

Board of Commissioners Handbook



Mission

The purpose of ACDHH is to ensure, in partnership with the public and private sector, accessibility for the deaf and hard of hearing to improve their quality of life.

Vision

An energetic and innovative team, ACDHH aspires to be a national leader in the provision of communication access, support services, and community empowerment throughout the Grand Canyon State.

ACDHH Board of Commissioners Handbook

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Jane D. Hull
GOVERNOR



Sherri L. Collins
EXECUTIVE DIRECTOR

1400 West Washington • Room 126 • Phoenix, Arizona 85007

www.acdhh.org

September 17, 2002

Fellow Commissioners:

As Chair of the ACDHH Board of Commissioners, it pleases me greatly to see such a comprehensive resource designed to assist the Board in giving its fullest performance.

Our work as commissioners is important. We represent the voices of all Arizona when confronting hearing loss. We are 14 minds who work together not for ourselves but the demographics we represent. Sometimes we may fall into thinking only of the present and forget that there were commissioners before us and will be commissioners after us; this handbook will guide both present and future commissioners throughout our service to the Arizona deaf and hard of hearing population.

May this handbook serve us to even greater success!

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Schneck". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chris Schneck,
Chair, ACDHH Board of Commissioners

Jane D. Hull
GOVERNOR



Sherri L. Collins
EXECUTIVE DIRECTOR

1400 West Washington • Room 126 • Phoenix, Arizona 85007

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September 17, 2002

Dear Commissioners:

Since its inception in 1977, the Commission has done wonderful work in its service to the many populations with a hearing loss within the Arizona community we serve.

But there is a little known historical fact about the Commission: The Board preceded the staff by almost a year.

The legislation that enabled the Commission was passed into law in 1977 and quickly saw the formation of the Board. In 1978, a proposal to fund the Commission made it out of the Legislature and ACDHH was able to add an executive director and a secretary to its payroll. In that one-year period, however, the Commission did not stay idle—thanks to the Board of Commissioners.

Over the years, the role of the Board has not diminished. Your leadership helps shape the vision of the programs and services ACDHH provides to the deaf and hard of hearing community all across Arizona.

I look forward to a productive working relationship with each one of you!

Sincerely,

Sherri L. Collins
Executive Director

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The mission of the Arizona Commission for the Deaf and the Hard of Hearing is to ensure, in partnership with the public and private sectors, accessibility for the deaf and the hard of hearing to improve their quality of life.

Board Composition

Appointing authority:	Governor of Arizona
Term:	Three (3) years (A.R.S. §36-1941)
Number of members:	Fourteen (14) (A.R.S. §36-1941)
Compensation:	None except as outlined in the travel reimbursement policy
Composition:	The Board shall consist of fourteen (14) members appointed by the Governor. Of these members:

- Four (4) members shall be Deaf persons
- Four (4) members shall be Hard of Hearing persons
- One (1) member shall be from the Department of Economic Security
- One (1) member shall be from the Arizona School for the Deaf and the Blind in Tucson or from the Phoenix Day School for the Deaf
- One (1) member shall be a clinical audiologist
- One (1) member shall be a hearing aid dispenser pursuant to A.R.S.
- One (1) member shall be from the Arizona Registry of Interpreters for the Deaf
- One (1) member shall be a parent of a deaf or hard of hearing child

Commitment to Service

As a board member, I am committed to:

1. **Serving the needs of people.** The Commission exists to serve the Deaf and the Hard of Hearing and its success is measured in the quality of service delivered to them. The Board's energy should be focused on fulfilling the needs of these people.
2. **Providing budget planning for our organization.** A Board member helps assure the financial integrity of the Commission by approving an annual budget and monitoring finances.
3. **Providing resources and expertise to the organization.** Board members are asked to serve on the Board because of their talents, special skills and interests. Board members personally provide a great deal of assistance by volunteering their talents and skills, or providing links and encouragement.
4. **Giving my time and energy.** When you give your time, you are investing in the people the Commission serves. The time you give for Board meetings, committee meetings and special events is critical.
5. **Respecting the vote.** It is vitally important that the minority viewpoint be given a full hearing. It is equally important that the majority rule prevails, and that each Board member in the minority fully supports the decision once a vote is recorded.
6. **Making this a "working" Board.** Knowing what you are expected to do and how it relates to others you work with is very important. Doing what I am expected to do is altogether different and a Board member should not only strive to maintain the seat but to also expand and enhance the Board.

Consequently, I shall:

- Attend Board meetings and organizational functions
- Leave vested interests in particular programs outside Board meetings
- Give full support of skills and resources to the Commission
- Serve on committees
- Remain informed about the needs of the Deaf and the Hard of Hearing
- Strictly adhere to the Commission's bylaws and Board policies
- Actively promote the organization through professional contacts
- Provide the Commission staff with contacts
- Appear in media and in the public to promote Commission activities
- Work with the State Legislature to advocate Commission positions
- Do my most to observe legislative hearings and sub-committee meetings on matters concerning the Commission

Code of Ethics

A.R.S. §38-501 through §38-510 concern conflicts of interest of public officers and employees and it is the Board member's continuing responsibility to observe and apply the provisions of these laws. The following policy can help the Board avoid situations that can damage the public's trust in the Commission.

- **Business or professional interests.** Board members have outside business and professional interests. Board members, however, may not make a profit in any way in their outside employment or business interests from their service on the Commission's board of directors, either for themselves, relatives or friends. Board members shall disclose any conflict of interest involving an issue before the Board. While they may participate in discussion of the issue, they shall not vote.
- **Gifts, gratuities.** Board members will not accept gifts, gratuities, trips, personal property or other items of value from an outside person or organization as an inducement to vote a certain way, do business a certain way, or provide certain services.
- **Personal beliefs.** Board members hold a wide range of personal beliefs, values and commitments. These may present a conflict of interest if they prevent Board members from acting for the benefit of the full organization, from carrying out their responsibilities as Board members, if Board members attempt to use their membership to further their personal interests, or to convince other Board members, the Executive Director or Commission staff to act upon the Board member's wishes. My efforts shall be focused on the mission of the Commission and not on my personal goals.
- **Abuse of the Board office.** Board members should not abuse their office by using the Commission's staff, services, equipment or property for their personal or family gain. This includes using their position on this Board to obtain employment at the Commission for themselves, family members or friends.

Confidentiality

Minutes of and discussions made at an Executive Session are required by law to be kept confidential and shall not be shared with any person outside this meeting room, except to:

- Members of the Commission,
- A person who is the subject of the discussion pursuant to A.R.S. § 38-431(A)(I),
- The Auditor General in connection with an audit authorized by law, and
- The Attorney General

Glossary

Throughout the handbook, the following terms in boldface are intended to take on the following specific definitions:

Board. The Board of Commissioners of the Arizona Commission for the Deaf and the Hard of Hearing.

Board Member. A person who sits on the Board of Commissioners of the Arizona Commission for the Deaf and the Hard of Hearing.

Commission. The Arizona Commission for the Deaf and the Hard of Hearing.

Commission Member. A person affiliated with the Arizona Commission for the Deaf and the Hard of Hearing as a Board Member or a Commission Staff.

Commission Staff. The staff members of the Arizona Commission for the Deaf and the Hard of Hearing.

deaf. Generalization indicating profound hearing loss.

Deaf. Those with hearing loss who use American Sign Language.

Executive Director. The Chief Executive Officer of the Arizona Commission for the Deaf and the Hard of Hearing.

Hard of Hearing. Those with hearing loss who do not use American Sign Language.

Year 2002

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Board Member Job Description

Title: Member, ACDHH Board of Directors

Reports to: Board Chair

Purpose: To serve the Board as a voting member, to assist in policy-making, and to monitor the finances, programs and performance of the organization.

Term: Three years, beginning on September 1 and ending on August 31

Expected Meeting Attendance:

- Regularly attend scheduled meetings
- Attend meetings of committees served
- Attend Board retreats, planning sessions, and Board development workshops
- Attend and participate in special events

Obligations of the Board:

- Establish policy
- Hire, terminate (if necessary), supervise and annually evaluate the Executive Director
- Help with financial planning
- Maintain, update and monitor strategic plans

Specific Duties:

- Attend meetings, participate and show commitment to board activities
- Be well-informed and prepared for meetings
- Contribute skills, knowledge and experience when appropriate
- Listen respectfully to other viewpoints
- Assume leadership roles in all board activities
- Represent the Commission to the public, businesses and the community
- Educate yourself about the needs of the Deaf and the Hard of Hearing people
- Evaluate the Executive Director

Duties

All Members

- Attend regularly scheduled Commission meetings to achieve quorum
- Attend specially scheduled Commission meetings to achieve quorum
- Be aware of the needs of the constituents that you are representing
- Represent your constituency to the best of your ability
- Determine need for committees based on issues to be resolved
- Participate in committees
- Serve three-year terms

Vice Chair

- Assume all duties of the Chair in the absence of the Chair
- Assume all duties of the Vice Chair set forth in here and any other policies approved by the Board
- May serve only two consecutive terms as Vice Chair

Chair

- Preside over all Board meetings, following parliamentary procedure
- Call meetings; business meetings, town hall meetings, executive sessions, any other special sessions
- Establish agenda for all Board meetings
- Determine chairperson, size, and possible staffing of subcommittees
- Delegate meeting responsibility to a Board member if unable to attend a meeting and Vice Chair's absence is expected
- Vote only in the event of a tie vote
- Issue an annual report to the governor
- Maintain communications with all Board members
- Maintain communications with the Executive Director
- Oversee any evaluation of the Executive Director
- Assume all duties of the Chair set forth in here and any other policies approved by the Board
- May serve only two consecutive terms as Chair

Functions of the Board

The job of a Commission board is usually defined as **policymaker and regulator**. The Board establishes policies that direct the Commission staff to take a course of action to meet the agency mission. The Commission functions within the parameters of these policies.

