

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 211.)

[R10-03]

PREAMBLE

- 1. Sections Affected**

R7-2-401	<u>Rulemaking Action</u>
R7-2-405	Amend
R7-2-405.01	Amend
R7-2-405.02	New Section
	New Section
- 2. The statutory 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(A)(1)
Implementing statute: Not applicable
- 3. The effective date of the rules:**

December 7, 2009
- 4. A list of all previous notices appearing in the *Register* addressing the exempt rules:**

Not applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Vince Yanez, Executive Director State Board of Education
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- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

The main purpose for the rule change is to conform our state rules to new federal rules that were recently implemented. In addition, the proposed changes to the definition of speech therapy are proposed to clarify the scope of practice for speech and language technicians. This clarification is necessary so that these individuals can receive a limited speech therapy license from the Department of Health Services. This limited license is a condition of employment in Arizona schools. Pursuant to A.R.S. § 41-1005(F) the State Board of Education is exempt from standard rule-making procedures.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

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8. 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

9. The summary of the economic, small business and consumer impact:

The rules are not expected to have any economic impact on small businesses nor have any impact upon school districts and charter schools.

10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

On October 26, 2009, the State Board of Education initiated rulemaking procedures for proposed rules R7-2-401 and R7-2-405, regarding IDEA Part B regulations.

As required by the Board's rulemaking procedures, a public hearing was held on November 24, 2009 at 1:00 p.m. The following items were addressed by individuals of the public:

- Concerns that the proposed changes regarding the definition of speech therapy may cause confusion in the field. Public participants stated that the amendment may make it difficult to determine which speech and language therapy services are being provided by a certified technician or a certified pathologist.
- The Board received additional written comments that recommended a number of additional technical and substantive comments.

This proposed language does not change current practice; therefore, staff recommends that this language remain.

Staff reviewed all written comments and makes the following recommendations:

- R7-2-401(G)(5) – amended to reflect current assessment and testing requirements relating to accommodations and AIMS-A.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

Not applicable

15. The full text of the rule follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 4. SPECIAL EDUCATION

Section

R7-2-401. Special Education Standards for Public Agencies Providing Educational Services

R7-2-405. ~~Due Process Standards Relating to Special Education~~ Special Education Dispute Resolution; Due Process

R7-2-405.01. Special Education Dispute Resolution; State Administrative Complaints

R7-2-405.02. Special Education Dispute Resolution; Mediation

ARTICLE 4. SPECIAL EDUCATION

R7-2-401. Special Education Standards for Public Agencies Providing Educational Services

A. For the purposes of this Article, the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1400 et seq. and its implementing regulations, 34 CFR 300.1 et seq., are incorporated herein by reference. Copies of the incorporated material can be obtained from the U.S. Government Printing Office, ~~Superintendent of Documents, P.O. Box 37195-7954, Pittsburgh, PA 15250~~ Attn: New Orders, P.O. Box 979050, St. Louis, MO 63197-9000 or the Arizona Department of Education, Exceptional Student Services, 1535 West Jefferson Street, Phoenix, Arizona 85007. ~~This Article does not include any later amendments or additions to IDEA or IDEA regulations.~~

B. Definitions. All terms defined in the ~~regulations for the Individuals with Disabilities Education Improvement Act (IDEA) Amendments and its implementing regulations and A.R.S. § 15-761~~ are applicable, with the following additions:

