

## **ESA RULEMAKING PROCESS UPDATE**


The following pages represent the second draft of the ESA Rules. Please note that the highlighted areas are additional changes from when the rule was opened and that they are still DRAFT; meaning this is all still in progress.

The version the Board will consider at the December 13th Board meeting may be different than what is provided because we are still collecting feedback.

Please make note of the brief explanation of the highlighted changes below:

1. Removes quarterly expense reports which are no longer required and replaces with current expense options
2. Consistent with the Parent Handbook, allows parents to provide an IEP, evaluation or letter from a qualified service provider to serve as documentation for an associated good
3. Clarifies the process for reactivating accounts that have been closed for non-renewal
4. Requires the expense review process to be included in the parent handbook rather than simply online
5. Only requires parents to submit quarterly attestations if they did not make any expenses in the quarter
6. Requires ADE to include information on the appeals process in the Parent Handbook
7. After receiving an appeal recommendation, requires the Board to place the recommendation on one of the next two Board meetings rather than within 30 days
8. Makes other changes to the timing of appeals.

Regards,



Katherine Ruiz, MSA

Project Director: Empowerment Scholarship Accounts

Arizona State Board of Education

ARTICLE 15. EMPOWERMENT SCHOLARSHIP ACCOUNTS

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.
- ~~7. 8.~~ “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.
- ~~8. “OAH” means the Arizona Office of Administrative Hearing.~~
9. “Parent” means a resident of this state who is the parent, stepparent, ~~or~~ legal guardian, or account holder of a qualified student.
10. “Program” means the Empowerment Scholarship Account Program.
11. “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.
12. “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 United States Code section 794);
    - ii. Identified by a school district or by an independent third party pursuant to A.R.S. § 15-2403(I) 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;
    - iv. Attending a school or school district that ~~has been~~ 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 ~~who~~ is currently eligible to attend kindergarten and who resides within the attendance boundary of a school that ~~has been~~ 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 United State Code Sections 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);

- 1 vi. A child of a parent who is a member of the armed forces of the United States and who is  
2 on active duty or was killed in the line of duty. A child who meets the requirements of this  
3 subsection is not subject to R7-2-1501(12)(b);
- 4 vii. A child who is a ward of the juvenile court and who is residing with a prospective  
5 permanent placement pursuant to A.R.S. § 8-862 and the case plan is adoption or  
6 permanent guardianship;
- 7 viii. A child who was a ward of the juvenile court and who achieved permanency through  
8 adoption or permanent guardianship;
- 9 ix. A child who is the sibling of a current or previous ESA recipient or of an eligible qualified  
10 student who accepts the terms of and enrolls in an ESA;
- 11 x. A child who resides within the boundaries of an Indian reservation in this state as  
12 determined by the Department or a tribal government; or
- 13 xi. A child of a parent who is legally blind or deaf or hard of hearing as defined in A.R.S. §  
14 36-1941.
- 15 b. And, except as provided in [R7-2-1501\(12\)\(a\)\(iv\)](#) and [R7-2-1501\(12\)\(a\)\(vi\)](#), who meets any of  
16 the following requirements:
  - 17 i. Attended a governmental primary or secondary school as a full-time student as defined in  
18 A.R.S. § 15-901 for at least ~~the first 100~~ [45](#) days of the [current or](#) prior fiscal year and who  
19 transferred from a governmental primary or secondary school under a contract to  
20 participate in an ESA. [Kindergarten students who are enrolled in Arizona online instruction  
21 must receive 200 hours of logged instruction to be eligible pursuant to this subsection.](#)  
22 [First, second and third grade students who are enrolled in Arizona online instruction must  
23 receive 400 hours of logged instruction to be eligible pursuant to this subsection. Fourth,  
24 fifth and sixth grade students who are enrolled in Arizona online instruction must receive  
25 500 hours of logged instruction to be eligible pursuant to this subsection. Seventh and  
26 eighth grade students who are enrolled in Arizona online instruction must receive 550 hours  
27 of logged instruction to be eligible pursuant to this subsection. High school students who  
28 are enrolled in Arizona online instruction must receive 500 hours of logged instruction to  
29 be eligible pursuant to this subsection. \[For the purposes of this subsection, students may  
30 accumulate days of enrollment and hours of instruction in the current or prior fiscal year,  
31 or a combination thereof;\]\(#\)](#)
  - 32 ii. Previously participated in an ESA;
  - 33 iii. Received a scholarship under A.R.S. § 43-1505 and who continues to attend a qualified  
34 school if the student attended a governmental primary or secondary school as a full-time  
35 student as defined in A.R.S. § 15-901 for at least 90 days of the prior fiscal year or one full  
36 semester before attending a qualified school;
  - 37 iv. Was eligible for an Arizona scholarship for pupils with disabilities and received monies  
38 from a school tuition organization pursuant to A.R.S. § 43-1505 or received an Arizona  
39 scholarship for pupils with disabilities but did not receive monies from a school tuition  
40 organization pursuant to A.R.S. § 43-1505 and who continues to attend a qualified school  
41 if the student attended a governmental primary or secondary school as a full-time student  
42 as defined in A.R.S. § 15-901 for at least 90 days of the prior fiscal year or one full semester  
43 prior to attending a qualified school;
  - 44 v. Has not previously attended a governmental primary or secondary school but is currently  
45 eligible to enroll in a kindergarten program in a school district or charter school in this state  
46 or attended a program for preschool children with disabilities; or
  - 47 vi. Has not previously attended a governmental primary or secondary school but is currently  
48 eligible to enroll in a program for preschool children with disabilities in this state.
- 49 13. “Substantively complete” means an ESA application that meets all substantive criteria required by  
50 statute or this Article.