The Board observes and evaluates how well the Commission, led by the Executive Director, implements board policies and carries out the Commission's mission.

Four areas of Board responsibility

Within your policy-making role, your four specific areas of responsibility are:

1. *The Board hires, supervises, evaluates and, if necessary, terminates the Executive Director.* The Board's first responsibility, and maybe the most important one, is to hire a competent administrator to run the organization by managing all aspects of its day-to-day affairs.

Most board members do not have the time to manage the day-to-day business of the organization. By hiring, and then supporting a professional who keeps things running smoothly, you ensure that the organization is well managed and in a position to fulfill its mission.

2. *The Board is responsible for the Commission's future.* Strategic planning is a key board responsibility. Social, regulatory and economic changes mean that boards must anticipate and plan for what the future will bring.

Once the board approves a strategic plan for the organization, it should monitor the progress the Executive Director makes toward meeting the plan's goals and objectives. Short-term operational planning is necessary to achieve your plan, and this is the administrator's responsibility.

3. *The Board monitors and evaluates.* You should monitor the Commission's performance in two key areas: financial health and progress toward the board's strategic, long-range plan. A board must monitor and evaluate bottom-line results.

4. *The Board serves as an advocate.* You are in a unique position to advocate. You're not being paid for your service, and you have a higher motive: service to the community at large. This gives you credibility, which is the key to any advocate's success.

As an advocate, you might lobby state and federal lawmakers and funding sources, or communicate your organization's goals to constituents and the community.

Policy-Making: Board or Management Decision?

How do you identify which member of the board team should manage an issue, the board or the executive director?

Setting policy is very different from managing the organization

Board policies answer the big-picture questions of what the Commission will do.

The Executive Director implements the board's policies and determines how to carry out the board's policies.

An example: Approving the Commission's annual budget is a board policy decision. That is a board responsibility.

Spending within that board-approved budget is the Executive Director's job. By examining financial reports and the annual audit, the Board monitors the implementation of the budget it set.

The issue of personnel management causes more headaches and heartaches in the Board and Executive Director relationship than any other. It shouldn't be that way, because managing Commission staff is the Executive Director's job.

But if a staff member complains to several

board members about being unfairly disciplined, should you get involved?

First, determine if the issue is really a board issue or something the Executive Director should handle. Boards handle issues that:

- Affect the entire organization (The administrator handles issues that affect individuals)
- Dictate what the Commission will do—policy matters that is not established by the state (The administrator and staff determine how a policy is implemented)
- Are required by law
- Are requested by the Executive Director

If it is a policy issue, the board should ask the Executive Director to research the issue then make recommendations to the Board. Finally, the Board makes its decision.

Board policy

Board members and Commission staff—including the Executive Director—come and go, but board policy lasts. A policy manual:

- Provides consistency and fosters stability
- Provides guidance for Board members and the Executive Director
- Legitimize Board actions
- Allows the Commission to operate efficiently
- Provides the basis for a legal record

Meeting the Board's Financial Responsibilities

You don't need to be a CPA, banker or financial wizard by trade. So how in the world are you supposed to understand complicated funding streams and monthly financial statements?

You don't have to figure this all out by yourself. You're not responsible for figuring out where every penny has been spent—that's the Executive Director's responsibility.

Your financial responsibility to the Commission is simply this: *To oversee and monitor the financial health of the organization.*

Here are the four areas you are responsible for:

1. *You set financial policy.* This means that you determine the areas of the Commission spending. Your policy decisions will be based on the goals set during your planning sessions.

2. *You help develop and approve the annual budget.* Your budget is the financial blueprint for the Commission, based on the Board's broad financial policies. You must make sure there is enough money in the budget to deliver services and meet goals and objectives for the coming year.

3. *You delegate implementation of financial policies to the Executive Director.* It's the Executive Director's job to make all spending decisions within budget limits.

4. *You monitor financial outcomes.* Board members have always been haunted by financial worries. "Is spending being done appropriately? Will there be money to meet our obligations?"

It's tempting to open up the books and seek answers. But that's not your job. Remember, you monitor results. Instead of trying to monitor every single purchase the Executive Director makes, pay attention to big-picture concerns by asking questions like these:

- Are we on target with our planned expenses and revenues?
- Are we financially solvent?
- Will we have income to meet future expenses?

Know the financial figures you need to see

1. *A basic financial statement.* This should summarize revenues and expenses in a way that provides a good idea of the Commission's financial standing.

2. *Bottom-line figures.* Rather than line-by-line explanations, ask the Executive Director to highlight bottom-line figures in the basic financial statement. Concentrate on total expenditures and revenues.

3. *Historical figures for comparison.* This will put the numbers into context for you. You'll want to review this month's figures and compare them to last month's, as well as the numbers from the same month last year. If the numbers are very different from what the board expects, start asking questions.

Strategic Planning & Your Legacy

The current condition of the Commission depends on how well its previous boards have planned. And the future depends on how well your board plans.

To plan for the Commission's future, every Board member should ask three planning questions:

- What kind of future are we going to give the Commission?
- How can we plan for a healthy future?
- How can we anticipate problems before they happen?

A plan tells the Executive Director what areas to focus Commission actions on. To start the planning process, start with these four steps:

1. **Review the Commission's history.** The plan must be consistent with its mission and respect its past actions.
2. **Do a survey to find the Commission's strengths and weaknesses.** In what areas are the Commission doing well? Not so well? Consider issues such as mission, staffing, facilities, programs, public image, and funding.
3. **Assess external conditions and obstacles to success/growth.** Examine current demographics, social or cultural trends, new legislation, new leadership at any level, economic trends, funding patterns, and new developments concerning the Deaf and the Hard of Hearing.
4. **Solicit community input.** Prioritize Commission business through learning what the people want. Give all stakeholders the opportunity to weigh in their opinions as you chart the Commission's strategic direction.

Leaving a legacy

When you join the Board, you are in a position to make a mark on the Deaf and Hard of Hearing community.

Your aim should be to leave the Board in a better position than it was when you started. That is your measure as a Board member... and the Commission and the public should be the better for your time on the Board.

Executive Director Position Description

- 1. Fulfills Statutory Responsibilities.** Acts as the chief executive officer of the Commission in carrying out its statutory responsibilities as the statewide coordinating agency in advocating, strengthening, and implementing state policies affecting Deaf and Hard of Hearing individuals, and their relationship to entities in all sectors.
- 2. Performs Strategic and Vision Planning.** Carries out the appropriate directives of the Commission. Designs, develops, implements and monitors Commission projects and programs. Develops effective monitoring and evaluation procedures for new and ongoing programs. Directs strategic plans; conducts special studies; evaluates agency programs, resource management, and budget control.
- 3. Represents the Commission in Public.** Represents the Commission when speaking to public and professional groups about the goals and activities of the Commission as well as issues related to deafness and hearing loss. Represents the Commission at legislative hearings. Meets with personnel from the Office of the Attorney General. Responds to inquires from the press, Legislature, Governor's Office, and members of the public.
- 4. Oversees Finances.** Prepares and controls the Commission's annual budget; prepares funding proposals; prepares financial statements and submits financial reports to the Board. Works closely with the business manager in the preparation and control of the Commission's annual budget. Has signature authority for all financial documents.
- 5. Produces Reports.** Produces annual reports and proposals to the Governor and Legislature on programs and progress; attends legislative sessions and speaks on behalf of the Commission and makes recommendations on funding and program concerns. Prepares for and attends Commission business/town hall meetings. Directs staff support and coordinates necessary follow-up procedures and documentations. Reviews complaints from the community and directs referrals to the appropriate agency.
- 6. Provides the Community with Resources.** Establishes and maintains a registry of people in the state who are deaf. Encourages and assists with research into causes and prevention of hearing loss. Approves outreach efforts. Acts as a consultant to City, County, and State agencies on deafness and hearing loss. Acts as an expert witness on matters involving the Deaf and Hard of Hearing.
- 7. Determines Personnel.** Supervises, hires, trains, and evaluates staff and assigns job tasks. Determines and provides appropriate educational opportunities for the staff.

Performance Management/Evaluation

The Executive Director position is an exempt position and is evaluated by the Board every January (see page 24 for evaluation procedures).

Qualifications, Knowledge and Skills

- Has a Masters degree in deaf education, or counseling, or business administration and 5 years of experience as an administrator of programs or services directly for Deaf or Hard of Hearing individuals
- Possesses knowledge of rules, regulations, policies and procedures that pertain to the Commission and the constituents it serves, and of the Arizona Revised Statutes governing the Commission and the principles and practices of public administration
- Possesses knowledge of Deaf Culture and all methods of communications by people who are Deaf and Hard of Hearing, sign language, laws affecting persons who are deaf, and about other agencies/services for Deaf and Hard of Hearing issues
- Possesses strong writing, public relations, and public speaking skills
- Has knowledge of grantwriting for development of programs and projects
- Has knowledge of computers and software
- Is skilled in use of manual communication, i.e., American Sign Language

Why Work with the Executive Director?

The Executive Director is a vital team member of the Board and should be treated accordingly.

This means the Executive Director should participate in all Board discussions and activities. The Executive Director, however, is a non-voting member.

That's why a Board should never meet without the Executive Director. These meetings, called closed sessions, destroy any sense of teamwork and violate the Open Meeting Law.

Closed sessions serve no purpose as they can:

- **Destroy trust.**
- **Don't allow administrators to explain their actions.**
- **Lead to poor decision-making.**

Expectations from Both Sides

What should the Executive Director expect of Board members?