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1. "Accommodations" means the provisions made to allow a student to access and demonstrate learning. Accommodations do not substantially change the instructional level, the content or the performance criteria, but are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations shall not alter the content of the curriculum or a test, or provide inappropriate assistance to the student within the context of the test.
2. "Adaptations" means changes made to the environment, curriculum, and instruction or assessment practices in order for a student to be a successful learner. Adaptations include accommodations and modifications. Adaptations are based on an individual student's strengths and needs.
3. "Administrator" means the chief administrative official or designee (responsible for special education services) of a public education agency.
4. "Audiologist" means a person who specializes in the identification and prevention of hearing problems and in the non-medical rehabilitation of those who have hearing impairments, and who is licensed to practice audiology according to A.R.S. Title 36, Chapter 17, Article 4.
5. "Boundaries of responsibility" means for:
 - a. A school district, the geographical area within the legally designated boundaries.
 - b. A public agency other than a school district, the population of students enrolled in a charter school or receiving educational services from a public agency.
6. "Certificate in speech and language therapy" means a speech-language pathologist or speech-language technician certificate awarded by the State Board of Education.
- ~~6-7.~~ "Certified school psychologist" means a person holding a certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, in the area of school psychology.
- ~~7-8.~~ "Certified speech-language therapist" means a person holding a speech-language pathologist or speech-language technician certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, and a license from the Arizona Department of Health Services as a speech-language pathologist in accordance with A.R.S. Title 36, Chapter 17, Article 4.
- ~~8.~~ "Speech-language technician" means a person holding a certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, and a limited license from the Arizona Department of Health Services as a speech-language pathologist in accordance with A.R.S. Title 36, Chapter 17, Article 4.
9. "Department" means the Arizona Department of Education.
10. "Doctor of medicine" means a person holding a license to practice medicine pursuant to A.R.S. Title 32, Chapter 13 (medical doctor) or Chapter 17 (doctor of osteopathy).
11. "Exceptional Student Services Division" or "ESS" means the Exceptional Student Services Division of the Arizona Department of Education.
12. "Evaluator" means a qualified person in a field relevant to the child's disability who administers specific and individualized assessment for the purpose of special education evaluation and placement.
13. "Full and individual evaluation" means procedures used in accordance with the IDEA to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. This evaluation includes:
 - a. A review of existing information about the child; ~~and~~
 - b. A decision regarding the need for additional information; ~~and~~
 - c. If necessary, the collection of additional information; and
 - d. A review of all information about the child and a determination of eligibility for special education services and needs of the child.
14. "Independent educational evaluation" means an evaluation conducted by a qualified evaluator who is not employed by the public education agency responsible for the education of the child in question.
15. "Interpreter" means a person trained to translate orally or in sign language in matters pertaining to special education identification, evaluation, placement, the provision of FAPE, or assurance of procedural safeguards for parents and students who converse in a language other than spoken English. Each student's IEP team determines the level of interpreter skill necessary for the provision of FAPE.
16. "Language in which the student is proficient" means all languages including sign language systems.
17. "Licensed psychologist" means a person holding a license from the state of Arizona Board of Psychologist examiners in accordance with A.R.S. Title 32, Chapter 19.1, Article 2.
18. "Modifications" means substantial changes in what a student is expected to learn and to demonstrate. Changes may be made in the instructional level, the content or the performance criteria. Such changes are made to provide a student with meaningful and productive learning experiences, environments, and assessments based on individual needs and abilities.
19. "Paraeducator" means a person employed to assist with the education of students but who is not certified to teach by the Arizona Department of Education. Alternate terms may include paraprofessional, teacher aide, instructional assistant or other similar titles.

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20. "Private school" means any nonpublic educational institution where academic instruction is provided, including non-sectarian and parochial schools, that are not under the jurisdiction of the state or a public education agency.
21. "Private special education school" means a private school that is established to serve primarily students with disabilities. The school may also serve students without disabilities.
22. "Psychiatrist" means a doctor of medicine who specializes in the study, diagnosis, treatment and prevention of mental disorders.
23. "Public education agency" or "PEA" means a school district, charter school, accommodation school, state supported institution, or other political subdivision of the state that is responsible for providing education to children with disabilities.
24. "Screening" means an informal or formal process of determining the status of a child with respect to appropriate developmental and academic norms. Screening may include observations, family interviews, review of medical, developmental, or education records, or the administration of specific instruments identified by the test publisher as appropriate for use as screening tools.
25. "Special education teacher" means a teacher holding a special education certificate from the Arizona Department of Education.
26. "Suspension" means a disciplinary removal from a child's current placement that results in a failure to provide services to the extent necessary to enable the child to progress appropriately in the general curriculum and advance toward achieving the goals set out in the child's IEP. The term does not include disciplinary actions or changes in placement through the IEP process if the child continues to receive the services described above. The term does include actions such as "in-school" and "going home for the rest of the day" removals if the child does not receive the services described above.