Opened September 26, 2021

Changes - November 16, 2021

- 1 14. “Supplemental materials” referenced in A.R.S. § 15-2401(2), means relevant materials directly  
2 related to the course of study for which they are being used that introduce content and instructional  
3 strategies or that enhance, complement, enrich, extend or support the curriculum.
- 4 15. “Treasurer” means the Office of the State Treasurer.
- 5 16. Unless otherwise specifically defined herein, all defined terms shall have the same meaning as  
6 those ascribed to them in the A.R.S., Title 41.

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

- 8 **A.** This Section is adopted pursuant to A.R.S. § 15-2403.
- 9 **B.** The Department and the Treasurer shall administer and provide general supervision and oversight of  
10 the Program pursuant to A.R.S. § 15-2401 et seq and this Article.
- 11 **C.** The Department and the Board shall include intermediate Saturday, Sundays, and legal holidays when  
12 computing days under this Article. If the final day of a deadline established pursuant to this Article falls  
13 on a Saturday, Sunday or legal holiday, the next business day is the final day of the deadline.
- 14 **D.** Unless otherwise specified, the Board and the Department shall serve a notice or decision that contains  
15 an appealable action under R7-2-1511, through personal delivery, first class mail, or certified mail to  
16 the parent’s last address with the Department. Each parent shall provide the Department with the  
17 parent’s [mailing address, home address, phone number and email](#) and shall inform the Department of  
18 any change of [mailing address, home address, phone number or email](#) within 30 days of the change of  
19 ~~address~~. In addition to service through one of the methods described, the Department shall also issue  
20 notices or decisions that contain an appealable action by any other method or methods that are  
21 reasonably determined to give actual notice to the parent, including electronic mail, text message, phone  
22 call, or through an online portal. For all other communications that do not contain appealable actions,  
23 the Board and the Department may communicate through any method or methods, including first class  
24 mail, certified mail, electronic mail, text message, phone call or through an online portal.
- 25 **E.** A document is filed with the Board or the Department on the date it is received by the Board or the  
26 Department, as established by the Board’s or the Department’s date stamp on the face of the document.  
27 A notice or decision containing an appealable action issued by the Board or the Department pursuant  
28 to this Article is served on a party as follows:
  - 29 1. On the date it is personally served,
  - 30 2. Five days after it is mailed by first class mail, or
  - 31 3. On the date of the return receipt if it is mailed by certified mail.

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

33 The Department shall:

- 34 1. On or before March 1 of each year, provide the Board with a handbook, developed in consultation  
35 with parents of children on the Program, that includes information relating to policies and processes  
36 of ESAs and complies with A.R.S. § 15-2401 et seq and this Article. The Board shall adopt the  
37 handbook on or before May 1 of each year. The Board shall limit substantive changes to the  
38 handbook to once every three years. The Board may approve changes to the handbook more  
39 frequently than every three years to conform and comply with changes to statute or this Article or  
40 at the Board’s discretion. The handbook shall be posted on the Department’s website and  
41 distributed to parents and shall clearly identify changes from the prior version, and include the date  
42 and time the new handbook was changed;
- 43 2. Establish a dedicated call center for exclusive use for the ESA Program that works in conjunction  
44 with the Exceptional Student Services division of the Department or its successor division. Subject  
45 to review and approval by the Board, the Department may contract with a third party to operate the  
46 call center;
- 47 3. Implement customer service performance management policies, procedures, and metrics;
- 48 4. Provide training to parents who use the private financial management firm contracted to assist with  
49 financial management of the program;

- 1 5. ~~Beginning with the first regular Board meeting of 2021,~~ Provide a quarterly report to the Board on  
2 the ESA Program, including:
  - 3 a. The number of students in the program disaggregated by eligibility, grade level and the school  
4 district or charter school associated with each student;
  - 5 b. The annual award amount associated with each student;
  - 6 c. The number of ESA applications received, approved and denied in the preceding quarter,  
7 including the justification for the denied applications;
  - 8 d. The number of applications processed within ~~45~~ 30 days of receipt and the number of  
9 administratively incomplete applications;
  - 10 e. A summary of any parent input or feedback collected pursuant to R7-2-1503(6) and how the  
11 Department is responding to concerns submitted as part of the process;
  - 12 f. Information on the private financial management firm contracted to assist with financial  
13 management of the Program, including:
    - 14 i. The number and eligibility type of accounts utilizing the firm,
    - 15 ii. The number of providers and vendors on the firm's platform,
    - 16 iii. Communications and training provided to parents,
    - 17 iv. Concerns from parents submitted to the Department, the Treasurer and the private financial  
18 management firm and how the Department, Treasurer and private financial management  
19 firm are addressing the concerns, and
  - 20 ~~v. Any other information the Board requests.~~
  - 21 g. Information regarding appeals filed with the Board that were resolved prior to a hearing.
  - 22 h. Any other information the Board requests.
- 23 6. Establish and provide to the Board a process to collect parent input and feedback regarding the  
24 Program.