- Open and Honest Communication
- Provide counsel, advice, expertise, and insight into the local community
- Delegate responsibility for the implementation of policies to the Executive Director
- Refrain from managing administrative functions
- Understand Commission staff responsibilities
- Respect Commission's staff hierarchy
- Support the Executive Director
- Evaluate the Executive Director's performance annually
- Initiate strategic planning for the Commission's future

What should the Board members expect of the Executive Director?

- Open and honest communication
- Act as the Commission's professional advisor
- Interpret needs of the programs
- Recommend appropriate policies for Board consideration
- Implement Board policies
- Develop a budget and keep the Board informed on finances
- Recruit competent personnel, and develop and supervise them
- Be a visible presence in the community
- Provide the Board with professional judgment on strategic planning

Who is Responsible for What?

Area	Board Role	Executive Director Role
Long-term goals (longer than a year)	Approves	Recommends and provides input
Short-term goals (less than a year)	Monitors	Establishes and implements
Day-to-day operations	No role	Makes all decisions
Budget	Approves & Monitors	Develops and implements
Hiring of staff	No role	Approves all hiring
Staff assignments	No role	Establishes
Firing of staff	No role	Makes final termination decisions
Staff grievances	No role	Grievances should stop with administrator
Personnel policies	No role	Administers
Staff salaries	No role	Makes determinations
Staff evaluations	Evaluates only Executive Director	Evaluates staff

Evaluating the Executive Director

Make it an annual event! Evaluate the Executive Director every January!

There are many important reasons why the board should evaluate the Executive Director annually: It is in the best interests of the Commission.

The Executive Director's annual evaluation is one time during the year when the Board can sit down and objectively assess how the Commission is performing. By evaluating the performance of the Executive Director and how the Commission is managed, the board assures itself about the Commission's ability to deliver its mission.

An annual review of your Executive Director 's performance is a chance to look at performance and measure effectiveness.

A Board should appraise its Executive Director's performance on bottom-line indicators such as these:

- The quality of the information and recommendations the administrator provides the board
- The financial health of the Commission
- Community support for the Commission
- Progress toward the Commission's strategic goals
- The Executive Director's success in achieving the goals set out in the previous evaluation
- How well the Executive Director fulfills the position's job responsibilities

Two Rules for Evaluating the Executive Director

1. **Do it!** Perform this great service to the group you represent.

2. **Don't ask Commission staff to evaluate the Executive Director for the board.** Staff generally do not have the qualifications, and often use the opportunity to "vent" their frustrations, which often have nothing to do with the Executive Director's job performance.

Board Meeting Procedures

1. The Board shall, in accordance with state open meeting laws, conduct no less than four (4) Business Meetings per fiscal year, three (3) which will be conducted in the community of residence of the majority of the Board membership, and one (1) which will be conducted in the community of residence of the minority membership. Videoconferencing is recognized as a viable option.
 - A. Business Meetings will be held in January, July, May and November.
2. The Board shall conduct a minimum of one (1) town hall meeting per fiscal year. The purpose of the town hall meetings is to allow the public to address the Commission.
 - A. Town hall meetings may begin with an abbreviated Business Meeting to allow the Board to address matters requiring their immediate action.
 - B. Town hall meetings will, upon completion of the abbreviated Business Meeting, allow for comments from the public, in accordance with generally accepted public hearing protocol. All persons wishing to address the Commission may do so in writing or by a personal presentation at the time. The Chair of the Board shall determine time restraints on individual presentations, granting a minimum of three (3) minutes to each person.
3. All meetings, except Executive Sessions, are open to the public. Commission staff will be responsible for identifying meeting sites and informing members and the public in accordance with state open meeting laws.

Attendance

1. Board members will confirm with the designated administrative assistant with the Commission at least five (5) business days prior to the next Board meeting of their intention to attend or not.
2. Board members are expected to attend all regular Board sessions and town hall meetings. Additional meetings will be scheduled if required by Commission Business.
3. Board members who has accumulated three (3) unexcused absences from scheduled meetings of the full Board within a fiscal year or seven (7) unexcused absences during their three-year term will be asked to submit in writing their resignation from the Board to the Governor.
4. Absences are determined to be excused or unexcused at the discretion of the Chair.

Elections

1. Elections shall be for only a two-year term.
2. Elections shall take place in the month of November.
3. Elections for the positions of Chair shall occur on odd years while elections for the Vice Chair shall occur on even years.
4. A three-member nominating committee shall be established by the Chair in a meeting prior to the November election. The nominating committee shall consist of one (1) member representing Deaf consumers, one (1) member representing Hard of Hearing consumer, and one (1) member representing any of the remaining consumer groups.
5. Members are required to have served on the Board for at least a year to be eligible for election to either the Chair or Vice Chair positions.
6. Upon an unscheduled vacancy of the Chair, the Vice Chair shall assume the position of the Chair for the remainder of the term.
7. In the event that there is a vacancy in the Vice Chair position, there shall be an immediate election to fill the position for the remainder of the term.
8. Officers shall take their elected seat in the following January.

Running a Board Meeting

A short, productive meeting

Sound preparation is the most important thing a board member can do to make meetings more effective. Two weeks before the meeting, you will receive an agenda packet. Read it and all related materials carefully. If there is something you don't understand, contact the Executive Director before the board meeting for clarification.

Board meetings run according to the Open Meeting Law

The Open Meeting Law requires 24 hours' advance notice of agenda.

The board's chairperson and executive director will put together a meeting agenda in advance of the meeting date. The agenda gives the board a clear plan of business for its meeting. You should receive the agenda in your pre-meeting packet.

Asking that an item be placed on the meeting agenda at the last minute gives no one—your board colleagues or the Executive Director—time to prepare.

For the same reason, the category "Other Business" does not belong on a meeting agenda. It's not good decision-making to bring up important issues at the last minute.

Send your agenda items and amendments to the Chair at least three (3) weeks prior to the Board meeting.

Parliamentary Procedures at a Glance

To do this:	You Say this:	May You Interrupt Speaker?	Must You be Seconded?	Is the Motion Debatable?	Is the Motion Amendable?	What Vote is Required?
Recess the meeting	"I move that we recess until..."	No	Yes	No	Yes	Majority
Complain about noise, room temperature, etc.	"Point of privilege."	No	Yes	No ¹	No	No vote required ²
Suspend further consideration of something	"I move we table it."	No	Yes	No	No	Majority
End debate	"I call to the question."	No	Yes	Yes	Yes	2/3
Postpone consideration of something	"I move we postpone this matter until."	No	Yes	Yes	Yes	2/3
Have something studied further	"I move we refer this matter to a committee."	No	Yes	Yes	Yes	Majority, vote by speaker required
Amend a motion	"I move that this motion be amended by..."	No	Yes	Yes	Yes	Majority, vote by speaker required
Introduce business (a primary motion)	"I move that..."	No	Yes	Yes	Yes	Majority
Adjourn the meeting (before all business is complete) ³	"I move that we adjourn."	No	Yes	No	Yes	Majority

¹ In this case, any resulting motion is debatable.

² Chair decides.

³ These motions or points are listed in established order of precedence. When anyone of them is pending, you may not introduce another that's listed below it. But you may introduce another that's listed above it.

Parliamentary Procedures (continued)

To do this:⁴	You Say this:	May You interrupt Speaker?	Must You be Seconded?	Is the Motion Debatable?	Is the Motion Amendable?	What Vote is Required?
Object to procedure or to a personal affront	"Point of order."	Yes	No	No	No	No vote needed, Chair decides
Request information	"Point of information."	If urgent, Yes	No	No	No	No vote needed, Chair decides
Ask for a vote by actual count to verify a voice count	"I call for a division of the house."	No ⁵	No	No	No	No vote required unless someone objects ⁶
Object to considering some undiplomatic or improper matter	"I object to consideration of this question."	Yes	No	No	No	2/3
Take up a matter previously tabled	"I move we take from the table..."	No	Yes	No	No	Majority
Reconsider something already disposed of	"I move we now (or later) reconsider our action relative to..."	Yes	Yes	Yes if original motion is debatable	No	Majority
Consider something out of its scheduled order	"I move we suspend the rules and consider..."	No	Yes	No	No	2/3
Vote on a ruling by the chairperson	"I appeal the chairperson's decision."	Yes	Yes	Yes	No	Majority in the negative required to reverse chair's decision

⁴ The motions, point and proposals have no established order of precedence. Any of them may be introduced at any time except when the meeting is considering one of the top three matters listed in the chart (motion to adjourn, motion to recess, point of privilege).

⁵ But division must be called for before another motion is started.

⁶ Then majority vote is required.

Open Meeting Law

A.R.S. §38-401 – 38-431.09

Article 3.1	Public Meetings and Proceedings
<u>38-431</u>	Definitions (p. 30)
<u>38-431.01</u>	Meetings shall be open to the public (p. 31)
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<u>38-431.06</u>	Investigations; written investigative demands (p. 35)
<u>38-431.07</u>	Violations; enforcement; removal from office; in camera review (p. 36)
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38-431. Definitions

In this article, unless the context otherwise requires:

1. "Advisory committee" means a committee that is officially established, upon motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.
2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in section 38-431.03 and the auditor general as provided in section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.
4. "Meeting" means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.
5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.
6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and

instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

38-431.01. Meetings shall be open to the public

A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

B. All public bodies, except for subcommittees and advisory committees, shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to section 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.

D. The minutes or a recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article.

E. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder, camera or other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

F. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall distribute open meeting law materials prepared and approved by the attorney general to a person elected or appointed to a public body prior to the day that person takes office.

G. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the

public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

H. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

38-431.02. Notice of meetings

A. Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.