C. Public Awareness.

1. Each public education agency shall inform the general public and all parents, within the public education agency's boundaries of responsibility, of the availability of special education services for students aged 3 through 21 years and how to access those services. This includes information regarding early intervention services for children aged birth through 2 years.
2. Each public education agency is responsible for public awareness within their enrolled population (including the families of enrolled students).
3. School districts are responsible for public awareness in private schools located within their geographical boundaries.

D. Child Identification and Referral.

1. Each public education agency shall establish, implement, and disseminate to its school-based personnel and all parents, within the public education agency boundaries of responsibility, written procedures for the identification and referral of all children with disabilities, aged birth through 21, including children with disabilities attending private schools and home schools, regardless of the severity of their disability.
2. Each public education agency will require all school-based staff to review the written procedures related to child identification and referral on an annual basis. The public education agency shall maintain documentation of staff review.
3. Procedures for child identification and referral shall meet the requirements of the IDEA and regulations, A.R.S. Title 15, Chapter 7, Article 4 and these rules.
4. The public education agency responsible for child identification activities is the school district in which the parents reside unless:
 - a. The student is enrolled in a charter school or public education agency that is not a school district. In that event, the charter school or public education agency is responsible for child identification activities;
 - b. The student is enrolled in a non-profit private school. In that event, the school district within whose boundaries the private school is located is responsible for child identification activities.
5. Identification (screening for possible disabilities) shall be completed within 45 calendar days after:
 - a. Entry of each preschool or kindergarten student and any student enrolling without appropriate records of screening, evaluation, and progress in school; or
 - b. Notification to the public education agency by parents of concerns regarding developmental or educational progress by their child aged 3 years through 21 years.
6. Screening procedures shall include vision and hearing status and consideration of the following areas: cognitive or academic, communication, motor, social or behavioral, and adaptive development. Screening does not include detailed individualized comprehensive evaluation procedures.
7. For a student transferring into a school; the public education agency shall review enrollment data and educational performance in the prior school. If there is a history of special education for a student not currently eligible for special education, or poor progress, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services.
8. If a concern about a student is identified through screening procedures or through review of records, the public education agency shall notify the parents of the student of the concern within 10 school days and inform them of the public

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education agency procedures to follow-up on the student's needs.

9. Each public education agency shall maintain documentation of the identification procedures utilized, the dates of entry into school or notification by parents made pursuant to subsection (D)(5), and the dates of screening. The results shall be maintained in the student's permanent records in a location designated by the administrator. In the case of a student not enrolled, the results shall be maintained in a location designated by the administrator.
10. If the identification process indicates a possible disability, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services. A parent or a student may request an evaluation of the student. For parentally-placed private school students the school district within whose boundaries the non-profit private school is located is responsible for such evaluation.
11. If, after consultation with the parent, the responsible public education agency determines that a full and individual evaluation is not warranted, the public education agency shall provide prior written notice and procedural safeguards notice to the parent in a timely manner.

