



# State of Arizona Department of Education



## Investigative Unit

Enclosed is a Statement of Allegations packet. Also included with this packet are the rules (A.A.C. R7-2-205 and R7-2-1301 to 1307) that govern the complaint process.

If you choose to file a Statement of Allegations against a certified person, please be sure to include the license holder's current place of employment on the forms provided.

Be advised that the jurisdiction of the Arizona Department of Education Investigative Unit is limited to those individuals holding (or who previously held) certificates issued by the State Board of Education. Upon a finding of immoral or unprofessional conduct on the part of a certificate holder, the Arizona State Board of Education may impose discipline on the certificate holder. The Arizona State Board of Education does not supervise the individual school districts or school district policies. Generally, the hierarchy is as follows: the local school/principal, the superintendent, then the local governing board for the district.

If you choose to file a formal complaint with Arizona Department of Education Investigative Unit a Statement of Allegation must be filled out and notarized. Please complete the Statement of Allegation Packet and mail the original notarized packet to the Arizona Department of Education Investigative Unit at the address below. Please make sure to use only one Statement of Allegation packet per each certified person you are filing a complaint against. Please be very detailed as to the allegation you are filing the complaint about and who you are filing a complaint on. Please note you must submit any and all supporting documents or evidence (if any) at the time you submit your formal complaint packet so that the Arizona Department of Education Investigative Unit can look into the allegations, also note that all documents submitted to the Investigative Unit will not be returned to you, so please ensure that you keep a copy if you wish. The Investigative Unit needs the complete name of the certified individual you are filing a complaint on including their educator identification number. Arizona Department of Education has provided the public with a website they may use to verify the certificate information of Arizona Educators. The website is the Online Arizona Certification Information System (OACIS) <https://oacis.azed.gov/PublicOACIS/NormalPages/Educators.aspx>

Be advised that it is in the Complainant's best interest to include documentation of reasonable efforts made to resolve the matter(s) at the district level. The State Board of Education has the authority, pursuant to Arizona Revised Statute §15-203(B) (6), to assess costs and reasonable attorney fees against a person who files a frivolous complaint or who files a complaint in bad faith. Confidentiality of pupils' names and testimony is a concern to the Board. Processing of a complaint is facilitated by keeping pupils' names, which will be redacted, to a minimum.

Please return the completed Statement of Allegations to the Arizona Department of Education Investigative Unit to 1535 W. Jefferson Street, BIN # 35, Phoenix, AZ 85007. If you have any questions, please do not hesitate to contact us at (602) 542-2972.



**COMPLAINANT QUESTIONNAIRE**

Information needed from the Complainant in preparation for investigation and hearing by the Arizona State Board of Education.

Your name \_\_\_\_\_ Phone No. \_\_\_\_\_  
Address \_\_\_\_\_

\_\_\_\_\_

The School District/Agency \_\_\_\_\_

Your official position, if any, in above-named School District/Agency:

\_\_\_\_\_

Name of certificate holder: \_\_\_\_\_

**In the event of an investigation, individuals who may be contacted to provide information regarding the allegations contained in this Statement of Allegations:**

Name \_\_\_\_\_ Address \_\_\_\_\_

Official relationship to either party \_\_\_\_\_

Substance of testimony \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Official relationship to either party \_\_\_\_\_

Substance of testimony \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**In the event of an investigation, individuals who may be contacted to provide information regarding the allegations contained in this Statement of Allegations:**

Name \_\_\_\_\_ Address \_\_\_\_\_  
Official relationship to either party \_\_\_\_\_  
Substance of testimony \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_  
Official relationship to either party \_\_\_\_\_  
Substance of testimony \_\_\_\_\_  
\_\_\_\_\_  
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Name \_\_\_\_\_ Address \_\_\_\_\_  
Official relationship to either party \_\_\_\_\_  
Substance of testimony \_\_\_\_\_  
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Name \_\_\_\_\_ Address \_\_\_\_\_  
Official relationship to either party \_\_\_\_\_  
Substance of testimony \_\_\_\_\_  
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Name \_\_\_\_\_ Address \_\_\_\_\_  
Official relationship to either party \_\_\_\_\_  
Substance of testimony \_\_\_\_\_  
\_\_\_\_\_  
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**R7-2-205. Certification Review, Suspension, and Revocation**