2. The public bodies of the counties, school districts and other special districts shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.

3. The public bodies of the cities and towns shall file a statement with the city clerk or mayor's office stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings.

B. If an executive session will be held, the notice shall be given to the members of the public body, and to the general public, stating the specific provision of law authorizing the executive session.

C. Except as provided in subsections D and E, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public.

D. In case of an actual emergency, a meeting, including an executive session, may be held upon such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I.

E. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A, and if, prior to recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.

F. A public body which intends to meet for a specified calendar period, on a regular day, date or event during such calendar period, and at a regular place and time, may post public notice of such meetings at the beginning of such period. Such notice shall specify the period for which notice is applicable.

G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours prior to the meeting, except in the case of an actual emergency under subsection D.

H. Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.

I. Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. Such agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee, or compromise the attorney-client privilege.

J. Notwithstanding subsections H and I, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, where the matter was not listed on the agenda provided that a statement setting forth the reasons necessitating such discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately prior to the executive session.

K. Notwithstanding subsection H, the chief administrator or presiding officer of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that:

1. The summary is listed on the agenda.
2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

38-431.03. Executive sessions

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.

4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.

5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

B. Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body which met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.

3. The auditor general on a request made in connection with an audit authorized as provided by law.

4. A county attorney or the attorney general when investigating alleged violations of this article.

C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

E. Except as provided in section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.

F. Disclosure of executive session information pursuant to this section or section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or section 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

38-431.04. Writ of mandamus

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

38-431.05. Meeting held in violation of article; business transacted null and void; ratification

A. All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

B. A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.
2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.
3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.
4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

38-431.06. Investigations; written investigative demands

A. On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.

B. In addition to other powers conferred by this article, in order to carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:

1. Issue written investigative demands to any person.
2. Administer an oath or affirmation to any person for testimony.
3. Examine under oath any person in connection with the investigation of the alleged violation of this article.
4. Examine by means of inspecting, studying or copying any account, book, computer, document, minutes, paper, recording or record.

5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

C. The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.
4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.

D. If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:

1. Adjudging the person in contempt of court.
2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.
3. Granting other relief the court deems proper.

38-431.07. Violations; enforcement; removal from office; in camera review

A. Any person affected by an alleged violation of this article, the attorney general or the county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by members of the public body, or to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as it deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be

deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information violated any provision of this article the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.

B. A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such obligation or indebtedness.

C. In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

38-431.08. Exceptions; limitation

A. This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.
2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to section 41-619.55.

B. A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person's signature.
3. Prevent and prohibit any articles from being taken into a hearing except recording devices, and if the person who attends a hearing is a member of the media, cameras.

4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

C. The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in section 38-431.07, as against the director only.

D. Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

38-431.09. Declaration of public policy

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe any provision of this article in favor of open and public meetings.

Public Representation of the Commission

All representations made to the Arizona State Legislature, city municipalities, and the U.S. Congress by Commission members must be either an approved position of the Commission or clearly identified as personal opinion.

- A. It is the responsibility of the Executive Director to inform the Board, in a timely manner and in writing, of legislation, rules or regulations promulgated by the State Legislature, the Governor, or any state agency or entity affecting issues of concern to Deaf and Hard of Hearing persons.
- B. The Executive Director and Board members, when asked by such political entities and elected officials, shall express only the position of the Commission on issues where the Board has, by a vote in open meeting, taken a position on these particular issues.
 - 1. All Commission members, when offering personal opinions, will mention whether the Commission has taken a formal position of the particular issue or not.
 - 2. All Commission staff, when offering personal opinions, will give the Commission's position on the same occasion.
 - 3. It shall be the responsibility of the Executive Director to provide the Board with copies of personal opinions written by Commission members and delivered to any officials or appointed staff.
- C. As a State Agency, this policy does not prohibit the Executive Director and Commission staff from providing information, data, and other resource materials to members of the public and governmental offices.
- D. The Executive Director will issue to Board members any and all printed information regarding newly introduced bills and provide copies of the bills before the State Legislature and other governmental bodies, including the U.S. Congress, that address issues of concern in the Deaf and Hard of Hearing community immediately.

Travel Reimbursement

In accordance with A.R.S. §36-1941 E, "Members of the Commission shall receive no compensation but shall be reimbursed for expenses pursuant to Title 38, Chapter 4, Article 2."

The following policy was made effective by the Board on January 30, 1991, and shall be administered by the Executive Director.

1. Board members shall be reimbursed in accordance with current Department of Administration rates for transportation, meals, and lodging for:
 - A. Business and town hall meetings called by the Chair of the Board
 - B. Special meetings called by the Chair
 - C. Subcommittee meetings held pursuant to current Arizona Open Meeting Laws
2. Board Members requesting reimbursement for travel, lodging, and meals to attend meetings other than those listed above shall request prior authorization for such reimbursement from the Executive Director.
3. The Executive Director, in compliance with A.R.S. §38-4, shall be the final approving authority to determine authorization for travel submitted by Board Members who wish to attend meetings other than those specifically called by the Chair or coordinated by the Commission staff.
4. The Executive Director shall reference A.R.S. §38-4 and, in order to determine feasibility for reimbursement, require that all three of the following are met:
 - A. The purpose of attending the meeting is to represent the Commission
 - B. The meeting addresses issues directly related to Commission business
 - C. There are sufficient agency funds available

Please refer to the current state travel reimbursement form. If a copy is not provided here, you can request one from the Business Manager.

Writing a Position Paper

The criteria for any position paper being brought to the attention of the Board is:

- The name of the author(s)/organization(s) taking the position must be disclosed
- Contact information for the author(s)/organization(s) taking the position must be provided

Position papers containing hearsay or unsubstantiated claims will be rejected.

The following outline can be used to guide small committees or individuals through writing up recommendations to present to the Board.

I. **Statement of Problem**

This should be a concise description of the problem, i.e. "City Hall has no loop system "or" County Attorney's Office refuses to pay for interpreters".

II. **Background**

This section should describe specifically who, what, and where the problem is and its negative impact. Names, telephone numbers, and any written correspondence relating to the problem should be mentioned and attached.

III. **Research and information**

IV. **Possible Solutions**

This section should explain, in brief sentences, the most effective solution(s) or means to address the problem.

V. **Statement of Position and Recommendations**

NOTE: To be included on the agenda, the position paper must be submitted to the Executive Director three (3) weeks prior to the Board meeting.

Risk Management

As a Board member, your obligation is to act in good faith and in the best interests of the organization. You should know whether your Commission's policies are up-to-date and in compliance with non-discrimination and employment laws.

Here are a few rules for managing your liability as a Board member* :

Attend meetings and pay attention. Be an active participant. Liability comes from negligence or not doing the job as it should be done. That's why your meeting attendance is crucial. You can be held responsible for Board actions taken even in your absence.

- Keep minutes for all Board meetings.
- Review meeting minutes for accuracy and register—in writing—any disagreements
- Keep minutes for all committee meetings as well
- Pay attention to financial reports
- Be sure that you have accurate and correct information, and understand issues before making decisions

Know and follow your policies and governing documents. The Board should have two sets of policies—one governing the Board and its operations and the other providing direction for the Commission. Failure to abide by Board policy or applying it inconsistently are common sources of litigation.

- Review Board policies each year and update them to reflect new laws
- Be sure that meetings are announced, that meetings are held regularly, and that Board members are appointed properly

Know the laws that apply to the Commission. Many state and federal equal employment regulations affect Commission personnel policies, especially those that relate to staff hiring and firing, family and medical leave, and accommodations for the disabled. State and federal laws also limit lobbying and political activity by the Commission. Take the time to review and understand these limitations.

Review the executive director's performance each year. That's how you can help determine how well the organization is meeting its mission.

Avoid conflicts of interest. Board members who benefit financially from a Board decision should be able to prove that the decision was made in good faith.

Request counsel when necessary. Seek an attorney's opinion for questions of law. Use auditors, accountants and other professionals to make sure your Board is making good decisions. Ask the Commission's attorney to discuss Board liability with the Board.

* A.R.S. §41-621 offers the Board full coverage for liability and casualty occurrences, so long as the Board performs within the course and scope of their duties.

Article 3.1	Risk Management
41-621	Purchase of Insurance; coverage; limitations; exclusions; definitions (p. 43)
41-621.01	Contractors or subcontractors; pooling of property, liability and workers' compensation coverage; exemptions; board of trustees; contract; termination; audit; insolvency (p. 48)

CHAPTER 3.1 - RISK MANAGEMENT

Article 1 - Insurance; Uninsured Losses

41-621. Purchase of insurance; coverage; limitations; exclusions; definitions

A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of the state as provided in subsection F of this section, on the following:

1. All state owned buildings, including those of the universities, excluding buildings of community colleges, whether financed in whole or in part by state monies or buildings in which the state has an insurable interest as determined by the department of administration.
2. Contents in any buildings owned, leased or rented, in whole or in part, by or to the state, excluding buildings of community colleges, and reported to the department of administration.
3. **The state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as may be necessary to accomplish the functions or business of the state and its departments, agencies, boards and commissions against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization except as prescribed by this chapter.**
4. All personal property reported to the department of administration, including vehicles and aircraft owned by the state and its departments, agencies, boards and commissions and all non-owned personal property which is under the clear responsibility of this state because of written leases or other written agreements.
5. **The state and its departments, agencies, boards and commissions against casualty, use and occupancy and liability losses of every nature except as prescribed by this chapter.**
6. Workers' compensation and employers' liability insurance.
7. Design and construction of buildings, roads, environmental remediations and other construction projects.
8. **Other exposures to loss where insurance may be required to protect this state and its departments, agencies, boards and commissions and all officers, agents and employees acting in the course and scope of employment or authorization except as prescribed by this chapter.**

