively incomplete, the
32 Department shall include the applicant's right to appeal.

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1 F. Pursuant to R7-2-1511, a person who has had an application denied due to being
2 substantively incomplete may file a written request for a hearing within 30 days after being served
3 the notice of denial. Administratively incomplete applications are not appealable.

4 G. If the Board finds in favor of a parent who appealed a denied application, the Department
5 shall expedite the contract and funding to the parent to the extent possible.

6 **R7-2-1505. Contract between Parent and Department**

7 A. To enroll a qualified student in an ESA, a parent of the qualified student shall sign a
8 contract with the Department. The parent:

9 1. Shall use a portion of the ESA monies allocated annually to provide an education for the
10 qualified student in at least the subjects of reading, grammar, mathematics, social studies and
11 science, unless the ESA is allocated monies according to a transfer schedule other than quarterly
12 transfers pursuant to A.R.S. § 15-2403(F). This subsection does not require a parent to spend a
13 portion of ESA monies on each subject every quarter;

14 2. Shall not enroll the qualified student in a school district or charter school, and shall release
15 the school district from all obligations to educate the qualified student. This subsection does not:

16 a. Relieve the school district or charter school that the qualified student previously
17 attended from the obligation to conduct an evaluation pursuant to A.R.S. § 15-766, or

18 b. Require a qualified student to withdraw from a school district or charter school in
19 order to apply for an ESA.

20 3. Shall not accept a scholarship from a school tuition organization pursuant to A.R.S., Title
21 43 concurrently with an ESA for the qualified student in the same year a parent signs the contract
22 pursuant to this section;

23 4. Shall use the monies deposited in the qualified student's ESA only for the expenses listed
24 in A.R.S. § 15-2402(B)(4);

25 5. Shall not file an affidavit of intent to homeschool pursuant to A.R.S. § 15-802(B)(2) or (3);

26 6. Shall not use monies deposited in the qualified student's account for any of the following:

27 a. Computer hardware or other technological devices, except as provided in R7-2-
28 1505(B);

29 b. Transportation of the pupil; or

30 c. Consumable educational supplies, including papers, pens or markers.

31 7. Shall submit expense reports as required in R7-2-1508.

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1 **B.** If a qualified student meets any of the criteria specified in A.R.S. § 15-2401(7)(a)(i), (ii),
2 or (iii), as determined by a school district or by an independent third party under A.R.S. § 15-
3 2403(I), the qualified student may use the following additional services:

4 1. Educational therapies from a licensed or accredited practitioner or provider,

5 2. A licensed or accredited paraprofessional or educational aide,

6 3. Tuition for vocational and life skills education approved by the department, and

7 4. Associated goods—and services that include, but are not limited to, educational and
8 psychological evaluations, assistive technology rentals and braille translation goods and
9 services approved by the Department. Associated goods as described in this subsection may
10 include computer hardware or technological devices that assist in accessing educational
11 materials or services and that are associated with the qualified student’s needs. Parents that are
12 seeking to use Program funds for an associated good or service pursuant to this subsection shall
13 provide to the Department the special education course of study, service or educational need
14 that the good or service is associated with.

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

16 **A.** A parent is eligible to renew an ESA if:

17 1. The parent submitted quarterly expense reports as required in R7-2-1508;

18 2. The Department approved the quarterly expense reports pursuant to R7-2-1508;

19 3. The parent spent monies to provide an education in at least reading, grammar, mathematics,
20 social studies, and science for the contract year pursuant to R7-2-1505(A)(1); and

21 4. The parent does not owe the Department monies for disallowed expenses. A parent remains
22 eligible to renew an ESA if the parent has an unresolved appeal regarding a disallowed expense.

23 **B.** A student with a disability as defined in A.R.S. § 15-2401(7)(a)(i), (ii), or (iii), as
24 determined by a school district or by an independent third party under A.R.S. § 15-2403(I), may
25 continue on the Program until the end of the school year in which the student reaches the age of
26 22, if the student or the parent provides documentation to the Department that demonstrates the
27 student has not finished high school.

