



Replacement Check List

For rules filed within the
1st Quarter
January – March 31, 2017

THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

Title 7. Education

Chapter 8. Achievement District Schools

Supplement 17-1

Sections, Parts, Exhibits, Tables or Appendices modified
R7-8-101 and R7-8-201

New Chapter
Pages: n/a

REPLACE with Supp. 17-1
Pages: 1 - 5

The agency's contact person who can answer questions about rules in Supp. 17-1:

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Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Public Services Division

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
PUBLIC SERVICES DIVISION
March 31, 2017

RULES

A.R.S. § 41-1001(17) states: “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State’s website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 7. EDUCATION

CHAPTER 8. ACHIEVEMENT DISTRICT SCHOOLS

Editor's Note: On November 29, 2016, the Public School Credit Enhancement Board conducted a public meeting where proposed rules were presented. At this time, the Board authorized staff to initiate the exempt rulemaking process and collect public comments for 30 days on proposed rules. On February 7, 2017, the Board approved the final rules which were published in the Arizona Administrative Register at 23 A.A.R. 661. Because the public was able to comment on the rules, the Office of the Secretary of State considers the rules filed as a Notice of Final Exempt Rulemaking.

ARTICLE 1. ACHIEVEMENT DISTRICT SCHOOL QUALIFICATIONS

ARTICLE 2. CREDIT ENHANCEMENT

Section R7-8-101. Achievement District Schools 2

Section R7-8-201. Arizona Public School Credit Enhancement Program2

ARTICLE 1. ACHIEVEMENT DISTRICT SCHOOL QUALIFICATIONS

R7-8-101. Achievement District Schools

- A.** Authority. This rule is adopted pursuant to A.R.S. § 15-2153(B)(9).
- B.** Purpose. The purpose of this rule is to implement the legislative intent, as expressed in Chapter 129, Laws of 2016, to administer the Achievement District Schools program.
- C.** Scope.
1. The scope of this Rule is the scope of A.R.S. Title 15, chapter 16, article 10 as it relates to Achievement District Schools. This rule is applicable to any district public school or charter public school operating in the State of Arizona that seeks qualification as an Achievement District School.
 2. The statutory authority for this rule, A.R.S. Title 15, chapter 16, article 10, does not provide for exemptions therefrom for person or agents of persons subject thereto, and no such exemption is intended or should be presumed by this rule or any provision thereof.
- D.** Repeal. This rule does not repeal any known prior rule, memorandum, bulletin, directive or opinion on this subject matter. If such prior rule or directive exists and is in conflict herewith, the same is repealed hereby.
- E.** Definitions
1. "Achievement District School" is any district public school or charter public school operating in the State of Arizona that meets all of the requirements set forth in A.R.S. § 15-2141(B) and that has applied for and has been designated by the Board as an Achievement District School.
 2. "Applicant" means a School that is applying to become an Achievement District School, either directly or through its charter holder or operator or school district.
 3. "Application" means an application for designation as an Achievement District School.
 4. "Board" has the meaning of A.R.S. § 15-2151(2).
 5. "School" means a district public school or a charter public school that qualifies as a "school" pursuant to section 15-101(22).
 6. "Underperforming" school means a school that has received a letter grade of C, D or F pursuant to A.R.S. § 15-241, or the equivalent under any replacement school evaluation system.
 7. "Unaffiliated" means two entities that do not have any common ownership or control and are not under the control or ownership of the same entity.
- F.** Achievement District Schools - Application
