

R7-2-1511. Appeals

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

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

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

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

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

a. Proceed with suspension of the account, or

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

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

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

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

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

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

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

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

3. Include a description of the parent's right to request a hearing on the appealable agency action; and
4. Include a description of the parent's right to request an informal settlement conference.

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

1. The identity of the party requesting the hearing,
2. The address of the party requesting the hearing,
3. The agency that rendered the decision related to the appealable action,
4. Identification of the action being appealed, and
5. A concise statement of the reasons for the request for hearing.

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

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

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

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and rules involved; and
4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

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

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

L. Informal Settlement Conference

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

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

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

N. Hearing Process

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

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

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

- a. Clarify or limit procedural, legal or factual issues;
- b. Consider amendments to any pleading;
- c. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
- d. Obtain stipulations or rulings regarding testimony, exhibits, facts or law;
- e. Schedule deadlines, hearing dates and locations if not previously set; or
- f. Allow the parties opportunity to discuss settlement.

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

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

O. Final Administrative Decision

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

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

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

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

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

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

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

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

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

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

P. Rehearing and review of decisions

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

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

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

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

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

Effective Dates.

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

- a. R7-2-1501 Definitions
- b. R7-2-1505 Contract between Parent and Department

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

- a. R7-2-1502 General Provisions
- b. R7-2-1503 Department Responsibilities
- c. R7-2-1504 Application and Account Activation
- d. R7-2-1506 Contract Renewal
- e. R7-2-1507 Use of Funds
- f. R7-2-1508 Review of Expenses
- g. R7-2-1509 Misuse of Funds
- h. R7-2-1510 Corrective Action
- i. R7-2-1511 Appeals