

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1.

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| <u>Sections Affected</u> R7-2-408 R7-2-806 | <u>Rulemaking Action</u> New Repeal |
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2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. §15-203
Implementing statute: A.R.S. §§ 15-183(R), 15-203(B)(4); 15-272(C)
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Corinne L. Velasquez, Administrator
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046
4. An explanation of the rule, including the agency's reasons for initiating the rule:
The State Board of Education is proposing a new rule, R7-2-408, Suspension and Expulsion of Special Education students. The new rule is proposed pursuant to A.R.S. §15-844, which requires the Board to prescribe rules for the suspension or expulsion of children with disabilities. The Board is proposing to repeal the language of R7-2-806, Rehearing Procedures, as the new Article 7, related to administrative hearings, addresses the issue of rehearings.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
6. The preliminary summary of the economic, small business and consumer impact statement:
It is not anticipated that the rule changes will have any economic, small business or consumer impact.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:
Name: Corinne L. Velasquez
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046

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8. The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rules, if no proceeding is scheduled, when, where, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: January 26, 1998
Time: 1:30 p.m.
Location: State Board of Education
1535 West Jefferson, Room 417
Phoenix, Arizona 85007

Written comments may be submitted before 5:00 p.m. on January 19, 1998, to the contact person listed in question #7.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 4. SPECIAL EDUCATION

Section
R7-2-408. Suspension and expulsion of a student with a disability

ARTICLE 8. COMPLIANCE

Section
R7-2-806. Rehearing procedure

ARTICLE 4. SPECIAL EDUCATION

R7-2-408. Suspension and expulsion of a student with a disability

A. For the purposes of this paragraph, the following definitions apply:

1. "Manifestation" of the student's disability means that the behavior has a direct and substantial relationship to the student's disability.
2. "Manifestation Determination Review" means a review conducted by the IEP Team and other qualified personnel to determine the relationship between the student's disability and the behavior subject to the discipline.
3. "Suspension" and "Expulsion" shall have the meaning defined in A.R.S. §15-840.

B. Short term actions.

1. Local governing boards may direct a change in placement of a student with a disability, to the extent such alternatives would be applied to a student without a disability:
 - (a) To an appropriate interim alternative educational setting, another setting or suspension for not more than 10 school days; or
 - (b) To an appropriate interim alternative educational setting for not more than 45 school days if the student carries a weapon to school or to a school function under the jurisdiction of a State or local educational agency, or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of illegal drugs at school or at a school function under the jurisdiction of a State or local educational agency.

2. A manifestation determination review shall be conducted before or no later than 10 school days after the date on which the decision to take disciplinary action is made to:

- (a) Review the behavior plan and modify as appropriate;
- (b) Conduct a functional behavioral assessment;
- (c) Implement a behavioral intervention plan; and
- (d) Recommend appropriate changes in placement or services.

3. Relevant disciplinary procedures may be applied for up to 10 consecutive or cumulative school days.

C. Long term actions. Disciplinary actions may be directed to a student with a disability which results in suspension or expulsion in excess of 10 consecutive or cumulative school days to the extent that such disciplinary action would be applied to a student without a disability.

1. A manifestation determination review shall be conducted before or no later than 10 school days after the date on which the decision to take disciplinary action is made to:

- (a) Review the behavior plan and modify as appropriate;
- (b) Conduct a functional behavioral assessment;
- (c) Implement a behavioral intervention plan; and
- (d) Recommend appropriate changes in placement or services.

2. Relevant disciplinary procedures may be applied except educational services shall continue to be provided.

3. If it is determined by a manifestation determination review that the behavior of a student with a disability was a manifestation of the disability, no change in placement may be made until the IEP team convenes and makes a determination on appropriate services, placement and a behavior management plan.

D. All appropriate procedural safeguards, such as but not limited to, expedited hearings and placement during appeals, shall apply pursuant to the Individuals With Disabilities Education Act and implementing regulations.

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ARTICLE 8. COMPLIANCE

R7-2-806. Rehearing procedure

- A.** Unless otherwise provided in another rule for a specific type of hearing:
1. Any party aggrieved by a decision rendered by the Board may file with the Board, not later than 15 days after service of the decision, a written motion for a rehearing or review of the decision, specifying the particular grounds therefor.
 2. A response may be filed within ten days after service of such motion by any other party or by the Attorney General.
 3. The Board may require the filing of written memoranda upon the issues raised in the motion and may provide for oral argument.
 4. The Board may consolidate the hearing to consider the motion for rehearing with the requested rehearing.
- B.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings before the Board or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Board or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring in the administrative hearing;
 7. That the decision is not justified by the evidence or is contrary to law.

- C.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part if the issues for any of the reasons set forth in subsection (B). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted and the rehearing shall cover only those matters so specified.
- D.** Not later than 15 days after a decision is rendered, the Board may on its own initiative order a rehearing or a review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for a rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds on which the order is based.
- E.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown, or by the parties by written stipulation. The Board may permit a reply affidavit by the moving party.
- F.** If in a particular decision the Board makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decision.