1. A School seeking designation as an Achievement District School, pursuant to A.R.S. § 15-2141, shall file an Application with the Board on Form A, which may be modified from time to time by the Board. The Application may be submitted either in paper format or electronically through the Governor's Office of Education website.
 2. Applications failing to comply with the requirements of A.R.S. § 15-2141 shall be denied without prejudice to the subsequent filing by such School of an application complying with such requirements.
 3. The accuracy and completeness of the information contained in an Application shall be certified to by the Chief Executive Officer or Chief Financial Officer of the School. Electronic Applications shall include a section for the provision of an electronic signature.
- G.** Achievement District Schools - Application Criteria. In completing Applications, Applicants must explain or provide the following information:
1. For proving receipt of a letter grade of A, or an equivalent successor classification, pursuant to A.R.S. § 15-2141(B)(1), certification that the School has received such grade at the time of submitting the Application. Charter public schools shall also provide certification that they are in material compliance with all requirements and their charter is not subject to revocation.
 2. For the proven instructional strategies and curricula that demonstrate high academic outcomes required by A.R.S. § 15-2141(B)(2), a short narrative describing the School's strategies that may include the School's core programs, areas of instruction, pedagogy utilized and educational philosophies.
 3. For verifiable enrollment demand required by A.R.S. § 15-2141(B)(3), certification that the School has demonstrated enrollment demand, such as a wait list or open enrollment demand, including the methodology used to evaluate enrollment demand.
 4. For a sound financial plan that contemplates operational costs and future enrollment growth, required by A.R.S. § 15-2141(B)(4), the Applicant's annual audited financial statements for the immediate past fiscal year, or if audited financial statements are not yet available, unaudited financial statements for the immediate past fiscal year, as well as year-to-date actual expenditures as compared to budget.
 5. For a commitment to provide technical assistance to an Underperforming school in the State, as required by required by A.R.S. § 15-2141(B)(5), a letter from an Unaffiliated and Underperforming school that confirms the applicant School's commitment and that identifies the areas of support being or to be provided.
 6. Pursuant to A.R.S. § 15-2141(B)(6), Applicants shall also provide information concerning any poverty indicators of its student population, including the ratio of students eligible for a free or reduced cost lunch program.
- H.** Achievement District Schools – Evaluation of Applications
1. Applications shall be reviewed to confirm that all required information has been received and the application is administratively complete. Within 30 days of submission of an application, the Applicant will be notified of any deficiencies in the Application.
 2. Once an Application is determined to be administratively complete, the Board shall evaluate each Application and either approve or deny the Application within 60 days of this determination.
 3. The Board shall meet no less than once every other month to decide upon Applications and for the conduct of any and all other business before the Board. The Board is authorized to call additional meetings in order to evaluate Applications or conduct other business and to cancel meetings if there is no business pending before the Board.
 4. Applicants shall be notified of the Board's decision to grant or deny Achievement District School status within 10 business days of the Board's decision in writing, either by letter, facsimile or electronic mail.

Historical Note

New Section made by final exempt rulemaking at 23 A.A.R. 661, effective March 1, 2017 (Supp. 17-1).

ARTICLE 2. CREDIT ENHANCEMENT

R7-8-201. Arizona Public School Credit Enhancement Program

- A.** Authority. This rule is adopted pursuant to A.R.S. § 15-2153(B)(9).