- A.** Professional Practices Advisory Committees (“Committees”) shall act in an advisory capacity to the State Board of Education (“Board”) in regard to certification or recertification matters related to immoral conduct, unprofessional conduct, unfitness to teach, and revocation, suspension, or surrender of certificates.
- B.** Committees shall each consist of seven members comprised of the following:
1. One elementary classroom teacher,
  2. One secondary classroom teacher,
  3. One principal,
  4. One superintendent or assistant/associate superintendent,
  5. Two lay members, one lay member who shall be a parent of a student currently attending public school in Arizona, and
  6. One local Governing Board member.
- C.** Members appointed pursuant to subsections B(1), (2), (3) and (4) of this rule shall meet at least the following requirements:
1. Certified to teach in Arizona.
  2. Currently employed in or retired from the education profession in the specific category of their appointment.
  3. If currently employed, shall have been employed in this category for the three years immediately preceding their appointment.
- D.** Terms of the members
1. All regular terms shall be for four years except as set forth in subsection (E) below.
  2. A member may be reappointed with Board approval.
- E.** The Board may remove any member from the Committee. All vacancies shall be filled as prescribed in subsections (C) above, and those persons appointed to fill vacancies shall serve to complete the term of the person replaced.
- F.** The Committee shall:
1. Select from its members a Chairman and Vice-Chairman,
  2. A quorum shall be a majority of members of the Committee. A quorum is necessary to conduct business. An affirmative vote of the majority of the members present is needed to take action.
  3. Hold meetings as needed to conduct hearings or other Committee business by call of the Chairman of the Committee. If the Chairman neglects or declines to call a meeting, then a majority of the Committee may call a meeting. The Board may call a meeting as required to conduct necessary business. Notice of any meeting shall be given to Committee members seven days prior to the meeting.
  4. Recommend the removal of any member who is absent from three consecutive meetings.
  5. Refer to R7-2-1308 to assist in determining whether the acts complained of constitute unprofessional conduct.
  6. Conduct its business pursuant to R7-2-1301 et seq. and hearings pursuant to R7-2-701 et seq.

**Historical Note**

Adopted effective December 4, 1978 (Supp. 78-6). Former Section R7-2-205 repealed, new Section R7-2-205 adopted effective February 24, 1982 (Supp. 82-1). Former Section R7-2-205 repealed, new Section R7-2-205 adopted effective August 30, 1984 (Supp. 84-4). Amended effective February 21, 1986 (Supp. 86-1). Amended subsections (H), (I), and (J) effective February 3, 1987 (Supp. 87-1). Amended effective December 15, 1989 (Supp. 89-4). Amended effective May 31, 1991 (Supp. 91-2). Amended effective April 9, 1993 (Supp. 93-2). Amended effective December 3, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by final exempt rulemaking at 21 A.A.R. 1775, effective May 20, 2013 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 725, effective January 23, 2017 (Supp. 17-1).

**R7-2-1301. Definitions**

In this Article, unless the context otherwise specifies:

1. “Alleging party” means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or other agency who completes a statement alleging immoral or unprofessional conduct against a certificated individual.
2. “Applicant” means a person who has submitted an application to the Department requesting an evaluation of the requirements set forth in R7-2-601 et seq., requesting issuance of a certificate pursuant to R7-2-601 et seq., requesting renewal of a certificate issued pursuant to R7-2-601 et seq. or requesting changes of coding to existing files or certificates pursuant to R7-2-601 et seq.
3. “Board” means the State Board of Education.
4. “Certificated individual” means an individual who holds an Arizona certificate issued pursuant to R7-2-601 et seq.

5. "Complaint" means the filing of a charge by the Board against a certificated individual alleging immoral or unprofessional conduct.
6. "Department" means the Arizona Department of Education.
7. "Hearing" means an adjudicative proceeding held pursuant to Title 41, Chapter 6 and R7-2-701 et seq.
8. "PPAC" means the Professional Practices Advisory Committee established pursuant to R7-2-205.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by final exempt rulemaking at 25 A.A.R. 967, effective March 27, 2019.