E. Evaluation/re-evaluation.

1. Each public education agency shall establish, implement, disseminate to its school-based personnel, and make available to parents within its boundaries of responsibility, written procedures for the initial full and individual evaluation of students suspected of having a disability, and for the re-evaluation of students previously identified as being eligible for special education.
2. Procedures for the initial full and individual evaluation of children suspected of having a disability and for the re-evaluation of students with disabilities shall meet the requirements of IDEA and regulations, and state statutes and State Board of Education rules.
3. The initial evaluation of a child being considered for special education, or the re-evaluation per a parental request of a student already receiving special education services, shall be completed as soon as possible, but shall not exceed 60 calendar days from receipt of informed written consent. If the public education agency initiates the evaluation, the 60-day period shall commence with the date of receipt of informed written consent and shall conclude with the date of the Multidisciplinary Evaluation Team (MET) determination of eligibility. If the parent requests the evaluation and the MET concurs, the 60-day period shall commence with the date that the written parental request was received by the public education agency and shall conclude with the date of the MET determination of eligibility.
4. The 60-day evaluation period may be extended for an additional 30 days, provided it is in the best interest of the child, and the parents and PEA agree in writing to such an extension. Neither the 60-day evaluation period nor any extension shall cause a re-evaluation to exceed the timelines for a re-evaluation within three years of the previous evaluation.
5. The public education agency may accept current information about the student from another state, public agency, public education agency, or independent evaluator. In such instances, the Multidisciplinary Evaluation Team shall be responsible for reviewing and approving or supplementing an evaluation to meet the requirements identified in subsections (E)(1) through (7).
6. For the following disabilities, the full and individual initial evaluation shall include:
 - a. Emotional disability: verification of a disorder by a psychiatrist, licensed psychologist, or a certified school psychologist.
 - b. Hearing impairment:
 - i. An audiological evaluation by an audiologist; and
 - ii. An evaluation of communication/language proficiency.
 - c. Other health impairment: verification of a health impairment by a doctor of medicine.
 - d. Specific learning disability: ~~a determination of whether the discrepancy between achievement and ability meet the public education agency criteria.~~ a determination of whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development that meets the public education agency criteria through one of the following methods:
 - i. A discrepancy between achievement and ability;
 - ii. The child's response to scientific, research-based interventions; or
 - iii. Other alternative research-based procedures.
 - e. Orthopedic impairment: verification of the physical disability by a doctor of medicine.
 - f. Speech/language impairment: an evaluation by a certified ~~speech/ language~~ speech-language therapist.
 - g. For students whose speech impairments appear to be limited to articulation, voice, or fluency problems, the written evaluation may be limited to:
 - i. An audiometric screening within the past calendar year; and
 - ii. A review of academic history and classroom functioning; and
 - iii. An assessment of the speech problem by a speech therapist; and
 - iv. An assessment of the student's functional communication skills.
 - h. Traumatic brain injury: verification of the injury by a doctor of medicine.
 - i. Visual impairment: verification of a visual impairment by an ophthalmologist or optometrist.

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7. The Multidisciplinary Evaluation Team shall determine, in accordance with the IDEA and regulations, whether the requirements of subsections (E)(6)(a) through (i) are required for a student's re-evaluation.

F. Parental Consent.

1. A public education agency shall obtain informed written consent from the parent of the child with a disability before the initial provision of special education and related services to the child.
2. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public education agency may not use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child.
3. If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public education agency:
 - a. Will not be considered to be in violation of the requirement to make available FAPE to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent, and
 - b. Is not required to convene an IEP Team meeting or develop an IEP in accordance with these rules.
4. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public education agency:
 - a. May not continue to provide special education and related services to the child, but shall provide prior written notice before ceasing the provision of special education and related services;
 - b. May not use the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
 - c. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
 - d. Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.
5. If a parent revokes consent in writing for his or her child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

F.G. Individualized Education Program (IEP).

1. Each public education agency shall establish, implement, and disseminate to its school-based personnel, and make available to parents, written procedures for the development, implementation, review, and revision of IEPs.
2. Procedures for IEPs shall meet the requirements of the IDEA and regulations, and state statutes and State Board of Education rules.
3. Procedures shall include the incorporation of Arizona Academic Standards into the development of each IEP. IEP goals aligned with the Arizona Academic Standards shall identify the specific level within the Standard that is being addressed.
4. Each IEP of a student with a disability shall stipulate the provision of instructional or support services by a special education teacher, certified ~~speech/language~~ speech-language therapist, and/or ancillary service provider(s), as appropriate.
- ~~5. Each student with a disability shall participate in the Arizona Student Assessment Program. The level at which a student will be assessed shall be documented on the student's IEP and shall be at least at the student's instructional level. The IEP shall also document instructional and assessment adaptations required by the student.~~
5. Each student with a disability who has an IEP shall participate in the state assessment system. Students with disabilities can test with or without standard accommodations as indicated in the student's IEP. Students who are determined to have a significant cognitive disability based on the established eligibility criteria will be assessed with the state's alternate assessment as determined by the IEP team.
6. A meeting shall be conducted to review and revise each student's IEP at least annually, or more frequently if the student's progress substantially deviates from what was anticipated. The public education agency shall provide written notice of the meeting to the parents of the student to ensure that parents have the opportunity to participate in the meeting.
7. A parent or public education agency may request in writing a review of the IEP. Such review shall take place within 15 school days of the receipt of the request or at a mutually agreed upon time but not to exceed 30 school days.