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

- 26 **A.** The Department shall accept applications to participate in the Program between July 1 and June 30 of  
27 each year.
- 28 **B.** The Department shall provide information for prospective applicants on eligibility.
- 29 **C.** The Department shall enroll and issue an award letter to eligible applicants within ~~45~~ 30 days after  
30 receipt of a completed application and all required documentation. The award letter shall include  
31 information on how to activate the account and the amount of ESA funding the student will receive.
- 32 **D.** Within 30 days of issuing the award letter, the Department shall issue the contract to eligible applicants.
- 33 **E.** Prior to issuing a notice of a denied application, the Department shall provide notice describing the  
34 administrative or substantive incompleteness of the application and provide the applicant 30 days to  
35 provide the missing documentation or information. The Department shall include the justification for  
36 the denial and, if the application was substantively incomplete, the Department shall include the  
37 applicant's right to appeal.
- 38 **F.** Pursuant to R7-2-1511, a person who has had an application denied due to being substantively  
39 incomplete may file a written request for a hearing within 30 days after being served the notice of  
40 denial. Administratively incomplete applications are not appealable.
- 41 **G.** If the Board finds in favor of a parent who appealed a denied application, the Department shall expedite  
42 the contract and funding to the parent to the extent possible.

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

- 44 **A.** To enroll a qualified student in an ESA, a parent of the qualified student shall sign a contract with the  
45 Department. The parent:
  - 46 1. Shall use a portion of the ESA monies allocated annually to provide an education for the qualified  
47 student in at least the subjects of reading, grammar, mathematics, social studies and science, unless  
48 the ESA is allocated monies according to a transfer schedule other than quarterly transfers pursuant  
49 to A.R.S. § 15-2403(F). This subsection does not require a parent to spend a portion of ESA monies  
50 on each subject every quarter;

- 1 2. Shall not enroll the qualified student in a school district or charter school, and shall release the
- 2 school district from all obligations to educate the qualified student. This subsection does not:
- 3 a. Relieve the school district or charter school that the qualified student previously attended from
- 4 the obligation to conduct an evaluation pursuant to A.R.S. § 15-766, or
- 5 b. Require a qualified student to withdraw from a school district or charter school in order to apply
- 6 for an ESA.
- 7 3. Shall not accept a scholarship from a school tuition organization pursuant to A.R.S., Title 43
- 8 concurrently with an ESA for the qualified student in the same year a parent signs the contract
- 9 pursuant to this Section;
- 10 4. Shall use the monies deposited in the qualified student's ESA only for the expenses listed in A.R.S.
- 11 § 15-2402(B)(4);
- 12 5. Shall not file an affidavit of intent to homeschool pursuant to A.R.S. § 15-802(B)(2) or (3);
- 13 6. Shall not use monies deposited in the qualified student's account for any of the following:
- 14 a. Computer hardware or other technological devices, except as provided in R7-2-1505(B);
- 15 b. Transportation of the pupil; or
- 16 c. Consumable educational supplies, including papers, pens or markers.
- 17 7. Shall submit ~~expense reports~~ expenses and documentation as required in R7-2-1508.
- 18 **B.** If a qualified student meets any of the criteria specified in A.R.S. § 15-2401(7)(a)(i), (ii), or (iii), as
- 19 determined by a school district or by an independent third party under A.R.S. § 15-2403(I), the qualified
- 20 student may use the following additional services:
- 21 1. Educational therapies from a licensed or accredited practitioner or provider including and up to any
- 22 amount not covered by insurance if the expense is partially paid by a health insurance policy for
- 23 the qualified students,
- 24 2. A licensed or accredited paraprofessional or educational aide,
- 25 3. Tuition for vocational and life skills education approved by the department, and
- 26 4. Associated goods and services that include, but are not limited to, educational and psychological
- 27 evaluations, assistive technology rentals and braille translation goods and services approved by the
- 28 Department. Associated goods as described in this subsection may include computer hardware or
- 29 technological devices that assist in accessing educational materials or services and that are associated
- 30 with the qualified student's needs. Parents that are seeking to use Program funds for an associated good
- 31 or service pursuant to this subsection shall provide to the Department the special education course of
- 32 study, service or educational need that the good or service is associated with or may provide the
- 33 Department with the most current individualized education program, evaluation, or a letter
- 34 from a qualified service provider. Parents are not advised to contact their districts seeking to update
- 35 or change their students' individualized education programs or request special education
- 36 reevaluations in order to make ESA purchases.