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- B. Purpose.** The purpose of this rule is to implement the legislative intent, as expressed in Chapter 129, Laws of 2016, to administer the Arizona Public School Credit Enhancement Program.
- C. Scope.**
1. The scope of this Rule is the scope of A.R.S. Title 15, chapter 16, article 11 as it relates to Arizona public school credit enhancement. This rule is applicable to any district public school or charter public school operating in the State of Arizona that applies for a Guaranteed Financing from the Board.
 2. The statutory authority for this rule, A.R.S. Title 15, chapter 16, article 11, does not provide for exemptions therefrom for person or agents of persons subject thereto, and no such exemption is intended or should be presumed by this rule or any provision thereof.
- D. Repeal.** This rule does not repeal any known prior rule, memorandum, bulletin, directive or opinion on this subject matter. If such prior rule or directive exists and is in conflict herewith, the same is repealed hereby.
- E. Definitions**
1. "Achievement District School" has the meaning of A.R.S. § 15-2151(1).
 2. "Applicant" means an Achievement District School that has submitted an Application to the Board, either directly or through its charter holder or operator or school district.
 3. "Application" means an application for a Guaranteed Financing submitted by an Achievement District School to the Board.
 4. "Board" has the meaning of A.R.S. § 15-2151(2).
 5. "Guaranteed Financing" has the meaning of A.R.S. § 15-2151(4).
 6. "School" means a district public school or a charter public school that qualifies as a "school" pursuant to section 15-101(22).
- F. Arizona Public School Credit Enhancement – Application**
1. An Achievement District School seeking a Guaranteed Financing, pursuant to A.R.S. § 15-2155, shall file an Application with the Board on Form B, which may be modified from time to time by the Board. In the alternative, a School may apply to become an Achievement District School and for a Guaranteed Financing contemporaneously by filing an Application with the Board on Form C. Applications may be submitted either in paper format or electronically through the Governor's Office of Education website.
 2. Applications failing to comply with the requirements of A.R.S. § 15-2155 shall be denied without prejudice to the subsequent filing by such School of an application complying with such requirements.
 3. The accuracy and completeness of information in an Application shall be certified to by the Chief Executive Officer or Chief Financial Officer of the School. Electronic Applications shall include a section for the provision of an electronic signature.
- G. Arizona Public School Credit Enhancement - Application Criteria.** In completing Applications, Applicants must explain or provide the following information:
1. Unless the Application is a combined Application, for proof as approval as an Achievement District School, certification that the information previously submitted to the Board in the Applicant's Achievement District School application pursuant to A.R.S. § 15-2155(B)(1) is still accurate in all respects.
 2. For exhibited sustainability of the Achievement District School's financial operations, in addition to the items required by A.R.S. § 15-2155(B)(2), the following documents:
 - a. At least the two immediate past years' audited financial statements. The audits must include an unqualified opinion and may not identify any "going concern" issues. If an audit has not been completed for the most recent year, internally generated financial statements, including at least a statement of revenues and expenditures or a balance sheet by line-item or category totals that align with the submitted financial statements must be provided. The Board may request an additional year of audited financials
 - b. The School's current year budget with line items or category totals that align with the submitted audited financial statements. For applications made after the first quarter of a fiscal year, a current balance sheet and year-to-date revenues and expenditures compared to budget by budget category.
 - c. Additionally, for charter public schools:
 - i. The Applicant must include a listing of the names, positions and experience of the charter public school's corporate board of directors and its senior staff.
 - ii. The Applicant must include information on any material or substantial lawsuits, threatened or potential litigation brought by any outside party, either currently or in the past three years, or any failure to have its charter re-approved, if any.
 - iii. The Applicant must include a projection of revenues, expenditures and net cash flows for the ensuing three-year period.
 - iv. The Applicant shall also provide student enrollment statistics by grade for each grade level served, for the shorter of either the period the School has been in operation or for the most recent five years, for the current year, and projected student enrollment for the next five years.
 - v. The Applicant must demonstrate sufficient liquidity as evidenced by providing a statement showing the School has either:
 - (1) At least 45 days unrestricted cash on hand based on the most recently completed fiscal year and for each of the years under the projections provided; or
 - (2) At least 30 days cash on hand based on the most recently completed fiscal year, a net increase in cash and cash equivalents for such year compared to the prior fiscal year, and that its days cash on hand is projected to increase to 45 days cash on hand within two fiscal years based on the provided projections.
 - vi. If the Applicant has outstanding debt that is rated by a municipal bond rating agency, documentation showing the rating.
 - vii. A list of all of its current outstanding debts, accompanied by a statement that the Applicant is not currently in default on any outstanding debt.
 3. For a charter Achievement District School's demonstrated experience in operating and managing charter public schools with high academic outcomes for at least two consecutive years, as required by A.R.S. § 15-2155(B)(3), a narrative history covering at least the two

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most recent years of the Applicant's historical academic outcomes and operations.