G.H. Least Restrictive Environment.

1. Each public education agency shall establish, implement, and disseminate to its school-based personnel, and make available to parents, written procedures to ensure the delivery of special education services in the least restrictive environment as identified by IDEA and regulations, and state statutes and State Board of Education rules.
2. A continuum of services and supports for students with disabilities shall be available through each public education

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agency.

H-I. Procedural Safeguards.

1. Each public education agency shall establish, implement, and disseminate to its school-based personnel and parents of students with disabilities written procedures to ensure children with disabilities and their parents are afforded the procedural safeguards required by federal statute and regulation and state statute. These procedures shall include dissemination to parents information about the public education agency's and state's dispute resolution options.
2. In accordance with the prior written notice requirements of IDEA, prior written notice must be issued in a timely manner following a decision by a PEA to propose to initiate or change, or refuse to initiate or change, the identification, evaluation, educational placement or the provision of FAPE to the child.

I-J. Confidentiality.

1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written policies and procedures to ensure the confidentiality of records and information in accordance with the IDEA, the Family Educational Rights and Privacy Act (FERPA) and regulations, and state statutes.
2. Parents shall be fully informed about the requirements of the IDEA and regulations, including an annual notice of the policies and procedures that the PEA must follow regarding storage, disclosure to a third party, retention, and destruction of personally identifiable information.
3. The rights of parents regarding education records are transferred to the student at age 18, unless the student has been declared legally incompetent, or the student has executed a delegation of rights to make educational decisions pursuant to A.R.S. § 15-773.
- 3-4. Upon receiving a written request, each public education agency shall forward special education records to any other public education agency in which a student is attempting to enroll. Records shall be forwarded within the time-frame specified in A.R.S. § 15-828(F). The public education agency shall also forward records to any other person or agency for which the parents have given signed consent.

J-K. Preschool Programs. Each public education agency responsible for serving preschool children with disabilities shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures for:

1. The operation of the preschool program in accordance with federal statute and regulation, and state statute;
2. The smooth and effective transition from the Arizona Early Intervention Program (AzEIP) to a public school preschool program in accordance with the agreement between the Department of Economic Security and the Department; and
3. The provision of a minimum of 360 minutes of instruction in a program that operates at least three days a week.

K-L. Children in Private Schools. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures regarding the access to special education services to students enrolled in private schools as identified by the IDEA and regulations, and state statutes and State Board of Education rules.

L-M. State Education Agency Responsible for General Supervision and Obligations Related to and Methods of Ensuring Services.

1. The Department is responsible for the general supervision of services to children with disabilities aged 3 through 21 served through a public education agency.
2. The Department shall ensure through fund allocation, monitoring, dispute resolution, and technical assistance that all eligible students receive a free appropriate public education in conformance with the IDEA regulations, A.R.S. Title 15, Chapter 7, Article 4, and these rules.
3. In exercising its general supervision responsibilities, the Department shall ensure that when it identifies noncompliance with the requirements of the IDEA Part B, the noncompliance is corrected as soon as possible, and in no case later than one year after the Department's written notification to the PEA of its identification of the noncompliance.

M-N. Procedural Requirements Relating to Public Education Agency Eligibility.

1. Each public education agency shall establish eligibility for funding with the Arizona Department in accordance with the IDEA and regulations, and state statutes and with schedule and method prescribed by the Department.
2. In the event the Department determines that a public education agency does not meet eligibility for funding requirements, the public education agency has a right to a hearing before such funding is withheld.
3. The Department may temporarily interrupt payments during any time period when a public education agency has not corrected deficiencies in eligibility for federal funds as a result of fiscal requirements of monitoring, auditing, complaint and due process findings.
4. Each public education agency shall, on an annual basis, determine the number of children within each disability category who have been identified, located, evaluated, and/or receiving special education services. This includes children residing within the boundaries of responsibility of the public education agency who have been placed by their parents in private schools or who are home schooled.