28 **C.** A parent shall renew ESAs on an annual basis as follows:

29 1. The Department shall provide renewal contracts on or before May 1 to each parent who
30 meets R7-2-1506(A) of this section;

31 2. Each parent shall submit the renewal contract to the Department on or before June 30; and

32 3. Within 30 days of receipt, the Department shall notify each parent of the renewal of the
33 contract. The Department may provide notification through an online portal.

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1 D. If a parent does not submit a renewal contract pursuant to R7-2-1506(C), the Department
2 shall temporarily suspend the account and cease funding to the ESA until the parent submits the
3 appropriate renewal contract.

4 E. If a parent does not submit a renewal contract for a period of three academic years, the
5 Department shall provide notice through certified mail, email and telephone, if applicable, that the
6 ESA will be closed. To renew the ESA, the parent shall submit a renewal contract within 60 days
7 of receipt of the notification. If the parent does not submit a renewal contract within 60 days, the
8 Department shall close the ESA and return any remaining monies in the ESA to the state general
9 fund.

10 F. On the qualified student's graduation from a postsecondary institution or after any period
11 of four consecutive years after high school graduation in which the student is not enrolled in an
12 eligible postsecondary institution, the qualified student's Arizona empowerment scholarship
13 account shall be closed and any remaining monies shall be returned to the state general fund.

14 G. Pursuant to R7-2-1511, a parent whose contract was not renewed by the Department may
15 file a written request for a hearing within 30 days after being served the notice of the non-renewal.

16 H. At the written request of a parent, the Department shall extend the renewal contract
17 timeframe for up to 30 days from the deadline prescribed in this section if the parent demonstrates
18 hardship, including an act of God or similar circumstance that prevented the parent from
19 responding by the deadline.

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

21 A. The Department shall establish and maintain a database of approved expenses and
22 disallowed expenses for the current and upcoming fiscal years pursuant to A.R.S. § 15-2401 et
23 seq. and this Article. The Department shall make the database available to parents online and
24 disaggregate the approved expenses by eligibility category.

25 B. The Department shall establish a process to review an expense before making an
26 administrative decision to deny the expense. The Department shall make the process publicly
27 available and provide a copy to the Board.

28 C. The Department shall not request repayment for an expense it has approved for a specific
29 ESA. The Department shall treat similar expenditures by similarly situated account holders in the
30 same manner so long as the account holder provides sufficient documentation to support the
31 expense. This section does not create authorization for an account holder to expend funds in a
32 manner not permitted by statute.

33 D. Pursuant to R7-2-1511, a parent who has had an expense disallowed by the Department
34 may file a written request for a hearing within 30 days after being served the notice of the
35 disallowed expense.

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

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1 A. The Department shall conduct or contract for review of quarterly expenses pursuant to this
2 section to ensure monies are used only for approved expenses. The Department may conduct or
3 contract for random or annual audits as needed to ensure monies are used only for expenses that
4 were approved or allowed at the time the expense was made. The Department shall use record
5 retention requirements that were in place at the time the expense was made to determine
6 compliance. The Department may only audit account activity from the last two fiscal years,
7 including the current fiscal year.

8 B. The Department shall provide annual notice to each parent of when and how the
9 Department will conduct reviews of expenses and audits. The notice may be provided in the
10 handbook adopted pursuant to R7-2-1503.

11 C. Except as provided in R7-2-1508(J), parents shall submit quarterly expense reports, that
12 shall include, but are not limited to, the following:

13 1. Invoices for each vendor, individual or product;

14 2. Invoices for private schools, which shall include the following:

15 a. The name of the qualified student,

16 b. The name of the private school,

17 c. The transaction date,

18 d. Tuition or fee amounts, and

19 e. Total charged to the card;

20 3. Invoices for tutors, paraprofessionals, service type or therapists which shall include:

21 a. Name of the qualified student,

22 b. The name of one of the following: the vendor, facility, therapist or tutor,

23 c. The transaction date,

24 d. The rate amounts,

25 e. Any processing fees, and

26 f. Total charged to the card.