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

- 38 **A.** A parent is eligible to renew an ESA if:
- 39 1. Pursuant to R7-2-1508, the parent submitted expenses and documentation or submitted quarterly
- 40 expense reports, as if required in R7-2-1508-attestations;
- 41 2. If required, the Department approved ~~the quarterly expense reports~~ expenses pursuant to R7-2-
- 42 1508;
- 43 3. The parent spent monies to provide an education in at least reading, grammar, mathematics, social
- 44 studies, and science for the contract year pursuant to R7-2-1505(A)(1); and
- 45 4. The parent does not owe the Department monies for disallowed expenses. A parent remains eligible
- 46 to renew an ESA if the parent has an unresolved appeal regarding a disallowed expense.
- 47 **B.** A student with a disability as defined in A.R.S. § 15-2401(7)(a)(i), (ii), or (iii), as determined by a
- 48 school district or by an independent third party under A.R.S. § 15-2403(I), may continue on the Program
- 49 until the end of the school year in which the student reaches the age of 22, if the student or the parent
- 50 provides documentation to the Department that demonstrates the student has not finished high school.

- 1 C. A parent shall renew ESAs on an annual basis as follows:  
2 1. The Department shall provide renewal contracts on or before May 1 to each parent who meets R7-  
3 2-1506(A) of this Section;  
4 2. Each parent shall submit the renewal contract to the Department on or before June 30; and  
5 3. Within 30 days of receipt, the Department shall notify each parent of the renewal of the contract.  
6 The Department may provide notification through an online portal.
- 7 D. If a parent does not submit a renewal contract pursuant to R7-2-1506(C), the Department shall  
8 temporarily ~~suspend~~ ~~close~~ the account and cease funding to the ESA until the parent submits the  
9 appropriate ~~signed~~ renewal contract. During the temporary closure, funding shall remain in the account  
10 until the parent signs the appropriate renewal contract in a format provided by the Department or the  
11 Department closes the ESA pursuant to R7-2-1506(E).
- 12 E. After an ~~account~~ ESA has been temporarily ~~suspended~~ ~~closed~~ for non-renewal pursuant to R7-2-  
13 1506(D), a parent may submit the appropriate ~~signed~~ renewal contract ~~to the Department~~ in a format  
14 provided by the Department to reactivate the ~~account~~ ESA. If a parent does not submit a renewal  
15 contract for a period of three academic years, the Department shall provide notice through certified  
16 mail, email and telephone, if applicable, that the ESA will be closed. To renew the ESA, the parent  
17 shall submit a renewal contract within 60 days of receipt of the notification. If the parent does not  
18 submit a renewal contract within 60 days, the Department shall close the ESA and return any remaining  
19 monies in the ESA to the state general fund. Notwithstanding R7-2-1506(C)(1) and (2), a parent may  
20 submit a ~~the appropriate signed~~ renewal contract between July 1 and June 30 for the purposes of this  
21 subsection.
- 22 F. Notwithstanding R7-2-1506(E), on the qualified student's graduation from a postsecondary institution  
23 or after any period of four consecutive years after high school graduation in which the student is not  
24 enrolled in an eligible postsecondary institution, but not before this time as long as the account holder  
25 continues using a portion of account monies for eligible expenses each year and is in good standing,  
26 the qualified student's Arizona empowerment scholarship account shall be closed and any remaining  
27 monies shall be returned to the state general fund.
- 28 G. Pursuant to R7-2-1511, a parent whose contract was not renewed by the Department may file a written  
29 request for a hearing within 30 days after being served the notice of the non-renewal.
- 30 H. At the written request of a parent, the Department shall extend the renewal contract timeframe for up  
31 to 30 days from the deadline prescribed in this Section if the parent demonstrates hardship, including  
32 an act of God or similar circumstance that prevented the parent from responding by the deadline.

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

- 34 A. The Department shall establish and maintain a database of approved expenses and disallowed expenses  
35 for the current and upcoming fiscal years pursuant to A.R.S. § 15-2401 et seq, and this Article. The  
36 Department shall make the database available to parents online and disaggregate the approved expenses  
37 by eligibility category.
- 38 B. The Department shall establish a process to review an expense before making an administrative  
39 decision to deny the expense. The Department shall ~~make provide a copy of~~ the process ~~publicly~~  
40 ~~available and provide a copy~~ to the Board and publish include the process online in the handbook  
41 adopted pursuant to R7-2-1503.
- 42 C. The Department shall not request repayment for an expense it has approved for a specific ESA. The  
43 Department shall treat similar expenditures by similarly situated account holders in the same manner  
44 ~~so long as the account holder provides sufficient documentation to support the expense.~~ This Section  
45 does not create authorization for an account holder to expend funds in a manner not permitted by statute.
- 46 D. Pursuant to R7-2-1511, a parent who has had an expense disallowed by the Department may file a  
47 written request for a hearing within 30 days after being served the notice of the disallowed expense.