4. For information regarding the proposed Guaranteed Financing, the following information:
 - a. The planned timing of such financing, a schedule of estimated sources and uses of funds for such financing, the expected principal and interest payment dates and amounts by payment date for such financing, and plans for funding reserves, if any.
 - b. A description of what the Guaranteed Financing will be used for, a description of how the Guaranteed Financing will reduce or impact the Applicant's enrollment demand, whether the Guaranteed Financing will be a refinance of existing debt obligations, and if so, the estimated savings of the refinance and how the Applicant proposes to spend the monies saved as a result of the refinance.
 5. For identification of any property being pledged as collateral, as required by A.R.S. § 15-2155(B)(6), the Applicant must disclose whether any property to be financed and secured by a Guaranteed Financing will be owned or leased by the Applicant or, for charter public schools, the Applicant or its charter holder. Real property being pledged as collateral shall be identified by physical address, and a copy of an independent appraisal of the property that reflects current valuation within 90 days of submission, along with a copy of the lease for any leased collateral real property, must be provided to the Board not less than 30 calendar days and not more than 60 calendar days before the issuance of the Guaranteed Financing.
 6. Pursuant to A.R.S. § 15-2155(B)(7), information concerning the Applicant's teacher turnover rate and the results from the immediate prior two years of any parent and/or teacher satisfaction surveys conducted by the Applicant. For charter public schools, the Applicant shall also disclose whether any personal benefit will inure to any employee of the School or school operator or an immediate relative, including a parent, spouse, sibling or child, of any such employee or operator.
- H. Arizona Public School Credit Enhancement – Required Financial Provisions for Guaranteed Financings.** In order for the Board to approve a Guaranteed Financing, the proposed project must meet the following terms and requirements:
1. The debt service on the Guaranteed Financing may include interest-only payments for no more than two fiscal years following the fiscal year of issuance and must include level annual total principal and interest payments thereafter.
 2. The Guaranteed Financing must be fully amortizing over a period not to exceed 35 years.
 3. For non-general obligation, tax-supported obligations, the Guaranteed Financing must meet one of the following debt service coverage ratio requirements as estimated at the time of the Application and upon issuance of the Guaranteed Financing:
 - a. The ratio of the net cash flow (i.e. total revenues less operating expenses excluding debt or lease payments on land and facilities and non-cash expenses) for the most recently completed fiscal year to the maximum annual combined payments on existing debt, leases of land and facilities and the Guaranteed Financing must be at least 110%; or
 - b. The ratio of the net cash flow as defined above for the most recently completed fiscal year to the combined payments on existing debt and leases, but excluding the Guaranteed Financing, must be at least 110%, and the ratio of projected net cash flow as defined above for each of the subsequent five fiscal years to the combined maximum annual payments on existing debt, leases of land and facilities, and the Guaranteed Financing must be at least 110%. For this requirement, the projections must be accompanied by a report from an independent certified public accountant or a financial consultant with demonstrated expertise in public charter school financings confirming that the accountant or consultant has reviewed the Applicant's projections and deems the projections to be fair and reasonable.
 4. Tax Base/Collections – District Public Schools
 - a. For district public school Applicants using a district's voted general obligation bond authorization for a Guaranteed Financing, property tax collections for the three most recent fiscal years must average 90% or more.
 - b. For district public school Applicants that will not use the property tax base for a Guaranteed Financing, the Applicant must identify the authorized source of payment for the Guaranteed Financing and provide evidence of adequate ongoing dedicated or pledged revenues and budget capacity to service the minimum annual payments to be due under the Guaranteed Financing and any other parity obligations at 110% of the annual payments due.
 5. Guaranteed Financings Secured by Real Property
 - a. If the Guaranteed Financing will involve property or facilities that will be pledged as collateral for the Guaranteed Financing, the Applicant must provide an independent appraisal to the Board dated not less than 30 calendar days and not more than 60 calendar days before the issuance of the Guaranteed Financing indicating that the "as built" value of the pledged property is equal to or greater than the principal amount of the Guaranteed Financing, net of reserves securing the Guaranteed Financing and transaction costs for the Guaranteed Financing. At the time of Application, the Applicant shall certify that it reasonably believes this requirement will be met at the time of the Guaranteed Financing. For Guaranteed Financings that will refinance prior existing debt obligations of the Applicant, the Applicant may grant a security interest in the pledged property to secure debt obligations under the related financing that are not guaranteed by the Fund, provided that such security interest is subordinate to the security interest granted by the Applicant in such pledged property to secure the Guaranteed Financing.
 - b. The Applicant must identify or describe the ownership status of the property/facilities that will be funded by the Guaranteed Financing, including whether the property will be owned in fee simple, will be leased, or will be subject to some other control or ownership agreement.
 - c. For property being leased, the Applicant must provide a copy of the lease and identify the term, renewal options, assignment rights and the payment schedule.
 - d. For a Guaranteed Financing that will require construction of new facilities or major renovations to existing facilities of \$1,000,000.00 or more, the Applicant must acknowledge that the Guaranteed Financing is contingent upon execution of a guaranteed maximum price contract or other acceptable