27 D. Except as provided for in R7-2-1508(J), a parent shall submit quarterly expense reports to
28 the Department as follows:

29 1. On or before September 30 for quarter one,

30 2. On or before December 31 for quarter two,

31 3. On or before March 31 for quarter three, and

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1 4. On or before June 30 for quarter four.

2 **E.** The Department shall review and approve quarterly expense reports and make its next
3 quarterly disbursement of funds within 30 days of the deadlines prescribed in R7-2-1508(D). On
4 receipt and approval of the quarterly expense report, the Department shall notify the parent through
5 electronic mail or through an online portal. Notwithstanding any other rule, the Department may
6 review expense reports less frequently based on a risk-based approach. The Department shall not
7 withhold funds for a subsequent quarter if it fails to review a quarterly expense report within 30
8 days of the deadline. A parent may submit a corrected expense report any time prior to the quarterly
9 submission deadline.

10 **F.** If a parent fails to submit a quarterly expense report by the deadlines prescribed in R7-2-
11 1508(D) or submits an incomplete quarterly expense report, the Department shall:

12 1. Serve notice to the parent of the deficiencies,

13 2. Provide the parent 10 days from the date of receipt of the notice to submit a
14 complete quarterly expense report, and

15 3. Review quarterly expense reports submitted pursuant to this subsection within five
16 days of receipt from the parent.

17 **G.** Following the 10 day period provided in R7-2-1508(F)(2), the Department may remove a
18 parent from the Program for failing to submit a required quarterly expense report or failing to
19 correct the deficiencies in an incomplete quarterly expense report.

20 **H.** Pursuant to R7-2-1511, a parent that has been removed from the Program may file a written
21 request for a hearing within 30 days after being served the notice of removal. Except in cases in
22 which the Board has found misuse of funds or fraud pursuant to R7-2-1509, the Department shall
23 not withhold funding to one qualified student's ESA due to deficiencies in the expense reporting
24 of a sibling's account.

25 **I.** At the written request of a parent, the Department shall extend the quarterly expense report
26 deadlines for up to 30 days from the deadlines prescribed in this section if the parent demonstrates
27 hardship, including an act of God or similar circumstance that prevented the parent from
28 responding by the deadline.

29 **J.** A parent is not required to submit quarterly expense reports pursuant to this section if
30 either of the following apply:

31 1. No expenses were made in the quarter, or

32 2. All expenses in the quarter were preapproved through a private financial
33 management firm contracted with the Treasurer to assist with financial management.

34 **K.** Parents shall attest that they met the conditions of R7-2-1508(J) in a format provided by the
35 Department.

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

2 **A.** Based on a finding that a parent knowingly misuses funds, the Department shall
3 temporarily suspend the account and provide notice to the parent. The notice shall:

4 1. Include the reason for the temporary suspension and a detailed description of the
5 disallowed expense; and

6 2. Provide the parent 10 days, not including weekends, to either:

7 a. Present documentation that demonstrates the expense is allowable or that
8 the parent was victim to identity theft or fraud; or

9 b. Agree to repay the amount.

10 **B.** The Department shall review the documentation submitted pursuant to R7-2-1509(A)(2)(a)
11 within five days of receipt to determine if the expense is allowable or if the parent was victim to
12 identity theft or fraud. If the Department determines the expense is allowable or that the parent
13 was victim to identity theft or fraud, the Department shall lift the temporary suspension, reinstate
14 the account and make any disbursements that were withheld during the suspension.

15 **C.** If the Department determines the documentation fails to demonstrate the expense is
16 allowable or that the parent was victim to identity theft or fraud, the Department shall provide
17 notification to the parent that the amount must be repaid. The Department shall withhold the
18 disbursement of any additional ESA funds until repayment is made. The Department may agree to
19 a gradual repayment plans at the request of the parent and shall reinstate additional ESA funding
20 once repayment has begun. The Department may remove a parent from the Program that fails to
21 repay an amount or agree to a repayment plan.