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

- 49 A. ~~The Department shall conduct or contract for review of quarterly expenses pursuant to this Section to~~  
50 ~~ensure monies are used only for approved expenses.~~ The Department may conduct or contract for

- 1 random or annual audits as needed to ensure monies are used only for expenses that were approved or  
2 allowed at the time the expense was made. The Department shall use record retention requirements that  
3 were in place at the time the expense was made to determine compliance. The Department may only  
4 audit account activity from the last two fiscal years, including the current fiscal year.
- 5 **B.** The Department shall provide annual notice to each parent of when and how the Department will  
6 conduct reviews of expenses and audits. The notice may be provided in the handbook adopted pursuant  
7 to R7-2-1503. Notwithstanding any other Section, the Department may review expenses less frequently  
8 using a risk-based approach, if the Department provides notice to parents and the Board pursuant to  
9 this section.
- 10 **C.** ~~Except as provided in R7-2-1508(J),~~ Parents shall submit quarterly expense reports expenses that shall  
11 include, but are not limited to, the following:  
12 1. Invoices for each vendor, individual or product;  
13 2. Invoices for private schools, which shall include the following:  
14 a. The name of the qualified student,  
15 b. The name of the private school,  
16 c. The transaction date,  
17 d. Tuition or fee amounts, and  
18 e. Total charged to the card, and for reimbursements, proof of method of payment;  
19 3. Invoices for tutors, paraprofessionals, service type or therapists which shall include:  
20 a. Name of the qualified student,  
21 b. The name of one of the following: the vendor, facility, therapist or tutor,  
22 c. A description of the services,  
23 e. d. The transaction date,  
24 ~~d. e.~~ The rate amounts,  
25 e. f. Any processing fees, and  
26 f. g. Total charged to the card, and for reimbursements, proof of method of payment.
- 27 **D.** ~~Except as provided for in R7-2-1508(J),~~ For debit card transactions, a parent shall submit all quarterly  
28 debit card transaction expense reports receipts to 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  
32 4. On or before June 30 for quarter four.
- 33 **E.** The Department shall review and approve quarterly expense expenses reports and make its next  
34 quarterly disbursement of funds within 30 days of the deadlines prescribed in R7-2-1508(D).
- 35 **F.** On receipt and approval of the quarterly debit card transaction expense reports receipts or  
36 reimbursements, the Department shall notify the parent through electronic mail or through an online  
37 portal. ~~Notwithstanding any other Section, the Department may review expense reports expenses less~~  
38 ~~frequently based on a risk-based approach.~~ The Department shall not withhold funds for a subsequent  
39 quarter if it fails to review a quarterly expenses, debit card transaction expense reports receipts or  
40 reimbursements within 30 days of the deadline. A parent may submit a corrected debit card transaction  
41 expense report receipts any time prior to the quarterly submission deadline.
- 42 **F. G.** If a parent fails to submit a quarterly debit card transaction expense reports receipts, if required, by  
43 the deadlines prescribed in R7-2-1508(D) or submits an incomplete quarterly debit card transaction  
44 expense reports receipts or reimbursements, the Department shall:  
45 1. Serve notice to the parent of the deficiencies,  
46 2. Provide the parent 10 days from the date of receipt of the notice to submit a complete quarterly  
47 debit card transaction expense reports receipts or reimbursements, and  
48 3. Review quarterly debit card transaction expense reports receipts or reimbursements submitted  
49 pursuant to this subsection within five days of receipt from the parent.
- 50 **G. H.** Following the 10 day period provided in R7-2-1508(F)(2) R7-2-1508(G)(2), the Department may  
51 remove a parent from the Program for failing to submit a required quarterly debit card transaction



1 expense ~~reports~~ receipts or failing to correct the deficiencies ~~in an incomplete quarterly expense report~~  
2 ~~of a debit card transaction expense receipt.~~

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

8 ~~I. J.~~ At the written request of a parent, the Department shall extend the ~~quarterly expense report~~  
9 deadlines ~~prescribed in R7-2-1508(D)~~ for up to 30 days from the deadlines prescribed in this Section if  
10 the parent demonstrates hardship, including an act of God or similar circumstance that prevented the  
11 parent from responding by the deadline.

12 ~~J. K.~~ ~~If a parent does not make any expenses in a quarter, the A parent is not required to shall submit~~  
13 ~~attest to that fact in a format provided by the Department quarterly expense reports pursuant to this~~  
14 ~~Section if either of the following apply:~~

15 ~~1. No expenses were made in the quarter, or~~

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

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

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

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

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

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

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

27 b. Agree to repay the amount.

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

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

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

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

43 2. Within seven days, if repayment is made by personal check; ~~;~~

44 E. Except in cases which the Attorney General determines that a parent or accountholder has committed  
45 fraud, any expenditure from an Arizona Empowerment Scholarship Account for a purchase that is  
46 deemed ineligible pursuant to A.R.S. § 15-2402 and that is subsequently repaid by the parent or  
47 accountholder shall be credited back to the Arizona Empowerment Scholarship Account balance within  
48 30 days after the receipt of payment.