N-O. Public Participation.

1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures to ensure that, prior to the adoption of any policies and procedures needed to comply with federal and state statutes and regulations, there are:

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- a. Public hearings;
 - b. Notice of the hearings; and
 - c. An opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.
2. This requirement does not pertain to day-to-day operating procedures.

~~0-P.~~ Suspension and Expulsion.

1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures for the suspension and expulsion of students with disabilities.
2. Each public education agency shall require all school-based staff involved in the disciplinary process to review the policies and procedures related to suspension and expulsion on an annual basis. The public education agency shall maintain documentation of staff review.
3. Procedures for such suspensions and expulsions shall meet the requirements of the IDEA and regulations, and state statutes.

R7-2-405. ~~Due Process Standards Relating to Special Education~~ Special Education Dispute Resolution: Due Process

A. Definitions. The following definitions are applicable to this rule:

1. ~~A “due~~ “Due process hearing” means a fair and impartial administrative hearing conducted by the State Education Agency by an impartial hearing officer through the Arizona Office of Administrative Hearings in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and its implementing regulations (34 CFR 300).
2. “Impartial hearing officer” or “hearing officer” means an Administrative Law Judge (“ALJ”) of the Arizona Office of Administrative Hearings (“OAH”) and who is knowledgeable in the laws governing special education and administrative hearings.
3. “Public agency” (“PEA”) has the same definition as provided in R7-2-401.
4. “State Education Agency” (“SEA”) means the Department of Education, Exceptional Student Services Section.

B. The due process procedures specified in this rule apply to all public agencies dealing with the identification, evaluation, special educational placement of, and the provision of a free appropriate public education (“FAPE”) for children with disabilities.

C. The SEA shall establish procedures concerning:

1. Impartial due process hearings, and
2. Confidentiality and access to student records.

D. An impartial hearing officer shall be:

1. Unbiased - not prejudiced for or against any party in the hearing;
2. Disinterested - not having any personal or professional interest that would conflict with objectivity in the hearing;
3. Independent - may not be an officer, employee, or agent of a public agency involved in the education or care of the child or the SEA. A person who otherwise qualifies to conduct a hearing is not an employee of the public agency or the SEA solely because the person is paid by the public agency to serve as a hearing officer;
4. Trained by the SEA as to the state and federal laws pertaining to the identification, evaluation, placement of, and the provision of FAPE for children with disabilities.

E. Hearing officer qualifications and training.

1. All hearing officers shall participate in all required training conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, educational placement, and the provision of FAPE for children with disabilities.
2. A hearing officer shall meet the requirements set forth by OAH regarding ALJs. A hearing officer shall not have represented a parent in a special education matter during the preceding 12 months, and shall not have represented a school district in any matter during the preceding 12 months.

F. Selection of hearing officers.

1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in subsection (E) to serve as hearing officers. This list shall also include the qualifications of each hearing officer.
2. A hearing officer shall be assigned in accordance with the procedures of the Office of Administrative Hearings.

G. Request for Due Process Hearing.

1. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public education agency knew or should have known about the alleged action that forms the basis of the due process complaint.
2. A parent shall submit a written request for a due process hearing to the public education agency and the SEA. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and parents agree. If a parent requests a due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available and provide a copy of the procedural safeguards

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notice. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in the public school until the completion of all proceedings.

3. If the public education agency requests a due process hearing, such request may be made on a model form, as noted in subsection (G)(2), and a copy shall be provided to the parent and the SEA. Upon receipt of a written request, there shall be no change in the educational placement of the child except under the applicable provisions of IDEA, unless the PEA and the parents agree. In conjunction with its request for due process hearing, the public education agency shall advise the parents of any free or low-cost legal services available and provide a copy of the procedural safeguards notice. All correspondence to the parent, including the due process request, shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in the public school until the completion of all proceedings.