22 **D.** Once a parent agrees to a gradual repayment plan or repays an amount pursuant to R7-2-
23 1509(A)(2)(b) or R7-2-1509(C), the Department shall lift the temporary suspension, reinstate the
24 account and make any disbursements that were withheld during the suspension as follows:

25 1. Within one day, if the repayment is made by cashier's check or money order; or

26 2. Within seven days, if repayment is made by personal check.

27 **E.** Pursuant to R7-2-1511, a parent who has been removed from the Program pursuant to this
28 section may file a written request for a hearing within 30 days after being served the notice of
29 removal.

30 **F.** The Department shall refer a case to the Board if a parent does not file an appeal pursuant
31 to R7-2-1511 and either:

32 1. Fails to repay the amount of a disallowed expense, or

33 2. Fails to make a payment on a gradual repayment plan.

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1 G. On a finding of misuse of monies, the Board may refer the case to the Attorney General
2 who may bring an action to recover the monies. Upon obtaining evidence of fraudulent use of an
3 account, the Board may refer the case to the Attorney General for the purpose of a criminal
4 investigation.

5 H. A parent or qualified student is not eligible to enroll a qualified student in the ESA Program
6 if that parent was an account holder on an account that was referred to the Attorney General for
7 misuse of monies unless the parent's expense was subsequently found to be allowable or the parent
8 was the victim of identity theft or fraud.

9 I. If a parent commits fraud, the Department shall withhold funds from all accounts in the
10 parent's name and close the accounts.

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

12 A. Except for misuse of funds and failing to submit a quarterly expense report pursuant to R7-
13 2-1508, if the Department finds that a parent violated A.R.S. § 15-2401 et seq, this Article or the
14 terms and conditions set forth by the Department in the contract signed by the parent, the
15 Department shall:

16 1. Temporarily suspend the account;

17 2. Provide notice to the parent of the violation, including an explanation of the
18 violation; and

19 3. Provide the parent 30 days to correct the violation.

20 B. The Department may remove a parent or qualified student from the Program for failing to
21 correct a violation pursuant to this section.

22 C. Pursuant to R7-2-1511, a parent or qualified student who has been removed from the
23 Program pursuant to this section may file a written request for a hearing within 30 days after being
24 served the notice of removal.

25 **R7-2-1511. Appeals**

26 A. A parent may appeal to the Board any administrative decision the Department makes
27 pursuant to Arizona Revised Statutes, Title 15, Chapter 19, Article 1, including determinations of
28 allowable expenses, removal from the Program or enrollment eligibility.

29
30 B. Pending the resolution of an appeal during which an account is suspended, a parent may
31 request a stay on the account suspension.

32
33 1. Included in the request for a hearing filed pursuant to R7-2-1511(F), a parent may
34 file a request to the Board to stay an account suspension. Such request shall be in writing and shall
35 address the matters stated in the Department's notice in R7-2-1511(E).

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1 2. The Department may file a response to the parent’s request to stay the suspension
2 of the account. Such response shall be filed with the Board within five business days of receipt of
3 the parent’s request to stay the suspension. Such response shall be in writing and shall address the
4 matters stated in the parent’s request.

5
6 3. Within 10 business days after receipt of the Department’s response, the executive
7 director of the Board or his/her designee shall make a written determination to either:

8
9 a. Proceed with suspension of the account, or

10
11 b. Stay all or part of the suspension of the account if there is a reasonable
12 probability that the appeal will be upheld or that the stay is in the best interest of the State.

13
14 4. The executive director or his/her designee shall provide the parent and the
15 Department with a written copy of the determination including the basis for the determination.

16
17 5. The request for or issuance of a suspension does not toll the 60 day period in which
18 the administrative hearing is to be held.

19
20 **C.** Notwithstanding any other rule, the Department may, with the agreement of the account
21 holder on the resolution, informally resolve a disputed administrative action at any time without a
22 formal appeal pursuant to this Article.

23
24 **D.** The Department shall provide information on the appeals process on its website.