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

- 1 F. The Department shall refer a case to the Board if a parent does not file an appeal pursuant to R7-2-1511
- 2 and either:
- 3 1. Fails to repay the amount of a disallowed expense, or
- 4 2. Fails to make a payment on a gradual repayment plan.
- 5 G. On a finding of misuse of monies, the Board may refer the case to the Attorney General who may bring
- 6 an action to recover the monies. Upon obtaining evidence of fraudulent use of an account, the Board
- 7 may refer the case to the Attorney General for the purpose of a criminal investigation.
- 8 H. A parent or qualified student is not eligible to enroll a qualified student in the ESA Program if that
- 9 parent was an account holder on an account that was referred to the Attorney General for misuse of
- 10 monies unless the parent's expense was subsequently found to be allowable or the parent was the victim
- 11 of identity theft or fraud.
- 12 I. If a parent commits fraud, the Department shall withhold funds from all accounts in the parent's name
- 13 and close the accounts.

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

- 15 A. Except for misuse of funds ~~and or~~ failing to submit a ~~quarterly debit card transaction~~ expense ~~reports~~
- 16 ~~receipts~~ pursuant to R7-2-1508, if the Department finds that a parent violated A.R.S. § 15-2401 et seq,
- 17 this Article or the terms and conditions set forth by the Department in the contract signed by the parent,
- 18 the Department shall:
- 19 1. Temporarily suspend the account;
- 20 2. Provide notice to the parent of the violation, including an explanation of the violation; and
- 21 3. Provide the parent ~~30~~ 10 days to correct the violation.
- 22 B. The Department may remove a parent or qualified student from the Program for failing to correct a
- 23 violation pursuant to this Section.
- 24 C. Pursuant to R7-2-1511, a parent or qualified student who has been removed from the Program pursuant
- 25 to this Section may file a written request for a hearing within 30 days after being served the notice of
- 26 removal.

#### 27 R7-2-1511. Appeals

- 28 A. A parent may appeal to the Board any administrative decision the Department makes pursuant to
- 29 Arizona Revised Statutes, Title 15, Chapter 19, Article 1, including determinations of allowable
- 30 expenses, removal from the Program or enrollment eligibility.
- 31 B. Stay
- 32 ~~B.~~ 1. Pending the resolution of an appeal during which an account is suspended, a parent may request
- 33 a stay on the account suspension.
- 34 ~~1.~~ a. Included in the request for a hearing filed pursuant to R7-2-1511(F), a parent may file a
- 35 request to the Board to stay an account suspension. Such request shall be in writing and shall
- 36 address the matters stated in the Department's notice in R7-2-1511(E).
- 37 ~~2.~~ b. The Department may file a response to the parent's request to stay the suspension of the
- 38 account. Such response shall be filed with the Board within five business days of receipt of the
- 39 parent's request to stay the suspension. Such response shall be in writing and shall address the
- 40 matters stated in the parent's request.
- 41 ~~3.~~ c. Within 10 business days after receipt of the Department's response, the executive director
- 42 of the Board or his/her designee shall make a written determination to either:
- 43 ~~a.~~ i. Proceed with suspension of the account, or
- 44 ~~b.~~ ii. Stay all or part of the suspension of the account if there is a reasonable probability that
- 45 the appeal will be upheld or that the stay is in the best interest of the State. If a stay is issued,
- 46 the Department may not withhold funding or contract renewal for the account holder on account
- 47 of the appealed administrative decision during the stay unless directed by the Board to do so.
- 48 ~~4.~~ d. The executive director or his/her designee shall provide the parent and the Department with
- 49 a written copy of the stay determination including the basis for the determination.