B. To the extent it is determined necessary and in the best interests of the state, the department of administration shall obtain insurance or provide for state self-insurance against property damage caused by clients and liability coverage resulting from, the direct or incidental care of clients participating in programs of the state and its departments, agencies, boards or commissions relating to custodial care. The insurable programs shall include foster care, programs for the developmentally disabled, an independent living program pursuant to section 8-521 and respite-sitter service programs. The department shall obtain insurance or provide for state self-insurance pursuant to this subsection to protect the clients participating in these programs and individual providers of these program services on behalf of the state and its departments, agencies, boards or commissions. The insurance provided under this subsection does not include medical or workers' compensation coverage for providers. The department may include in its annual budget request pursuant to section 41-622, subsection D a charge for the insurance or self-insurance provided in this subsection. To assist in carrying out the provisions of this subsection, the department shall establish a seven member advisory board in accordance with the following provisions:

1. The board shall consist of three members appointed by the director of the department of administration, at least one of whom shall be a foster parent, two members appointed by the director of the department of economic security, one member appointed by the director of the state department of corrections, and one member appointed by the administrative director of the courts.
2. The board shall elect a chairman from among its members.
3. The board shall hold at least two meetings a year or shall meet at the call of the chairman.
4. Board members shall serve for three year terms.
5. Board members are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.
6. The board shall provide advice to the department regarding coverage and administration of the provisions of this subsection and shall assist the department in coordinating its activities pursuant to this subsection with state departments, agencies, boards and commissions.

C. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of the state as provided in subsection F of this section for the professional liability of individual physicians and psychiatrists who provide services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible of not more than ten thousand dollars per loss that arises out of a professional liability claim pursuant to this subsection. Deductible amounts established by the director shall be subject to annual review by the joint legislative budget committee.

D. The department of administration may obtain property, liability, disability or workers' compensation insurance, self-insure or develop risk retention pools to provide for payment of property loss or casualty claims or disability insurance claims against contractors of this state with the approval of the joint legislative budget committee. With respect to insurance, self-

insurance or risk retention pools for contractors licensed and contracted to do work for this state, the coverage afforded applies with respect to the conduct of the business entity of that contractor. The pool is available to all contractors regardless of the amount that the state contracted work bears in relation to the amount of nonstate contracted work. The contractor shall be terminated from the pool if the contractor ceases to be a state contractor.

E. The department of administration may determine, in the best interests of the state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims prescribed by subsection A of this section. If the department of administration provides state self-insurance, such coverage shall be excess over any other valid and collectible insurance. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible of not more than ten thousand dollars per loss that arises out of a property, liability or workers' compensation loss pursuant to this subsection. Deductible amounts established by the director shall be subject to annual review by the joint legislative budget committee.

F. In carrying out the provisions of this chapter, the department of administration shall establish and provide the state with some or all of the necessary risk management services, or shall contract for risk management services pursuant to chapter 23 of this title, as the director of the department of administration deems necessary in the best interest of the state, and may, in addition to other specifications of such coverage as deemed necessary, determine self-insurance to be established. The provisions of chapter 23 of this title shall not apply to the department of administration's procurement of insurance to cover losses arising out of state property or liability claims prescribed in subsections A and D of this section or excess loss insurance for the state's workers' compensation liability for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of the state. In purchasing insurance to cover losses arising out of state property or liability claims prescribed by subsection A of this section, the department of administration is not subject to the provisions of title 20, chapter 2, article 5.

G. No successful bidder for risk management services pursuant to this section shall be entitled to receive directly or indirectly any sales commission, contingent commission, excess profit commission, or other commissions, or anything of value, as payment for the risk management services except those amounts received directly from this state as payment for the risk management services.

H. The department of administration shall pay for purchased risk management services, premiums for insurance on state property and state liability and workers' compensation pursuant to the provisions of this chapter.

I. A state officer, agent or employee acting in good faith, without wanton disregard of his statutory duties and under the authority of an enactment that is subsequently declared to be unconstitutional, invalid or inapplicable is not personally liable for an injury or damage caused thereby except to the extent that he would have been personally liable had the enactment been constitutional, valid and applicable.

J. A state officer, agent or employee, except as otherwise provided by statute, is not personally liable for an injury or damage resulting from his act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in him if the exercise of the discretion was done in good faith without wanton disregard of his statutory duties.

K. The state and its departments, agencies, boards and commissions are immune from liability for losses arising out of a judgment for willful and wanton conduct resulting in punitive or exemplary damages.

L. The following exclusions shall apply to subsections A, B and E of this section:

1. Losses against this state and its departments, agencies, boards and commissions that arise out of and are directly attributable to an act or omission determined by a court to be a felony by a person who is provided coverage pursuant to this article unless the state knew of the person's propensity for that action, except those acts arising out of the operation or use of a motor vehicle.

2. Losses arising out of contractual breaches.

M. If self-insurance coverage is determined to exist, the attorney general, with funds provided by the department of administration, shall provide for the defense, either through his office or by appointment of outside legal counsel, of the state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as are insured by the department of administration for or on account of their acts or omissions covered pursuant to this chapter. All state departments, agencies, boards and commissions, all officers, agents and employees thereof and such others as are insured by the department of administration shall cooperate fully with the attorney general and department of administration in the defense of claims arising pursuant to this chapter.

N. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of twenty-five thousand dollars or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim over the amount of twenty-five thousand dollars up to fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration and the attorney general. Any claim over the amount of fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted. The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

O. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:

1. Impose any liability on this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state unless such liability otherwise exists.

2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.

P. The department of administration shall pay, on behalf of any state officer, agent or employee, any damages, excluding punitive damages, for which the officer, agent or employee becomes legally responsible if the acts or omissions resulting in liability were within the officer's, agent's or employee's course and scope of employment. The department of administration may pay for all damages however designated which the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.

Q. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit the provisions of this chapter.

R. For purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:

1. The acts or omissions that the state officer, agent or employee is employed or authorized to perform.
2. The acts or omissions of the state officer, agent or employee occur substantially within the authorized time and space limit.
3. The acts or omissions are activated at least in part by a purpose to serve this state or its departments, agencies, boards or commissions.

S. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be purchased to cover both general contractors and subcontractors doing work on a specific contracted work site. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over fifty million dollars.
2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance, but in no event for less than three years.
3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.
4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.

5. The program does not include surety insurance.
6. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed one million dollars.

T. For purposes of subsection S of this section:

1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted work site for purposes of general liability, property damage and workers' compensation.
2. "Specific contracted work site" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision of water and power.

41-621.01. Contractors or subcontractors; pooling of property, liability and workers' compensation coverage; exemptions; board of trustees; contract; termination; audit; insolvency

A. Pursuant to section 41-621, subsection D and section 41-622.01 two or more contractors or subcontractors licensed to do work for this state or any political subdivision of this state may with the approval of the department of administration enter into contracts or agreements pursuant to this section for the joint purchase of insurance, to pool retention of their risks for property and liability losses and to provide for the payment of the property loss or claim of liability made against any member of the pool on a cooperative or contract basis with one another or may jointly form a Commission corporation or enter into a trust agreement to carry out the provisions of this section in their behalf directly or by contract with a private party, if the department of administration has determined to sanction such a pool. Two or more contractors may enter into contracts or agreements pursuant to this section to establish a separate workers' compensation pool to provide for the payment of workers' compensation claims pursuant to title 23, chapter 6 on a cooperative or contract basis with one another or may jointly form a Commission corporation or enter into a trust agreement to carry out the provisions of this section in their behalf directly or by contract with a private party. A workers' compensation pool established pursuant to this subsection may only provide coverage for workers' compensation, employers' liability and occupational disease claims. A workers' compensation pool is a separate entity which is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2 and is subject to title 23, chapter 6 and rules adopted pursuant to that chapter in addition to the requirements of this section.

B. Section 10-11301 does not apply to Commission corporations formed pursuant to this section.

C. Chapter 23 of this title does not apply to the procurement of insurance or to the procurement of the services provided for in subsection G, paragraph 8 of this section by any pool established pursuant to this section.

D. Title 43 does not apply to any pool established pursuant to this section. Any pool established pursuant to this section is exempt from taxation under title 43.

E. Each pool shall be operated by a board of trustees consisting of at least five members, the majority of whom shall be elected officials or employees of the state. The board of trustees of each group shall do all of the following:

1. Establish terms and conditions of coverage within the pool including exclusions of coverage.
2. Ensure that all claims are paid promptly.
3. Take all necessary precautions to safeguard the assets of the group.
4. Maintain minutes of its meetings.
5. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
6. Notify the director of the department of insurance of the existence of the pool and file a copy of the agreement with him and with the attorney general.
7. If the pool is a workers' compensation pool, file a copy of the agreement with the director of the industrial commission.

F. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium except pursuant to payment plans established by the board.
2. Borrow any monies from the group or in the name of the group except in the ordinary course of business.

G. A contract or agreement made pursuant to subsection A of this section shall contain the following:

1. A provision for a system or program of loss control.
2. A provision for termination of membership including either:
 - (a) Cancellation of individual members of the pool by the pool.
 - (b) Election by an individual member of the pool to terminate its participation.
3. A provision requiring the pool to pay all claims for which each member incurs liability during each member's period of membership.
4. A provision stating that each member is not relieved of its liability incurred during the member's period of membership except through the payment of losses by the pool or by the member.
5. A provision for the maintenance of claims reserves equal to known incurred losses and an estimate of incurred but not reported claims.
6. A provision for a final accounting and settlement of the obligations of or refunds to a terminating member to occur when all incurred claims are concluded, settled or paid.