**R7-2-1302. Statement of Allegations**

- A. Any person may file, with the Department, a statement of allegations against a certificated individual on forms provided by the Department.
- B. A statement of allegations shall state the facts under which a party is alleging immoral or unprofessional conduct and shall be signed and notarized.
- C. The facts in a statement of allegations shall clearly state the details of the alleged immoral or unprofessional conduct.
- D. A statement of allegations shall contain the names, addresses and telephone numbers of individuals who can be contacted to provide information regarding the allegations contained in the statement. The list of individuals shall also include a brief summary of the substance and extent of each individual's knowledge regarding the allegations contained in the statement.
- E. The alleging party may attach written or other evidence to a statement of allegations at the time that the statement is filed with the Department.
- F. A statement of allegations may be returned to the alleging party if the statement is not complete or not legible.
- G. The Department shall conduct an investigation of all statements of allegations filed pursuant to this Article.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by final exempt rulemaking at 25 A.A.R. 967, effective March 27, 2019.

**R7-2-1303. Complaint**

- A. Upon completion of an investigation resulting from a statement of allegations, the Board may file a complaint against a certificated individual or may issue or deny certification to an applicant.
- B. The Board may, at its own discretion, investigate any matter and file a complaint against a certificated individual upon receiving any information, from any source, indicating immoral or unprofessional conduct has occurred.
- C. A hearing shall be held on a complaint before the PPAC.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Section R7-2-1303 renumbered to R7-2-1304; new Section R7-2-1303 renumbered from R7-2-1304 and amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by final exempt rulemaking at 25 A.A.R. 967, effective March 27, 2019.

**R7-2-1304. Notification; Investigation**

The certificated individual shall have 20 days from service by U.S. mail of the notice of investigation to file a written response with the Department.

**Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Section R7-2-1304 renumbered to R7-2-1303; new Section R7-2-1304 renumbered from R7-2-1303 and amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 23 A.A.R. 725, effective January 23, 2017. Amended by final exempt rulemaking at 25 A.A.R. 967, effective March 27, 2019.

**R7-2-1305. Investigation**

- A. Applicants shall certify on forms that are provided by the Department whether the applicant:
  1. Has ever received any disciplinary action, including revocation, suspension or reprimand, involving any professional certification or license;
  2. Is currently under investigation or has ever been the subject of any investigation by the Department of Child Safety or a similar department in this state or another jurisdiction;
  3. Has ever been convicted of a felony offense;

4. Has ever been arrested, cited and released, or received a criminal summons for any offense, regardless if eventually convicted of a crime or if a conviction was set aside or expunged; or

5. Has ever been arrested, cited and released, or received a criminal summons for any offense involving a child, regardless if eventually convicted of a crime or if a conviction was set aside or expunged.

- B.** Upon receipt of notification that an applicant or certificated individual has engaged in unprofessional or immoral conduct pursuant to R7-2-1308, conduct that would warrant disciplinary action if the person had been certified at the time that the alleged conduct occurred, or conduct listed in subsection A of this section, the Department shall initiate an investigation.
- C.** Applicants and certificated individuals who are alleged to have engaged in unprofessional or immoral conduct pursuant to R7-2-1308, conduct that would warrant disciplinary action if the person had been certified at the time that the alleged conduct occurred, or conduct listed in subsection A of this section shall provide the Board with copies of court records and law enforcement reports pertaining to the offense.

#### **Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 1132, effective March 10, 2000 (Supp. 00-1). Amended by final exempt rulemaking at 25 A.A.R. 967, effective March 27, 2019.