- 1       ~~5. The request for or issuance of a suspension does not toll the 60 day period in which the~~  
2       ~~administrative hearing is to be held.~~
- 3 C. Notwithstanding any other Section, the Department may, with the agreement of the account holder on  
4 the resolution, informally resolve a disputed administrative action at any time without a formal appeal  
5 pursuant to this Article.
- 6 D. The Department, on its website and in the parent handbook, shall provide information on the Board's  
7 appeals process ~~on its website~~.
- 8 E. The Department shall provide parents with written notice of an appealable action taken by the  
9 Department. Such written notice shall inform the parents of his/her right to request a hearing on the  
10 action and shall include the following:  
11 1. The statute or rule that is alleged to have been violated or on which the action is based;  
12 2. Identify, with reasonable particularity, the nature of any alleged violation or action;  
13 3. Include a description of the parent's right to request a hearing on the appealable agency action; and  
14 4. Include a description of the parent's right to request an informal settlement conference.
- 15 F. Within 30 days after being served with notice of an appealable action, a parent may file a request for a  
16 hearing ~~to be held before an administrative law judge~~. The notice must be in writing and shall state the  
17 following:  
18 1. The identity of the party requesting the hearing,  
19 2. The mailing address of the party requesting the hearing,  
20 3. The agency that rendered the decision related to the appealable action,  
21 4. Identification of the action being appealed, ~~and~~  
22 5. A concise statement of the reasons for the request for hearing;  
23 6. A copy of the administrative decision issued by the Department, and  
24 7. Any other information or documentation requested by the Board applicable to the appeal process.
- 25 G. If good cause is ~~shown~~ submitted, the Board may accept a request for a hearing that is not filed in a  
26 timely manner. Such request must be made in writing and state the basis for not filing the request on  
27 time.
- 28 H. If a parent requests a hearing pursuant to ~~R7-2-1511(E)~~ R7-2-1511(F) and includes all of the items  
29 listed in ~~R7-2-1511(E)~~ R7-2-1511(F), the Board shall ~~notify OAH and request~~ schedule a hearing ~~be~~  
30 ~~scheduled before an administrative law judge~~.
- 31 I. ~~The Board shall notify the Department when a hearing date before OAH has been scheduled~~. The Board  
32 shall provide all parties with a written notice at least ~~30~~ 20 days prior to the date set for the hearing.  
33 The notice shall include:  
34 1. A statement of the time, place and nature of the hearing;  
35 2. A statement of the legal authority and jurisdiction under which the hearing is to be held;  
36 3. A reference to the particular sections of the statutes and rules involved; and  
37 4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail  
38 at the time the notice is served, the initial notice may be limited to a statement of the issues involved.  
39 Thereafter upon application a more definite and detailed statement shall be furnished.
- 40 J. All notices shall be served via personal delivery or certified mail, return receipt requested or by any  
41 other method reasonably calculated to effect actual notice on the agency and all parties to the action at  
42 each party's last address of record.
- 43 K. A hearing on the appealable action shall be held ~~60 days~~ after ~~the notice of a complete~~ appeal is filed  
44 and may be advanced or delayed on the agreement of the parties or on a showing of good cause.
- 45 L. Informal Settlement Conference  
46 1. A parent may request an informal settlement conference be held with the Department. The request  
47 shall be in writing and shall be filed with the Department, and a copy provided to the Board, no  
48 later than 20 10 days ~~before the hearing~~ after the Board provides notice that the appeal is complete.  
49 The Department shall hold an informal settlement conference within ~~15~~ seven days after receiving  
50 the request. ~~The Board shall notify OAH of the request and the outcome of the conference, with a~~  
51 ~~copy provided to the Department.~~ The Department shall notify the Board of the result of the

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- 1 informal settlement conference within five days of the conclusion of the informal settlement  
2 conference or prior to the hearing date, whichever is first. The request for an informal settlement  
3 conference does not alter the date the ~~toll the 60-day period in which the administrative~~ hearing is  
4 to be held.
- 5 2. If an informal settlement conference is held, a person with the authority to act on behalf of the  
6 Department must represent the Department at the conference. The Department representative shall  
7 notify the parent in writing that statements, either written or oral, made at the conference, including  
8 a written document, created or expressed solely for the purpose of settlement negotiations are  
9 inadmissible in any subsequent administrative hearing.
- 10 M. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
- 11 N. Hearing Process
- 12 1. All hearings shall be conducted before ~~an administrative law judge pursuant to A.R.S. Title 41,~~  
13 ~~Chapter 6, Article 10 and this Section~~ a hearing officer pursuant to this Section.
- 14 2. The parties to the appealable agency action have the right to be represented by legal counsel or to  
15 proceed without counsel, to submit evidence and to cross-examine witnesses.
- 16 3. ~~A prehearing conference may be held upon order of the administrative law judge or upon request~~  
17 ~~of any party.~~ The Board shall schedule a prehearing conference on request of any party. Either party  
18 may waive appearance by filing the request in writing to the Board no later than five days before  
19 the prehearing conference. A prehearing conference may be held for the following purposes:  
20 a. Clarify or limit procedural, legal or factual issues;  
21 b. Consider amendments to any pleading;  
22 c. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;  
23 d. Obtain stipulations or rulings regarding testimony, exhibits, facts or law;  
24 e. Schedule deadlines, hearing dates and locations if not previously set; or  
25 f. Allow the parties opportunity to discuss settlement.
- 26 4. The record in a contested case shall include:  
27 a. All pleadings, motions and interlocutory rulings.  
28 b. Evidence received or considered.  
29 c. A statement of matters officially noticed.  
30 d. Objections and offers of proof and rulings thereon.  
31 e. Proposed findings of fact and conclusions of law and exceptions thereto.  
32 f. Any decision, opinion, recommendation or report of the hearing officer.  
33 g. All staff memoranda, other than privileged communications, or data submitted to the hearing  
34 officer in connection with its consideration of the case.
- 35 5. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- 36 6. A participant of record shall not communicate, either directly or indirectly, with the Hearing Officer  
37 about any substantive issue in a pending matter unless:  
38 a. All participants of record are present;  
39 b. Communication is during a scheduled proceeding, where an absent participant of record fails  
40 to appeal after proper notice; or  
41 c. Communication is by written motion with copies to all participants of record.
- 42 7. The Hearing Officer may postpone, continue, or cancel a hearing for good cause upon the written  
43 request of either party. The participant of record must establish good cause for the written request.
- 44 8. For good cause shown, the hearing officer may grant continuances and extensions of time for filing  
45 notices or other documents.
- 46 9. The Hearing Officer may direct a party to submit additional memorandum or information within a  
47 reasonable period of time. The Hearing Officer shall grant the opposing party a reasonable period  
48 of time to respond to the additional memorandum or information.
- 49 10. Upon written request, any party may request an opportunity to compare a document copy with the  
50 original. The Hearing Officer may grant the request if the record establishes good cause.
- 51 O. Conduct of Hearing