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- mechanism ensuring project completion, along with a requirement for the contractor to provide a completion bond or its equivalent.
6. Refinancing Guaranteed Financings – for Guaranteed Financings that will refinance a prior existing debt obligation for which the originally pledged property will be pledged as collateral for the Guaranteed Financing, payments on the Guaranteed Financing may not be greater in any fiscal year than the scheduled payments on the prior obligations, and the savings to be generated on a present value basis must equal or exceed 5% of the principal amount of the refinanced obligations.
- I. Arizona Public School Credit Enhancement – Evaluation of Applications**
1. Applications shall be reviewed to confirm that all required information has been received and the Application is administratively complete. Within 30 days of submission of an Application, the Applicant will be notified of any deficiencies in the Application.
 2. Once an Application is determined to be administratively complete, the Board shall evaluate each Application and either approve or deny the Application within 60 days of this determination.
 3. In deciding whether to approve or deny an Application, the Board may give preference to:
 - a. Proposed Guaranteed Financings that fund projects in low socioeconomic areas or to serve low socioeconomic student populations;
 - b. Proposed Guaranteed Financings based on the geographic distribution of Guaranteed Financings throughout the state;
 - c. Proposed Guaranteed Financings that fund new classrooms or facilities to meet established enrollment demand; and
 - d. Proposed Guaranteed Financings that will maintain the overall program requirements imposed by A.R.S. § 15-2155(C).
4. The Board shall meet no less than once every other month to decide upon Applications and for the conduct of any and all other business before the Board. The Board is authorized to call additional meetings in order to evaluate Applications or conduct other business and to cancel meetings if there is no business pending before the Board.
 5. Applicants shall be notified of the Board's decision to grant or deny credit enhancement to a proposed Guaranteed Financing within 10 business days of the Board's decision in writing, either by letter, facsimile or electronic mail.
- J. Deadline for Issuance of Guaranteed Financing –** Once the Applicant is awarded initial approval for a Guaranteed Financing, the Applicant must issue the Guaranteed Financing within 120 days of the date of the letter granting approval for the Guaranteed Financing. The initial approval for the Guaranteed Financing will expire at the end of the 120-day period. The Applicant may request an extension for an additional 60 days by submitting a written request to the Board setting forth the reasons for the requested extension, before the expiration of the initial 120-day period.
- K. Arizona Public School Credit Enhancement Participation Fee –** In setting participation fees pursuant to A.R.S. § 15-2155(E), the Board shall consider, among other things, the value and type of collateral being pledged, the term of the Guaranteed Financing, projected savings by the School through the Guaranteed Financing, the rating of the proposed Guaranteed Financing without regard to the credit enhancement to be provided, the overall amount of the Guaranteed Financing and whether the Achievement District School is a district public school or a charter public school. The Board may establish the participation fee as a percentage of the Guaranteed Financing or otherwise, depending on the specific terms of the Guaranteed Financing.

Historical Note

New Section made by final exempt rulemaking at 23 A.A.R. 661, effective March 1, 2017 (Supp. 17-1).