#### **R7-2-1307. Criminal Offenses**

- A.** The Board shall revoke, not issue, or not renew the certification of a person who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit any of the following criminal offenses in this state or similar offenses in another jurisdiction:

1. Sexual abuse of a minor;
2. Incest;
3. First-degree murder;
4. Second-degree murder;
5. Manslaughter;
6. Sexual assault;
7. Sexual exploitation of a minor;
8. Commercial sexual exploitation of a minor;
9. A dangerous crime against children as defined in A.R.S. § 13-705;
10. Armed robbery;
11. Aggravated assault;
12. Sexual conduct with a minor;
13. Molestation of a child;
14. Exploitation of minors involving drug offenses.;
15. Sexual abuse of a vulnerable adult;
16. Sexual exploitation of a vulnerable adult;
17. Commercial sexual exploitation of a vulnerable adult;
18. Child sex trafficking as prescribed in A.R.S. § 13-3212;
19. Child abuse;
20. Abuse of a vulnerable adult;
21. Molestation of a vulnerable adult;
22. Taking a child for the purpose of prostitution as prescribed in A.R.S. § 13-3206;
23. Neglect or abuse of a vulnerable adult;
24. Sex trafficking;
25. Sexual abuse;
26. Production, publication, sale, possession and presentation of obscene items as prescribed in A.R.S. § 13-3502;
27. Furnishing harmful items to minors as prescribed in A.R.S. § 13-3506;
28. Furnishing harmful items to minors by internet activity as prescribed in A.R.S. § 13-3506.01;
29. Obscene or indecent telephone communications to minors for commercial purposes as prescribed in A.R.S. § 13-3512;
30. Luring a minor for sexual exploitation;
31. Enticement of persons for purposes of prostitution;
32. Procurement by false pretenses of person for purposes of prostitution;
33. Procuring or placing persons in a house of prostitution;
34. Receiving earnings of a prostitute;
35. Causing one's spouse to become a prostitute;
36. Detention of persons in a house of prostitution for debt;

37. Keeping or residing in a house of prostitution or employment in prostitution;
38. Pandering;
39. Transporting persons for the purpose of prostitution, polygamy and concubinage;
40. Portraying adult as a minor as prescribed in A.R.S. § 13-3555;
41. Admitting minors to public displays of sexual conduct as prescribed in A.R.S. § 13-3558;
42. Unlawful sale or purchase of children;
43. Child bigamy; or
44. Trafficking of persons for forced labor or services.

**B.** Upon notification by the clerk of the court, magistrate or court of competent jurisdiction, the Board shall immediately and permanently revoke the certificate of a person who has been convicted of any of the following offenses:

1. A dangerous crime against children as defined in A.R.S. § 13-705;
2. Sexual abuse as prescribed in A.R.S. § 13-1404 in which the victim was a minor;
3. Sexual assault as prescribed in A.R.S. § 13-1406 in which the victim was a minor;
4. Sexual conduct with a minor as prescribed A.R.S. § 13-1405;
5. A preparatory offense as prescribed in A.R.S. § 13-1001 of any of the offenses prescribed in paragraphs one, two, three or four of this subsection;
6. Any crime that requires the person to register as a sex offender; or
7. An act committed in another state or territory that if committed in this state would have been one of the offenses listed in paragraphs one, two, three, or four of this subsection.

**C.** If the Board does not issue, does not renew, or revokes a certificate due to a person's conviction or admission of an offense listed in subsection A, but which is not an offense listed in subsection B, the notice of non-issuance, non-renewal or revocation shall inform the person of that person's right to request a hearing within 20 days of service of the notice.

#### **Historical Note**

Adopted effective December 4, 1998 (Supp. 98-4). Amended by exempt rulemaking at 23 A.A.R. 725, effective January 23, 2017. Amended by final exempt rulemaking at 25 A.A.R. 967, effective March 27, 2019.

#### **R7-2-1308. Unprofessional and Immoral Conduct**

**A.** Individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall:

1. Make reasonable efforts to protect pupils from conditions harmful to learning, health, or safety;
2. Account for all funds collected from pupils, parents, or school personnel;
3. Adhere to provisions of the Uniform System of Financial Records related to use of school property, resources, or equipment; and
4. Abide by copyright restrictions, security, or administration procedures for a test or assessment.

