

NOTICE OF EXEMPT RULEMAKING

TITLE 7. EDUCATION

CHAPTER 8. ACHIEVEMENT DISTRICT SCHOOLS

PREAMBLE

1.

<u>Article, Part or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R7-8-101	New Section
R7-8-201	New Section

2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:
Authorizing statute: A.R.S. §§ 15-2153(B)(9)
Implementing statute: A.R.S. §§ 15-2141, -2155

3. The effective date of the rule and the agency's reason it selected the effective date:
March 1, 2017

4. A list of all notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:
Not applicable

5. The agency's contact person who can answer questions about the rulemaking:
Name: Dawn Wallace
Address: 1700 W. Washington St., Suite 503, Phoenix, AZ 85007
Telephone: 602-542-3438
Email: ksorensen@az.leg

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:
The Arizona State Legislature created the Achievement District School and the Arizona Public School Credit Enhancement Program in 2016 in order to make it more affordable for Arizona public schools to undertake public financing by enhancing the credit rating for participating schools, thereby decreasing the costs incurred in the public financing. The rules implement the program by creating application procedures and evaluation criteria for applying schools.

7. A reference to any study relevant to the rule that the agency reviewed and proposed either to rely on or not reply 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:
The agency did not review or rely on any study relevant to the rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking 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:

Not applicable

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

There were no changes to the draft rules based on comments received during the public comment period.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

An educator commented that he perceived the credit enhancement program to target charter schools over district schools since he believed that district schools cannot cap enrollment and would therefore not be able to have a waiting list. However, it was determined that both charter and district schools will be able to participate because district schools can exceed enrollment availability through open enrollment and other student demand.

Another educator commented that he was concerned about rural schools being able to qualify to become an achievement district school given the distance between schools in rural areas and the perceived unlikelihood that a rural school would ever have an enrollment demand. He also noted that in the event of growth due to enrollment demand, the school would hire more staff rather than create a wait list. It was determined that the qualifications to become an achievement district school are not too onerous or burdensome for rural schools.

Multiple educators submitted comments suggesting that "C" schools should not qualify as "underperforming" because a "C" grade is a passing grade for students. It was determined that the goal of the program is to be more inclusive rather than less inclusive and that "C" schools can still improve, so including "C" schools as an underperforming school that can receive assistance from an achievement district school will be beneficial to all schools.

A comment was also received which urged the credit enhancement program funds to be used for achievement district schools who wish to undertake a lease-purchase of the school facility to be purchased or improved with program funds. Because the draft rules already permit use of program funds for a lease purchase, no revisions to the rules was necessary.

A comment was received suggesting that both charter schools and district schools be required to pay the same participation fee. However, because the enabling legislation does require a minimum participation fee for district schools, the rules follow the

requirements of the statute and give the board discretion to set district school participation fees, if any.

A comment was received suggesting that charter school applicants should disclose any ongoing or potential litigation involving the charter school so that the board can properly evaluate the potential risk of applicants. Because the rules already require charter school applicants to disclose ongoing and threatened litigation over, no revisions to the rules was necessary.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require issuance of a regulatory permit or license

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact of business in other states:

No analysis was submitted

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking process:

Not applicable

15. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 8. ACHIEVEMENT DISTRICT SCHOOLS

ARTICLE 1. ACHIEVEMENT DISTRICT SCHOOL QUALIFICATIONS

Section

R7-8-101. Achievement District Schools

ARTICLE 2. CREDIT ENHANCEMENT

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

ARTICLE 1. ACHIEVEMENT DISTRICT SCHOOL QUALIFICATIONS

Section
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 ten (10) business days of the Board's decision in writing, either by letter, facsimile or electronic mail.

ARTICLE 2. CREDIT ENHANCEMENT

Section

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

- 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 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:
 - a. At least forty-five days unrestricted cash on hand based on the most recently completed fiscal year and for each of the years under the projections provided; or
 - b. At least thirty 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 forty-five 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 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 ninety (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 thirty (30) calendar days and not more than sixty (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 thirty-five 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 thirty (30) calendar days and not more than sixty (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 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 ten (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 one hundred-twenty (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 sixty (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.