7. A provision that the pool may establish offices where necessary in this state and employ necessary staff to carry out the purposes of the pool.

8. A provision that the pool may retain legal counsel, actuaries, auditors, engineers, private consultants and advisors.

9. A provision that the pool may make and alter bylaws and rules pertaining to the exercise of its purpose and powers.

10. A provision that the pool may purchase, lease or rent real and personal property it deems necessary.

11. A provision that the pool shall enter into a financial services agreement with banks and that it may issue checks in its own name.

H. A pool or a terminating member shall provide at least ninety days' written notice of the termination or cancellation. A workers' compensation pool shall notify the industrial commission of the termination or cancellation of a member thirty days before the termination or cancellation of the member.

I. The pool shall be audited annually at the expense of the pool by a certified public accountant, with a copy of the report submitted to the governing body or chief executive officer of each member of the pool and to the director of the department of insurance. The board of trustees of the pool shall obtain an appropriate actuarial evaluation of the claim reserves of the pool including an estimate of the incurred but not reported claims. The department of insurance shall examine each contractor pool once every three years. The director of the department of insurance may examine a contractor pool sooner than three years from the preceding examination if the director has reason to believe that the pool is insolvent. The costs of any examination shall be paid by the pool subject to the examination.

J. If, as a result of the annual audit or an examination by the director of the department of insurance, it appears that the assets of the pool are insufficient to enable the pool to discharge its legal liabilities and other obligations, the director of the department of insurance shall notify the administrator and the board of trustees of the pool of the deficiency and provide the director's list of recommendations to abate the deficiency, including a recommendation not to add any new members until the deficiency is abated. If the pool fails to comply with the recommendations within sixty days after the date of the notice, the director shall notify the chief executive officer or the governing bodies, if any, of the members of the pool, the governor, the president of the senate and the speaker of the house of representatives that the pool has failed to comply with the recommendations of the director.

K. If a pool is determined to be insolvent or is otherwise found to be unable to discharge its legal liabilities and other obligations, each agreement or contract shall provide that the members of the pool shall be assessed on a pro rata basis as calculated by the amount of each member's annual contribution in order to satisfy the amount of deficiency. The assessment shall not exceed the amount of each member's annual contribution to the pool.

L. If a workers' compensation pool fails to comply with title 23, chapter 6 or rules adopted pursuant to that chapter, the director of the industrial commission shall immediately notify the director of the department of administration and the director of the department of insurance.



The Commission at a Glance

The Arizona Commission for the Deaf and the Hard of Hearing was established in 1977 as a state agency to address the needs and concerns of Arizona's Deaf and Hard of Hearing population.

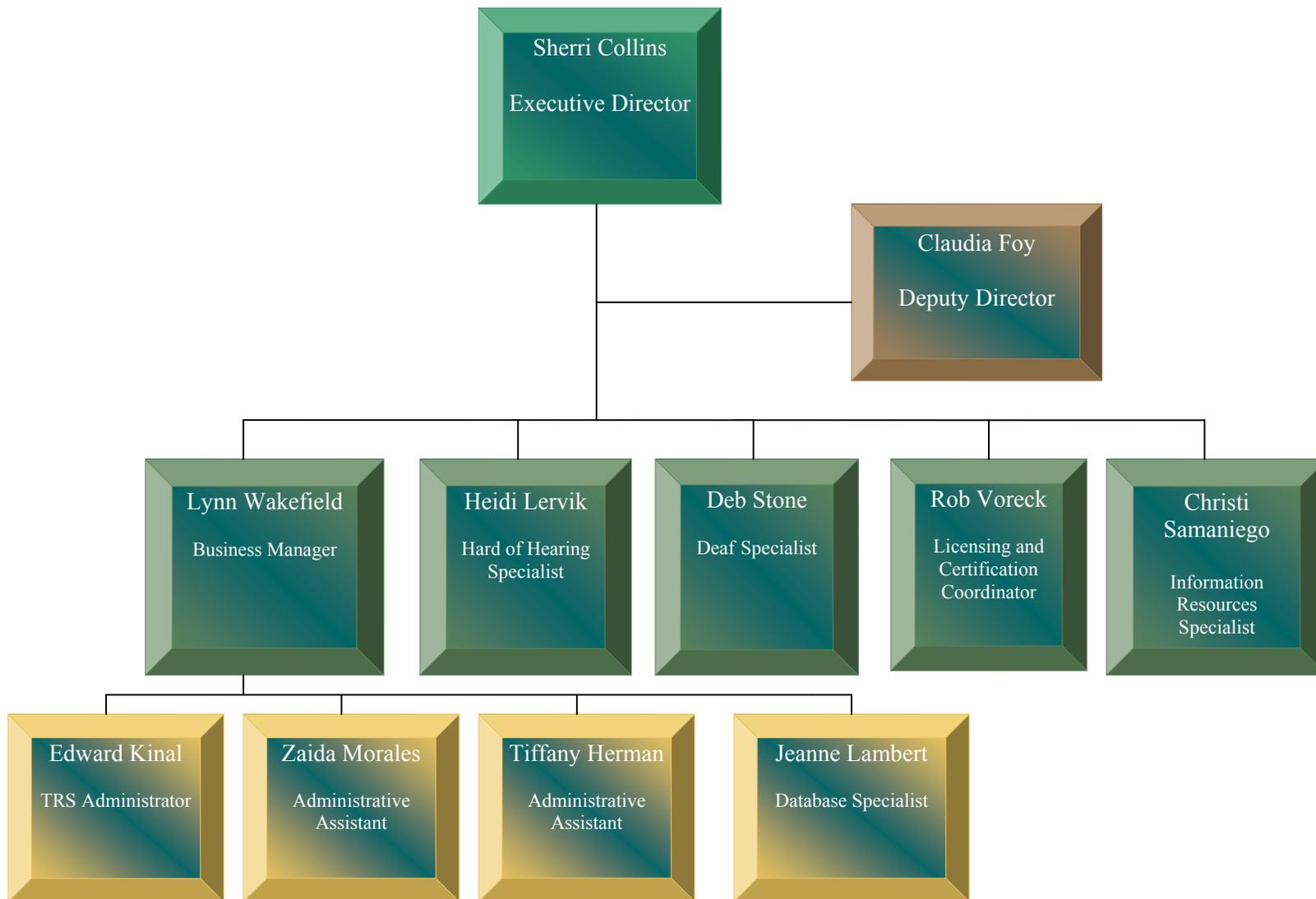
The Commission is governed by a 14-member board of directors appointed by the governor for a term of three years, with all programs and daily operations administered by an executive director and a staff of 11.

Daily operations include information and referral, telecommunications relay service administration, no-cost telecommunications equipment distribution, and interpreting certification and licensing.

The Commission publishes a quarterly newsletter, produces a weekly 30-minute television program, and maintains a website and an email list.

Throughout the state, the Commission promotes consumer education by conducting seminars and workshops and exhibiting an information booth at major events.

The Commission has an annual budget of approximately \$5.7 million, coming from the Telecommunication Fund for the Deaf. The Commission has been eligible in the past several years for monies from a special fund known as the 10% Governor's Discretionary Fund, which set aside approximately \$40,000 for FY2002.



Commission Duties

The Commission shall act as a bureau of information on the Deaf and the Hard of Hearing. In their capacity, the Commission staff shall:

1. Inform the Deaf and Hard of Hearing of the availability of programs and activities of the Commission and other services available at all levels of government.
2. Develop and foster a framework for consultation and cooperation with all state agencies and institutions represented on the Commission.
3. Study the issues concerning Deaf and Hard of Hearing people of all ages and periodically review the administration and operation of various programs for the Deaf and Hard of Hearing of all ages.
4. Administer the contract for the statewide distribution of telecommunications devices.
5. Administer the contract for the statewide 24-hour, 7-day telecommunications relay service.
6. Communicate all necessary information to the Board regarding new Commission appointees, staff activities, and community activities.
7. Submit an annual report to the Board for submission to the Governor and Legislature concerning its findings and recommendations.

Chronology

How the Commission got to where it is today:

1976

- Summer conference determines the need for a state advocacy organization

1977

- State Legislature establishes the Arizona Council for the Deaf

1978

- State Legislature funds the Arizona Council for the Deaf
- First staff is hired: An executive director and an administrative assistant
- “Sign Out,” a weekly 30-minute TV program begins
- Budget is \$55,000
- Office is located in Phoenix

1979

- News bulletin, known today as Clear Channels, starts distribution
- Statewide 24-hour emergency TTY service is implemented
- State law on service dogs expands to include the deaf and hard of hearing

1980

- Toll free number for the office is established

1981

- Third staff position is created: Typist

1982

- Inaugural publication of the state TTY directory

1983

- Begins having awareness booths at community events
- Public Service Announcements (PSAs) are developed for the first time

1984

- Assists in the establishment of IQAS (Interpreter Quality Assurance System)

1985

- Statewide TTY project & relay service are legislated
- State renames ACD the Arizona Council for the Hearing Impaired

1986

- Fourth staff position is created: TTY distribution project coordinator
- TTY project gets underway with three choices of equipment

1987

- Relay service begins

1988

- Supports legislation for newborn screening program
- AZRS handles an average of 21,000 calls per year

1989

- Two research analyst positions are created

1990

- Seventh staff position is created: TTY project assistant

1992

- ACHI moves next door to its present offices
- AZRS handles its three-millionth call

1996

- Eight staff positions, \$4.9 million budget

1998

- First deaf executive director
- Deaf specialist staff position is created

2000

- State renames ACHI the Arizona Commission for the Deaf and the Hard of Hearing
- Hard of Hearing specialist staff position is created

2001

- Interpreter certification and licensing coordinator position is created

2002

- Eleven staff positions, \$5.7 million budget
- AZRS handles 1.2 million calls a year
- AzTEDP carries 23 devices

Fiscal Year 2003 Strategic Plan

I. To Increase Public Awareness of Accessibility Issues.

Objective: Promote awareness of Assistive Technology beyond telecommunications devices.