**B.** Individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall not:

1. Discriminate against or harass any pupil or school employee on the basis of race, national origin, religion, sex, including sexual orientation, disability, color or age;
2. Deliberately suppress or distort information or facts relevant to a pupil's academic progress;
3. Misrepresent or falsify pupil, classroom, school, or district-level data from the administration of a test or assessment;
4. Engage in a pattern of conduct for the sole purpose or with the sole intent of embarrassing or disparaging a pupil;
5. Use professional position or relationships with pupils, parents, or colleagues for improper personal gain or advantage;
6. Falsify or misrepresent documents, records, or facts related to professional qualifications or educational history or character;
7. Assist in the professional certification or employment of a person the certificate holder knows to be unqualified to hold a position;
8. Accept gratuities or gifts that influence judgment in the exercise of professional duties;
9. Possess, consume, or be under the influence of alcohol on school premises or at school-sponsored activities;
10. Illegally possess, use, or be under the influence of marijuana, dangerous drugs, or narcotic drugs, as each is defined in A.R.S. § 13-3401;
11. Make any sexual advance towards a pupil or child, either verbal, written, or physical;
12. Engage in sexual activity, a romantic relationship, or dating of a pupil or child;
13. Submit fraudulent requests for reimbursement of expenses or for pay;

14. Use school equipment to access pornographic, obscene, or illegal materials; or
  15. Engage in conduct which would discredit the teaching profession.
- C.** Individuals found to have engaged in unprofessional or immoral conduct shall be subject to, and may be disciplined by, the Board.
  - D.** Procedures for making allegations, complaints, and investigation of unprofessional or immoral conduct shall be as set forth in this Article.
  - E.** Application forms and certificates shall include the rules and statutes related to unprofessional and immoral conduct, including resignation from a contracted position without authorization and duties to report as required by law.
  - F.** Individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq shall certify:
    1. That they have read and understood the rules and statutes related to unprofessional and immoral conduct, including resignation from a contracted position without authorization and duties to report as required by law; and
    2. Whether they have been disciplined or are under investigation in another state for engaging in conduct that is immoral or unprofessional.

#### **Historical Notes**

New Section made by final rulemaking at 9 A.A.R. 1544, effective June 28, 2003 (Supp. 03-2). Amended by exempt rulemaking at 23 A.A.R. 725, effective January 23, 2017.

#### **R7-2-701. Definitions**

In this Article, unless the context otherwise specifies:

1. "Board" means the State Board of Education.
2. "Chairman" means the chairperson of the Professional Practices Advisory Committee, established pursuant to R7-2-205.
3. "Contested case" means any proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by the State Board of Education after an opportunity for hearing.
4. "Department" means the Department of Education.
5. "Hearing body" means the Board or the Professional Practices Advisory Committee.
6. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.
7. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character, or another agency.
8. "PPAC" means the Professional Practices Advisory Committee, established pursuant to R7-2-205 to conduct hearings related to certification or recertification matters regarding immoral conduct, unprofessional conduct, unfitness to teach and revocation, suspension or surrender of certificates.
9. "Presiding officer" means a hearing officer, with either a minimum of three years of verified experience in the practice of law or a minimum of one year of verified experience in conducting hearings, who shall oversee hearings in regard to certification or recertification matters related to immoral conduct, unprofessional conduct, unfitness to teach, and revocation, suspension, or surrender of certificates.
10. "Pupil" means any student enrolled in an Arizona public or private school. "Pupil" also means any student who was enrolled in an Arizona public or private school at the time of the events which are the subject of a proceeding and who is still of minor age.
11. "Victim" means any person who has been previously identified pursuant to state law as a victim in a criminal proceeding which is the basis for a contested case.

#### **Historical Note**

Adopted effective May 25, 1978 (Supp. 78-3). Former Section R7-2-701 repealed, new Section R7-2-701 adopted effective December 4, 1978 (Supp. 78-6). Amended effective June 27, 1979 (Supp. 79-3). Amended subsection (A) effective October 7, 1980 (Supp. 80-5). Amended by adding subsection (A)(6) effective April 6, 1984 (Supp. 84-2). Amended effective October 19, 1984 (Supp. 84-5). Section R7-2-701 repealed as an emergency, new Section R7-2-701 adopted as an emergency effective January 2, 1985 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-1). Emergency expired. Repealed effective December 17, 1987 (Supp. 87-4). New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4). Amended by final exempt rulemaking at 21 A.A.R. 1775, effective May 20, 2013 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 725, effective January 23, 2017 (Supp. 17-1).