H. An impartial due process hearing shall be conducted in accordance with the following procedures:

1. The hearing officer shall hold a pre-hearing conference, either telephonically or at a location that is reasonably convenient to the parents and the child involved, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the time and dates for the hearing.
2. The hearing officer shall conduct the hearing at a location that is reasonably convenient to the parents and the child involved.
3. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner, and shall ensure that all parties involved have an opportunity to:
 - a. Present their evidence and confront, cross-examine, and compel the attendance of witnesses;
 - b. Object to the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
 - c. Produce outside expert witnesses;
 - d. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.
4. The parent involved in the hearing shall be given the right to:
 - a. Have the child who is the subject of the hearing present;
 - b. Have the hearing conducted in public;
 - c. Have an interpreter provided by the public agency.
5. The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement, and the provision of FAPE. This shall include any Independent Education Evaluation secured by the parent.
 - a. The hearing officer shall determine whether the public agency has met all requirements of federal and state law, rules, and regulations.
 - b. The hearing officer shall render findings of fact and a decision, which shall be binding on all parties unless appealed pursuant to this rule.
6. The hearing officer's findings of fact and decision shall be in writing and shall be provided to the parent, the public education agency, the SEA, and their respective representatives. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and decision shall be delivered by certified mail or by hand within 45 calendar days after notification to the hearing officer that the parties have been unable to resolve the matter in accordance with 20 U.S.C. 1415(f)(1)(B). A hearing officer may grant specific extensions of time beyond the 45 calendar days for good cause shown at the request of either party.
7. The findings of fact and decision of the hearing officer shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.
8. Any party to the proceeding has the right to appeal a final administrative decision to a court of competent jurisdiction within 35 calendar days after receipt of the decision.
9. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.

I. Expedited hearing.

1. An expedited hearing regarding disciplinary matters may be requested in accordance with federal law as set forth in 20 U.S.C. 1415(k).
2. Hearing officers for an expedited hearing shall be assigned by the Office of Administrative Hearings.
3. The expedited hearing shall be conducted within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

R7-2-405.01. Special Education Dispute Resolution: State Administrative Complaints

A. Notwithstanding any other provision of law, a state administrative complaint filed with the Department regarding any alleged violations of Part B of the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.) or its implementing regulations (34 CFR 300) shall be investigated in accordance with the Code of Federal Regulations Title

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1. The party filing the complaint shall forward a copy of the state administrative complaint to the public education agency serving the child at the same time the party files the complaint with the Department.

2. A written decision shall be issued to the complainant and the public education agency that is the subject of the state administrative complaint in accordance with the 60-day time limit specified in the Code of Federal Regulations Title 34.

B. The Department shall accept and investigate state administrative complaints that allege a violation that occurred not more than one year prior to the date that the complaint is received by the Department.

C. The state administrative complaint shall include all of the following:

1. A statement that a public education agency has violated a requirement of Part B of the IDEA or its implementing regulations.

2. The facts on which the statement is based.

3. The signature and contact information for the complainant.

4. If alleging violations with respect to a specific child, all of the following:

a. The name and address of the child.

b. The name of the school the child is attending.

c. In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (20 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending.

d. A description of the nature of the problem of the child, including facts relating to the problem.

e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

5. The Department shall develop a model form to assist parents and public agencies in filing a state administrative complaint under this Section.

R7-2-405.02. Special Education Dispute Resolution: Mediation

In accordance with the Individuals with Disabilities Education Act, the Department shall provide parents of students with disabilities and public education agencies the opportunity to resolve disputes involving any matter under IDEA, including matters arising prior to the filing of a request for due process, through a mediation process.

1. The mediation process shall:

a. Be voluntary on the part of both parties.

b. Not be used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part B of the IDEA.

c. Be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

2. The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

3. The Department shall select mediators on a random or rotational basis.

4. The Department shall bear the cost of the mediation process.

5. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to both the parent and the public education agency.

6. If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that:

a. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

b. Is signed by both the parent and a representative of the public education agency who has the authority to bind the agency, and

c. Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

7. Whether or not the dispute is resolved through mediation, discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal court or state court.

8. Impartiality of the Mediator. An individual who serves as a mediator:

a. May not be an employee of the Department or of the public education agency that is involved in the education or care of the student.

b. Shall not have a personal or professional interest that conflicts with the person's objectivity.

c. Is not an employee of the Department or of a public education agency solely because the mediator is paid by the Department of Education to serve as a mediator.