Objective 2: Increase awareness and understanding of interpreter use.

II. To Increase Partnerships in Providing Training and Program Services.

Objective 1: Increase the number of public and private sector partnerships in providing training services.

Objective 2: Increase the number of direct services provided.

III. To Promote Training Opportunities for ASL Instructors in the State of Arizona.

Objective 1: Create state ASL teacher certification standards.

Objective 2: Provide workshops for ASL instructors.

Objective 3: Prepare ASL instructors to meet national level certification and standards.

IV. To Improve Interpreter Support Services.

Objective 1: Increase the number of hours of interpreting classes and workshops statewide

Objective 2: Provide interpreters with training opportunities in order to attain their certificate of competency.

V. To Ensure Contractual Compliance of AZRS.

Objective 1: Monitor performance of AZRS provider to ensure compliance of state contract.

Objective 2: Insure customer satisfaction among TRS users.

VI. To Transition AzTEDP to a Voucher System.

Objective 1: Establish a baseline for measurement (beginning 11/1/02).

Objective 2: Inform and educate community about voucher program.

VII. To Expand Direct Services for the Deaf and Hard of Hearing in Arizona.

Objective: Seek funding for underserved deaf and hard of hearing population.

VIII. To Improve Agency Publicity on Issues Related to Hearing Loss.

Objective: Inform the community of ACDHH activities and positions on hearing loss issues.

General ACDHH Agency Statutes

Article 36	Public Health and Safety
36-1941.	Definitions (p. 57)
36-1942.	Commission for the deaf and the hard of hearing (p. 57)
36-1943.	Executive director; duties (p. 58)
36-1944.	Duties (p. 58)

36-1941. Definitions

In this chapter, unless the context otherwise requires:

1. "Commission" means the commission for the deaf and the hard of hearing.
2. "Deaf" means those persons who cannot generally understand speech sounds with or without a hearing aid when in optimal listening conditions.
3. "Hard of hearing" means those persons who have a degree of hearing loss greater than 40dB PTA-2, but less than 85dB PTA-2, in the better ear.
4. "Interpreting" means translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or the translating of a consumer specialized vocabulary to English concepts.
5. "Necessary specialized vocabulary" includes American sign language, English based sign language, cued speech and oral interpreting.
6. "PTA-2" means the average of hearing levels at one thousand, two thousand and four thousand Hz.

36-1942. Commission for the deaf and the hard of hearing

A. The commission for the deaf and the hard of hearing is established consisting of the following members appointed by the governor:

1. One member selected from the department of economic security.
2. One member selected from the Arizona school for the deaf and the blind at Tucson or the Phoenix day school for the deaf.
3. One member who is a dispensing clinical audiologist licensed pursuant to title 36, chapter 17.
4. One member who is a hearing aid dispenser licensed pursuant to title 36, chapter 17.
5. Four members who are deaf persons.
6. One member selected from the Arizona register of interpreters for the deaf.
7. One member who is a parent of a deaf person.
8. Four members who are hard of hearing.

B. Commission members serve three years and may be reappointed once. The governor may remove a commission member for cause.

C. The commission shall meet at least four times a year at the call of the chairman, who shall be selected by the commission from among its membership.

D. Members of the commission are not eligible to receive compensation but are eligible to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

36-1943. Executive director; duties

A. The commission shall appoint an executive director who serves at the pleasure of the commission. The commission may appoint other employees as necessary and shall fix their compensation and prescribe their powers and duties. With the approval of the commission, the executive director may contract for professional, technical and clerical services necessary to carry out functions of the commission.

B. The executive director shall be a trained professional experienced in problems of the deaf and the hard of hearing and skilled in the use of manual communication, commonly referred to as sign language, and may be either a deaf person, a person who is hard of hearing or a person with normal hearing. The executive director shall assist the commission to implement its programs and activities and to implement this chapter. The executive director shall not be a commission member. The executive director is eligible to receive compensation set by the commission within the range determined pursuant to section 38-611.

36-1944. Duties

The commission shall act as a bureau of information to the deaf and the hard of hearing, state agencies and institutions providing services to the deaf and the hard of hearing, local agencies of government and other public or private community agencies and programs. In this capacity, the commission shall:

1. Inform the deaf and the hard of hearing of the availability of the programs and activities of the commission and other services available for the deaf and the hard of hearing at all levels of government.
2. Develop and foster a framework for consultation and cooperation with the rehabilitation services bureau of the department of economic security and with all institutions represented on the commission.
3. Study issues relating to the deaf and the hard of hearing, review the administration and operation of the various programs for the deaf and the hard of hearing in this state and make recommendations concerning these problems and programs to the several agencies and institutions represented on the commission as it deems necessary.
4. Submit an annual report to the governor and the legislature concerning its findings and recommendations.
5. Review the problems of the deaf and the hard of hearing as they relate to the need for effective and appropriate auxiliary aids in public places.

6. Review and compile information on the development of acoustical technology for the hard of hearing and advocate the use of this technology if it deems appropriate.

7. Make recommendations to state agencies, political subdivisions and institutions on how to meet the needs of the hard of hearing.

8. Make recommendations to the legislature regarding statutory changes needed to implement a statewide newborn child hearing loss screening program.

36-1945. Commission for the deaf and the hard of hearing fund; gifts and donations; annual report

A. The commission for the deaf and the hard of hearing fund is established consisting of fees, penalties and any legislative appropriations. The commission shall administer the fund. Monies in the fund are subject to legislative appropriation.

B. The commission may accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.

C. The commission shall submit an annual report to the governor on all monies accepted by the commission pursuant to subsection B, the names of the donors and the respective amounts contributed and the amount of all disbursements from the fund.

41-3010.06. Commission for the deaf and the hard of hearing; termination July 1, 2010

A. The commission for the deaf and the hard of hearing terminates on July 1, 2010.

B. Title 36, chapter 17.1 is repealed on January 1, 2011.

(2000)

ACDHH Interpreter Certification and Licensure

36-1946. Interpreters for the deaf and the hard of hearing; certification; licensure

The commission shall:

1. Adopt rules necessary to achieve the purposes of section 12-242.
2. By rule, classify interpreters for the deaf and the hard of hearing based on the level of interpreting skills acquired by that person.
3. By rule, establish standards and procedures for the qualification and licensure of each classification of interpreters.
4. Help establish partnerships with colleges and universities in this state to provide interpreter training and degree programs.
5. By rule, establish standards and procedures to certify sign language teachers to teach American sign language.
6. Beginning on September 1, 2007, license interpreters for the deaf and the hard of hearing pursuant to article 2 of this chapter.

Legal Interpreting

12-242. Interpreters for deaf persons; proceedings; definitions

(L82, ch 258, sec 2)

A. The court shall in any civil or criminal case or grand jury proceeding in which a deaf person is party to such action, either as a witness, complainant, defendant or attorney, appoint a qualified interpreter to interpret the proceedings to the deaf person, to interpret the deaf person's testimony or statements and to interpret preparations with the deaf person's attorney.

B. A department, board, commission, agency or licensing authority of this state or a political subdivision of this state shall in any proceeding before such department, board, commission, agency or licensing authority in which a deaf person is a principal party of interest or witness, appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person's testimony or statements.

C. If a person known or ascertained to be deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer, his superiors or the court shall procure a qualified interpreter in order to properly interpret any of the following:

1. Warnings of the person's constitutional privilege against self-incrimination as it relates to custodial interrogation.
2. Interrogation of the deaf person.
3. The deaf person's statements.

D. If a juvenile whose parent or parents are deaf is brought before a court for any reason, the court may appoint a qualified interpreter to interpret the proceedings and testimony for the deaf parent or parents and to interpret any statements or testimony the deaf parent or parents may be called upon to give to the court.

E. If a communication made by a deaf person through an interpreter is privileged, the privilege extends also to the interpreter.

F. If the only available interpreter does not possess adequate interpreting skills for the particular situation, the court or appointing authority may permit the deaf person to nominate another person to act as an intermediary interpreter between the deaf person and the appointed interpreter during proceedings.

G. A deaf person entitled to the services of an interpreter under this section may knowingly and intelligently waive these services. A deaf person who has waived an interpreter under this subsection may provide his own interpreter at his own expense, without regard to whether the interpreter is qualified under this section.

H. As used in this section:

1. "Deaf person" means a person whose hearing impairment is so significant that the individual is impaired in processing linguistic information through hearing.
2. "Qualified interpreter" means a person who has a certificate of competency authorized by the Arizona council for the deaf.

Interpreting Licensure

Article 36	Public Health and Safety
36-1971.	Licensure; acts and persons not affected (p.62)
36-1972.	Use of title; prohibited acts; violation; classification (p.63)
36-1973.	Qualifications for licensure (p.63)
36-1974.	Issuance and renewal of license; continuing education (p. 63)
36-1975.	Denial of licensure (p. 64)
36-1976.	Revocation or suspension of license (p. 64)
36-1977.	Right to examine and copy evidence (p. 64)
36-1978.	Injunctive relief; bond; service of process (p. 65)

36-1971. Licensure; acts and persons not affected

(Effective 10/1/07)

A. A person shall not practice as an interpreter for the deaf and the hard of hearing without a license issued pursuant to this article. The licensure requirements of this article also apply to interpreters who provide services for legal proceedings as prescribed in section 12-242.