#### **R7-2-702. Filing; computation of time; extension of time**

- A.** All papers concerning a contested case shall be filed within the time limit, if any, for such filing.
- B.** All papers filed in any contested case shall be typewritten or legibly written on paper 8 1/2 by 11 inches in size, shall contain the name and address of the party or other correspondent, shall be properly captioned and designate the title and case number, shall state the name and address of each party served with a copy, and shall be signed by

the party or, if represented, by the party's attorney. The signature certifies that the signer has read the paper, that to the best of the signer's knowledge, information, and belief there are good grounds to support its contents, and that it is not interposed for delay.

- C. In computing any period of time prescribed or allowed by this Article, or any notice or order concerning a contested case, the day of the act, event, or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period to time is 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.
- D. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party by another party, and the notice or other paper is served by mail, five days shall be added to the prescribed period. This subsection has no application to notices, orders, or other papers issued by the hearing body.
- E. For good cause shown, the presiding officer may grant continuances and extensions of time for filing notices or other papers.

#### **Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

#### **R7-2-703. Contested cases; notice; hearing records**

- A. In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.
- B. 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.
  - 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.
- C. A reasonable effort shall be made to notify a victim of the time, place and nature of the hearing, and that the victim may submit a victim impact statement to be included as part of the record in a contested case.
- D. Opportunity shall be afforded all parties to respond and present evidence and argument on the issues involved.
- E. The Board may dispose of any contested case by decision or approved stipulation, agreed settlement, consent agreement or by default.
- F. A hearing before a hearing body in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Board.
- G. The hearing body may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings.
- H. The record in a contested case shall include:
  - 1. All pleadings, motions and interlocutory rulings.
  - 2. Evidence received or considered.
  - 3. A statement of matters officially noticed.
  - 4. Objections and offers of proof and rulings thereon.
  - 5. Proposed findings of fact and conclusions of law and exceptions thereto.
  - 6. Any decision, opinion, recommendation or report of the hearing body.
  - 7. All staff memoranda, other than privileged communications, or data submitted to the hearing body in connection with its consideration of the case.
  - 8. A victim impact statement, if submitted by the victim.
- I. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

#### **Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4). Amended by final exempt rulemaking at 21 A.A.R. 1775, effective May 20, 2013 (Supp. 15-3).

#### **R7-2-704. Service; proof of service**

- A. The Board shall serve notices of hearing, findings of fact, conclusions of law, and recommendations of the hearing body, and decisions and final orders of the Board, either by personal service or by certified mail. All other papers required to be served may be served by regular or certified mail or may be personally served.

- B.** After service of a notice of hearing in a contested case, a copy of every paper filed by a party, or individual seeking to intervene, shall be served on all parties to the contested case, or their lawyers if represented, at the same time the paper is filed.
- C.** The following evidences completed service:
  - 1. If personally served, an affidavit of personal service, sworn to by the individual serving the paper and stating the name of the individual upon whom it was served, where service was made, and the date of such service; or
  - 2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
  - 3. If served by regular or certified mail, either a statement subscribed on the paper filed, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- D.** When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Attorney General, or if no Assistant Attorney General is named, then on the Attorney General, Education and Health Section, Education Unit.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-705. Hearings and Evidence**

- A.** Parties may participate in the hearing in person or through an attorney.
- B.** The presiding officer may schedule a prehearing conference. The purpose of a prehearing conference shall be to narrow issues, attempt settlement, address evidentiary issues or for any other purpose deemed necessary by the presiding officer. The presiding officer or hearing body may require that the parties submit proposed findings of fact and conclusions of law prior to the hearing or at the close of evidence.
- C.** A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A party to such proceedings may be represented by counsel and shall have the right to submit evidence in open hearing and conduct cross examination. Hearings may be held in any location determined by the hearing body.
- D.** Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
- E.** Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the hearing body. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The hearing body's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4). Amended by final exempt rulemaking at 23 A.A.R. 725, effective January 23, 2017 (Supp. 17-1).