25
26 **E.** The Department shall provide parents with written notice of an appealable action taken by
27 the Department. Such written notice shall inform the parents of his/her right to request a hearing
28 on the action and shall include the following:

29
30 1. The statute or rule that is alleged to have been violated or on which the action is
31 based;

32 2. Identify, with reasonable particularity, the nature of any alleged violation or action;

33 3. Include a description of the parent’s right to request a hearing on the appealable
34 agency action; and

35 4. Include a description of the parent’s right to request an informal settlement
36 conference.

37
38 **F.** Within 30 days after being served with notice of an appealable action, a parent may file a
39 request for a hearing to be held before an administrative law judge. The notice must be in writing
40 and shall state the following:

41
42 1. The identity of the party requesting the hearing,

43 2. The address of the party requesting the hearing,

44 3. The agency that rendered the decision related to the appealable action,

45 4. Identification of the action being appealed, and

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1 5. A concise statement of the reasons for the request for hearing.

2
3 **G.** If good cause is shown, the Board may accept a request for a hearing that is not filed in a
4 timely manner. Such request must be made in writing and state the basis for not filing the request
5 on time.

6
7 **H.** If a parent requests a hearing pursuant to R7-2-1511(E) and includes all of the items listed
8 in R7-2-1511(E), the Board shall notify OAH and request a hearing be scheduled before an
9 administrative law judge.

10
11 **I.** The Board shall notify the Department when a hearing date before OAH has been
12 scheduled. The Board shall provide all parties with a written notice at least 30 days prior to the
13 date set for the hearing. The notice shall include:

14
15 1. A statement of the time, place and nature of the hearing;

16 2. A statement of the legal authority and jurisdiction under which the hearing is to be
17 held;

18 3. A reference to the particular sections of the statutes and rules involved; and

19 4. A short and plain statement of the matters asserted. If a party is unable to state the
20 matters in detail at the time the notice is served, the initial notice may be limited to a statement of
21 the issues involved. Thereafter upon application a more definite and detailed statement shall be
22 furnished.

23
24 **J.** All notices shall be served via personal delivery or certified mail, return receipt requested
25 or by any other method reasonably calculated to effect actual notice on the agency and all parties
26 to the action at each party's last address of record.

27
28 **K.** A hearing on the appealable action shall be held 60 days after the notice of appeal is filed
29 and may be advanced or delayed on the agreement of the parties or on a showing of good cause.

30
31 **L.** Informal Settlement Conference

32
33 1. A parent may request an informal settlement conference be held with the
34 Department. The request shall be in writing and shall be filed with the Department, and a copy
35 provided to the Board, no later than 20 days before the hearing. The Department shall hold an
36 informal settlement conference within 15 days after receiving the request. The Board shall notify
37 OAH of the request and the outcome of the conference, with a copy provided to the Department.
38 The request for an informal settlement conference does not toll the 60 day period in which the
39 administrative hearing is to be held.

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

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

3 N. Hearing Process

4 1. All hearings shall be conducted before an administrative law judge pursuant to
5 A.R.S. Title 41, Chapter 6 Article 10 and this Section.

6 2. The parties to the appealable agency action have the right to be represented by legal
7 counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

8
9 3. A prehearing conference may be held upon order of the administrative law judge
10 or upon request of any party. A prehearing conference may be held for the following purposes:

11
12 a. Clarify or limit procedural, legal or factual issues;

13 b. Consider amendments to any pleading;

14 c. Identify and exchange lists of witnesses and exhibits intended to be
15 introduced at the hearing;

16 d. Obtain stipulations or rulings regarding testimony, exhibits, facts or law;

17 e. Schedule deadlines, hearing dates and locations if not previously set; or

18 f. Allow the parties opportunity to discuss settlement.

19
20 4. All hearings shall be recorded. The administrative law judge shall secure either a
21 court reporter or an electronic means of producing a clear and accurate record of the proceeding.

22
23 5. A hearing may be conducted in an informal manner and without adherence to the
24 rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing
25 nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds
26 for reversing any administrative decision or order if the evidence supporting the decision or order
27 is substantial, reliable and probative.