- 1 ~~4.1.~~ All hearings shall be recorded. The ~~administrative law judge~~ Board shall secure either a court  
2 reporter or an electronic means of producing a clear and accurate record of the proceeding.
- 3 ~~5.2.~~ A hearing may be conducted in an informal manner and without adherence to the rules of evidence  
4 required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to  
5 adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any  
6 administrative decision or order if the evidence supporting the decision or order is substantial,  
7 reliable and probative.
- 8 3. The parties may submit proposed findings of fact and conclusions of law prior to the hearing. The  
9 hearing officer may require that the parties submit proposed findings of fact and conclusions of law  
10 prior to the hearing or at the close of evidence
- 11 4. All interested parties shall be ready and present with all witnesses and documents at the time and  
12 place specified in the notice of hearing and shall be prepared at such time to dispose of all issues  
13 and questions involved in the appeal. An interested party shall arrange for the presence of that  
14 party's witnesses at a hearing.
- 15 5. If a party fails to appear at a hearing, the hearing body may proceed with the presentation of the  
16 evidence of the appearing party.
- 17 6. The Hearing Officer conducting the hearing may close the hearing to other than interested parties  
18 to the extent necessary to protect the interests and rights of the interested parties, within the  
19 requirements of A.R.S. §§ 38-431.01, and 38-431.03.
- 20 7. The Hearing Officer may conduct all or part of the hearing by telephone other electronic means, as  
21 long as each party has an opportunity to participate in the entire proceeding as it takes place.
- 22 8. Conduct at any hearing that is disruptive or shows contempt for the proceeding shall be grounds  
23 for exclusion from further participation.

24 **P. Evidence**

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

37 **Q. Stipulations**

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

42 **O. R. Final Administrative Decision**

- 43 1. The administrative law judge hearing officer shall issue a written decision recommendation within  
44 20 days after the hearing is concluded. The written decision recommendation shall contain a concise  
45 explanation of the reasons supporting the decision recommendation, including the findings of fact  
46 and conclusions of law.
- 47 2. The administrative law judge hearing officer shall serve a copy of the decision recommendation on  
48 the Board. On request of the Board, OAH the hearing officer shall also transmit to the Board the  
49 record of the hearing as described in A.R.S. § 12-904.
- 50 3. At one of the following two regularly scheduled meetings of the Board within 30 days after the  
51 date that OAH the hearing officer sends a copy of the administrative law judge's decision

1 recommendation to the Board, the Board may review the ~~decision~~ recommendation and accept,  
2 reject or modify it.

3 a. If the Board declines to review the ~~administrative law judge's hearing officer's decision~~  
4 recommendation, the Board shall serve a copy of the ~~decision~~ recommendation on all parties.

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

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

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

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

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

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

30 **P. S.** Rehearing and review of decisions

31 1. A party may file a motion for rehearing or review within ~~30~~ 10 days after service of the final  
32 administrative decision. The motion shall be in writing and state the basis upon which the rehearing  
33 or review is requested. The motion shall be filed with the Board and a copy provided to the opposing  
34 party. When a motion of rehearing is based on new evidence, the new evidence shall be served to  
35 the Board with the written motion.

36 2. The opposing party may file a response to the motion for rehearing within 15 days after the date  
37 the motion for rehearing is filed. The response shall be in writing and address the basis upon which  
38 the rehearing or review is requested. The motion shall be filed with the Board and a copy provide  
39 to the moving party.

40 3. ~~The Board shall rule on the motion within 15 days after the response to the motion is filed or, if a~~  
41 ~~response is not filed, within five days of the expiration of the response period. A rehearing of a~~  
42 final administrative decision by the Board may be granted for any of the following causes materially  
43 affecting the moving party's rights:

44 a. Except as provided for in R7-2-1511(O)(2), irregularity in the administrative proceedings  
45 of the hearing, or abuse of discretion, whereby the moving party was deprived of a fair hearing;

46 b. Misconduct of the hearing officer; or

47 c. Newly discovered materials which could not with reasonable diligence have been  
48 discovered and produced at the hearing.

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

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

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*Section R7-2-1511 Appeals, becomes effective from and after January 1, 2022*

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