**R7-2-706. Request for hearing**

When a request for a hearing is filed with the Board, the request shall be in writing and shall state the specific grounds which are the basis of the hearing request and the statute, rule or other legal basis entitling the person to a hearing.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-707. Denial of request for hearing**

If the Board denies the request for a hearing, the denial shall be in writing and shall state the reasons therefor. A denial of a request for hearing is final and not subject to further administrative review.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-708. Repealed**

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4). Section repealed by final rulemaking at 11 A.A.R. 696, effective March 29, 2005 (Supp. 05-1).

**R7-2-709. Rehearing and review of decisions**

- A.** After a hearing is held, a party in a contested case who is aggrieved by a decision rendered by the Board may file with the Board, not later than 30 days after such decision has been made, a written motion for rehearing specifying the particular grounds therefor. A motion for rehearing under this Section may be amended at any time before it is

ruled upon by the Board. A response may be filed within 15 days after service of such motion by any other party. The Board may require the filing of written briefs on the issues raised in the motion or response and may provide for oral argument.

- B.** A rehearing of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
  - 2. Misconduct of the hearing body 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 hearing.
  - 5. Excessive or insufficient penalties.
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
  - 7. That the decision is not justified by the evidence or is contrary to the 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 of the issues, for any of the reasons set forth in subsection B herein. 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.** After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. The order granting such a rehearing shall specify the grounds therefor.
- E.** Not later than 20 days after a decision is rendered, the Board may, on its own initiative, order a rehearing of its decision for any reasons for which it might have granted a rehearing on motion of a party. The order granting such a rehearing shall specify the grounds therefor.
- F.** When a motion for rehearing is based upon affidavits they shall be served with the motion. An opposing party may, within ten days after service of such motion, serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G.** 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.
- H.** Any party in a contested case who is aggrieved by a decision rendered by the Board may file with the Board, not later than 20 days after such decision has been made, a written request for review of the decision. If a review of the decision is granted, the Board may affirm or modify the previous decision.

#### **Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

#### **R7-2-710. Intervention**

- A.** Any person seeking to intervene in any contested case shall file a written request to intervene. Intervention shall be granted only if the hearing body determines that:
  - 1. The legal interests of the person requesting to intervene may be substantially affected by the outcome of the contested case;
  - 2. Intervention will not unduly delay or bias the hearing;
  - 3. The interest of the person requesting to intervene is not adequately represented by another party to the contested case; and
  - 4. The proposed intervention is in the interests of justice.
- B.** The request shall state the claims or defenses for which intervention is sought, briefly describing the interests that may be affected by the outcome of the case and including such facts as demonstrate those interests.
- C.** The request shall be filed and served upon all parties at least 15 days prior to hearing.
- D.** Any party may file a response to the request to intervene within five days of service of the request upon the party.
- E.** The hearing body shall decide on the request to intervene at least five days prior to the hearing date and shall, prior to the end of the following business day, notify the persons requesting to intervene and all parties of the decision. The hearing body may reschedule a hearing or prehearing conference to provide sufficient time for the parties to respond to a request to intervene or to prepare for the hearing or prehearing conference.
- F.** The hearing body may limit the intervener's participation to issues in which the intervener has a particular interest.

#### **Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

#### **R7-2-711. Consolidation and severance**

- A.** When proceedings involving a common question of law or fact or common parties are pending before the hearing body, it may, upon its own volition or upon request of any party, order a joint hearing on any or all the matters at issue.

- B. In furtherance of convenience, to avoid prejudice, or when separate hearings will be conducive to expedition and economy, the hearing body may, upon its own volition or upon request of any party, order any proceeding severed with respect to some or all issues or parties.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-712. Subpoenas**