28
29 O. Final Administrative Decision

30
31 1. The administrative law judge shall issue a written decision within 20 days after the
32 hearing is concluded. The written decision shall contain a concise explanation of the reasons
33 supporting the decision, including the findings of fact and conclusions of law.

34 2. The administrative law judge shall serve a copy of the decision on the Board. On
35 request of the Board, OAH shall also transmit to the Board the record of the hearing as described
36 in A.R.S. § 12-904.

37 3. Within 30 days after the date that OAH sends a copy of the administrative law
38 judge's decision to the Board, the Board may review the decision and accept, reject or modify it.

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1 a. If the Board declines to review the administrative law judge's decision, the
2 Board shall serve a copy of the decision on all parties.

3 b. If the Board rejects or modifies the decision, the Board shall file with the
4 OAH, and serve on all parties, a copy of the administrative law judge's decision with the rejection
5 or modification and a written justification setting forth the reasons for the rejection or modification
6 of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion
7 of law, the written justification shall be sent to the president of the Senate and the speaker of the
8 House of Representatives.

9 c. Except as otherwise provided in this subsection, if the Board does not
10 accept, reject or modify the administrative law judge's decision within 30 days after the date that
11 OAH sends a copy of the administrative law judge's decision to the Board, as evidenced by receipt
12 of such action by OAH by the thirtieth day, OAH shall certify the administrative law judge's
13 decision as the final administrative decision.

14 d. If the Board meets monthly or less frequently and if OAH sends the
15 administrative law judge's decision at least 30 days before the next meeting of the Board and if the
16 Board does not accept, reject or modify the administrative law judge's decision at the next meeting
17 of the Board, as evidenced by receipt of such action by OAH within five days after the meeting,
18 OAH shall certify the administrative law judge's decision as the final administrative decision.

19 4. The Board shall provide all parties with at least 20 days written notice of the date,
20 time and location of the public meeting at which the Board will consider the administrative law
21 judge's decision.

22 5. A copy of the administrative law judge's decision is sent on personal delivery of the
23 decision or five days after the decision is mailed to the Board.

24 6. A party may appeal a final administrative decision pursuant to A.R.S. Title 12,
25 Chapter 7, Article 6, except that if a party has not requested a hearing on receipt of a notice of
26 appealable agency action pursuant to A.R.S. § 41-1092.03, the appealable agency action is not
27 subject to judicial review.

28
29 **P. Rehearing and review of decisions**

30 1. A party may file a motion for rehearing or review within 30 days after service of
31 the final administrative decision. The motion shall be in writing and state the basis upon which the
32 rehearing or review is requested. The motion shall be filed with the Board and a copy provided to
33 the opposing party.

34 2. The opposing party may file a response to the motion for rehearing within 15 days
35 after the date the motion for rehearing is filed. The response shall be in writing and address the

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1 basis upon which the rehearing or review is requested. The motion shall be filed with the Board
2 and a copy provide to the moving party.

3 3. The Board shall rule on the motion within 15 days after the response to the motion
4 is filed or, if a response is not filed, within five days of the expiration of the response period.

5 4. Service is complete on personal service or five days after the date the final
6 administrative decision is mailed to the party's last known address.

7 5. After a hearing has been held and a final administrative decision has been entered
8 a party is not required to file a motion for rehearing or review of the decision in order to exhaust
9 the party's administrative remedies.

10

11 Effective Dates.

12 **A.** The following sections are effective immediately November 1, 2020:

13 a. R7-2-1501 Definitions

14 b. R7-2-1505 Contract between Parent and Department

15 **B.** The following sections are effective on and after January 1, 2021:

16 a. R7-2-1502 General Provisions

17 b. R7-2-1503 Department Responsibilities

18 c. R7-2-1504 Application and Account Activation

19 d. R7-2-1506 Contract Renewal

20 e. R7-2-1507 Use of Funds

21 f. R7-2-1508 Review of Expenses

22 g. R7-2-1509 Misuse of Funds

23 h. R7-2-1510 Corrective Action

24 i. R7-2-1511 Appeals