- A. The Department may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence on its own volition or at the request of a party.
- B. A request for a hearing subpoena shall be in writing and served on each party at least seven days prior to the date set for hearing and shall state:
  - 1. The name of the contested case, the case number, and the time and place where the witness is expected to appear and testify;
  - 2. The name and address of the witness subpoenaed; and
  - 3. The documents, if any, sought to be provided.
- C. On application of a party or the agency and for use as evidence, the hearing body may permit a deposition to be taken, in the manner and upon the terms designated by the hearing body, of a witness who cannot be subpoenaed or is unable to attend the hearing.
- D. The individual to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for appearance, the hearing body grants a written request to quash or modify the subpoena. The request shall state the reasons why it should be granted. The hearing body shall grant or deny such request by order.
- E. The party requesting the subpoena shall prepare it and cause it to be served upon the individual to whom it is directed in the same manner as provided for service of subpoenas in civil matters before the superior court. The return of service shall be filed with the hearing body.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-713. Conduct of hearing**

- A. The presiding officer may conduct all or part of the hearing by telephone, television, or other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.
- B. Except for those hearings which may involve presentation of evidence protected by A.R.S. § 15-350, or which are otherwise closed pursuant to an express provision of law, all hearings are open to public observation.
- C. Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-714. Testimony of pupils**

- A. All individuals present at a hearing regarding an action against a certificate shall:
  - 1. Keep confidential the name of any pupil involved in the hearing, unless disclosure is with the consent of the pupil's parent or guardian or by order of the superior court. This action does not prevent disclosure of the pupil's name to any party to the hearing.
  - 2. Keep confidential the testimony of any pupil, all of which shall be taken in executive session, except that the Board office shall be furnished a confidential copy of the pupil's testimony as part of the complete transcript of the hearing. The individuals present during the executive session shall be determined by the presiding officer in consultation with the Attorney General's office except that the respondent and counsel shall always be permitted to be present. The transcripts of testimony taken during executive session shall be maintained by the Board.
- B. The Board of Education or its designee shall:
  - 1. Make available a consent form which requires the signature of the pupil's parent or guardian prior to disclosure of the pupil's name;
  - 2. Assign a fictitious name to all witnesses identified as pupils on the witness lists provided by the complainant and respondent if not in receipt of written parental or guardian consent for disclosure;
  - 3. Notify hearing participants, prior to and during the hearing, of any fictitious names to be used.
- C. The presiding officer shall instruct all individuals present at the hearing of the confidentiality requirements of A.R.S. § 15-551 and this Section.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-715. Evidence**

- A. All witnesses shall testify under oath or affirmation.

- B.** The hearing body shall have the power to administer oaths and affirmations.
- C.** All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and fair disclosure of the facts.
- D.** The hearing body shall receive evidence, rule upon offers of proof, and exclude evidence the hearing body has determined to be irrelevant, immaterial, or unduly repetitious.
- E.** Unless otherwise ordered by the hearing body, documentary evidence shall be limited in size when folded to 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and furnish a copy of each exhibit to each party present. One additional copy shall be furnished to the hearing body unless the hearing body otherwise directs. When evidence offered by any party appears in a larger work, containing other information, the party shall plainly designate the portion offered. If the evidence offered is so voluminous as would unnecessarily encumber the record, the book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered shall be subject to appropriate and timely objection.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-716. Stipulations**

Parties to any contested case may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the presiding officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. The hearing body may require presentation of evidence for proof of stipulated facts for the hearing body's consideration. No substantive matter agreed to by the parties shall be binding upon the Board unless incorporated into the decision of the Board.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-717. Recommended Decisions**

- A.** A recommended decision shall be prepared for the Board by the PPAC.
- B.** A recommended decision shall be delivered to the Board within 30 days after the close of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last, unless the Board extends the period for good cause.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).

**R7-2-718. Decisions and Orders**

- A.** Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.
- B.** When the Board is the hearing body, the decision shall be rendered within 60 days following the final day of the hearing or the date ordered for submission of proposed findings of fact and conclusions of law or legal memoranda, whichever comes last.
- C.** Within 30 days after receipt of any recommended decision from the PPAC, the Board shall render a decision to affirm, reverse, adopt, modify, supplement, amend or reject the findings of fact, conclusions of law and recommendations in whole or in part, may remand the matter to the hearing body with instructions, or may convene itself as the hearing body.
- D.** If no request for rehearing or review has been timely filed by a party, a decision in a contested case is effective and final ten days from the date served on that party.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 48, effective December 15, 2000 (Supp. 00-4).