B. The commission by rule shall prescribe education, examination and work history requirements for the following three categories of licenses:

1. Legal.
2. Generalist.
3. Provisional.

C. This article does not apply to:

1. An interpreter who works in this state for less than twenty days if that person registers with the commission to provide interpreting services in nonlegal situations.
2. An interpreter who provides interpreting services at religious activities.
3. An interpreter who provides interpreting services on an emergency basis if the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer.
4. An interpreter who works without compensation in nonlegal situations.
5. An interpreter who works in a school in this state pursuant to the individual education plan of a deaf or hard of hearing pupil. The qualifications of an interpreter working in a school in this state shall be determined by the individualized education program team. A school district shall inform a parent or guardian of a deaf or hard of hearing pupil of the parent or guardian's right to request a licensed interpreter.
6. Activities and services of an interpreter intern or student in training if both of the following are true:
 - (a) The interpreter is enrolled in a program of study in interpreting at an accredited institution of higher learning.

(b) The interpreter works under the supervision of a person licensed pursuant to this article as part of a supervised program of study and is identified to all consumers as an interpreter intern or student in training.

36-1972. Use of title; prohibited acts; violation; classification

(Effective 10/1/07)

A. A person who is not licensed pursuant to this article shall not:

1. Use any title, abbreviation, words, letters, signs or figures to indicate that the person is licensed pursuant to this chapter.
2. Practice as an interpreter for the deaf and the hard of hearing.
3. Use another person's license.

B. A person who violates this section is guilty of a class 2 misdemeanor.

36-1973. Qualifications for licensure

(Effective 10/1/07)

A. To receive a license to practice as an interpreter pursuant to this article a person shall submit an application and application fee as prescribed by the commission.

B. The applicant shall document to the commission's satisfaction that the applicant has successfully completed the education, examination and work history requirements for the specific category of license for which the licensee is applying.

36-1974. Issuance and renewal of license; continuing education

(Effective 10/1/07)

A. The executive director shall issue a license when the applicant has satisfied all of the requirements for licensure under this article.

B. A license issued pursuant to this article is subject to annual renewal on the licensee's birthday and terminates thirty days after that date unless it is renewed.

C. Each licensee shall renew the license not earlier than sixty days before and not later than thirty days after the license expires by submitting the renewal fee and a completed renewal form. A licensee who does not renew a license as required by this article must also pay a penalty fee as prescribed by the commission for late renewal. A person who practices interpreting in this state after that person's license has expired is in violation of this article.

D. A person whose license terminates shall submit an application and application fee as an original applicant for licensure.

E. The commission by rule may prescribe continuing education requirements as a condition of license renewal.

36-1975. Denial of licensure

(Effective 10/1/07)

The commission may refuse to issue or renew a license if the commission finds that any of the following is true:

1. The applicant committed fraud or misrepresentation in applying for a license in this state or another state.
2. The applicant was convicted of a felony offense or any other offense involving moral turpitude.
3. The applicant does not meet minimum qualifications as prescribed by this article.
4. The applicant was adjudicated insane or incompetent.
5. The applicant engaged in fraud, dishonesty or corruption on a certification examination in another state.

36-1976. Revocation or suspension of license

(Effective 10/1/07)

A. The commission may revoke or suspend a license issued under this article, place a licensee on probation, issue a reprimand or impose a civil penalty for any of the following reasons:

1. Unprofessional conduct.
2. A violation of this article.
3. Gross negligence or incompetence in the performance of duties.
4. Fraud, dishonesty or corruption.
5. Inability to perform the duties of an interpreter at a level of skill that is required by the commission.
6. Conviction of a felony offense or any other offense involving moral turpitude.
7. Failing to meet minimum qualifications as prescribed by this article.
8. Adjudication of insanity or incompetency.

B. Before it takes disciplinary action pursuant to this section, the commission shall give a licensee notice and an opportunity for a hearing pursuant to its rules.

C. The commission may issue subpoenas, examine witnesses and administer oaths pursuant to a hearing held under this section.

36-1977. Right to examine and copy evidence

(Effective 10/1/07)

In connection with a commission investigation conducted pursuant to section 36-1976, the commission at all reasonable times has the right to examine and copy any documents, reports, records or other physical evidence of any person being investigated or reports, records and any other documents maintained by and in the possession of any public or private agency if the

commission believes this information is related to unprofessional conduct or the mental or physical ability of a licensee to practice pursuant to this article.

36-1978. Injunctive relief; bond; service of process

(Effective 10/1/07)

A. In addition to all other available remedies, if the commission has any reason to believe that a person has violated this article or a commission rule, the commission through the attorney general or the county attorney of the county in which the violation is alleged to have occurred may apply to the superior court in that county for an injunction restraining that person from engaging in the violation.

B. The court shall issue a temporary restraining order, a preliminary injunction or a permanent injunction without requiring the commission to post a bond.

C. Service of process may be on the defendant in any county of this state where the defendant is found.

Telecommunication Fund

Article 36 Public Health and Safety

36-1947. Telecommunication devices for the deaf and the hearing and speech impaired; fund (p. 66)

Article 42 Taxation

42-5252. Levy of tax (p. 66)

42-5253. Remission and distribution of revenues (p. 67)

36-1947. Telecommunication devices for the deaf and the hearing and speech impaired; fund

A. The commission shall establish and administer a statewide program to purchase, repair and distribute telecommunication devices to residents of this state who are deaf or severely hearing or speech impaired and establish a dual party relay system making all phases of public telephone service available to persons who are deaf or severely hearing or speech impaired.

B. The commission may adopt administrative procedures, rules, criteria and forms to establish and administer the telecommunication device program under this section.

C. Telecommunication devices furnished by the commission under this section remain the property of this state. A person who receives a telecommunication device from the commission under this section is liable for the loss of or damage to the device. The commission may impose a civil penalty against the person in an amount equal to the cost of the device or the amount of damage done to the device. If a person objects to the imposition of a civil penalty, the commission shall conduct a hearing as prescribed in title 41, chapter 6, article 10. Monies collected by the commission under this subsection shall be deposited in the telecommunication fund for the deaf established by subsection D of this section.

D. The telecommunication fund for the deaf is established. The commission shall administer the fund. Monies in the fund shall be derived from the telecommunication services excise tax levied under section 42-5252, subsection A, paragraph 4. Interest accruing to the fund shall be deposited in the fund. Monies in the fund are exempt from section 35-190 relating to lapsing of appropriations. Subject to legislative appropriation, the commission shall use fund monies to purchase and repair telecommunication devices and administer the program established by this section.

E. Expenditures from the telecommunication fund for the deaf are subject to quarterly review by the joint legislative budget committee.

42-5252. Levy of tax

A. A tax is levied on every provider in an amount:

1. For the fiscal years beginning from and after June 30, 2001 and ending before July 1, 2006, thirty-seven cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.
2. For the fiscal years beginning from and after June 30, 2006 and ending before July 1, 2007, twenty-eight cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.
3. For the fiscal years beginning from and after June 30, 2007, twenty cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.
4. One and one-tenth per cent of the provider's gross proceeds of sales or gross income derived from the business of providing exchange access services for the purpose of financing telecommunication devices for the deaf and the severely hearing and speech impaired under the program established pursuant to section 36-1947.

B. Each provider shall state on the invoice to customers a separate line item stating the amount of tax levied pursuant to subsection A of this section.

C. Unless the context otherwise requires, article 1 of this chapter governs the administration of the tax imposed under this section.

42-5253. Remission and distribution of revenues

A. Each provider shall remit monthly to the department the amount of tax due pursuant to section 42-5252, accompanied by an information return as prescribed by the department.

B. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies remitted pursuant to this article as follows:

1. Section 42-5252, subsection A, paragraphs 1, 2 and 3 in the emergency telecommunication services revolving fund.
2. Section 42-5252, subsection A, paragraph 4 in the telecommunication fund for the deaf.

Service Dogs

11-1024. Dog guides and service dogs; rights; procedures; violation; classification; definitions

A. The legally blind, the visually impaired, the deaf and the auditorially impaired and the physically handicapped have the same right as all persons to the use of all streets, highways, walkways, common carriers, public lodging places, public eating places, public amusements and other places to which the general public is invited.

B. In any of the places listed in subsection A, every legally blind person may make use of a cane, predominately white or metallic in color, and every legally blind person, deaf person, physically handicapped person and dog guide trainer or service dog trainer may make use of a dog guide or service dog. These persons shall not be denied admittance nor be required to pay any admission charges for their dog guides or service dogs to such public places except as provided in subsection C. Such persons shall be liable for any damages done to the premises by their dog guides or service dogs. Any person using a dog guide or service dog may be required to identify the dog guide or service dog by exhibiting the dog's laminated identification card before the provisions of this section shall apply.

C. A zoo or wild animal park may prohibit a dog guide or service dog from any area of the zoo or park where the dog guide or service dog can come into direct contact with the animals contained in the zoo or park. Dog guides and service dogs shall not be excluded from public walkways or sidewalks or from any area that allows for physical barriers between the dog guides or service dogs and the animals in the zoo or park. Any zoo or wild animal park that prohibits dog guides and service dogs shall provide without cost adequate facilities for the temporary confinement of dog guides and service dogs. Such facilities shall be adequate to accommodate the anticipated attendance of legally blind, deaf or physically handicapped persons, shall be in an area not accessible to the general public, shall provide water for the dog guides and service dogs and shall otherwise be safe, clean and comfortable. The zoo or wild animal park on request by the legally blind person who is required to leave his dog guide or service dog pursuant to this subsection shall provide a sighted escort if the legally blind person is unaccompanied by a sighted person. In this subsection, "wild animal park" means an entity which is open to the public on a regular basis, which is licensed by the United States department of agriculture as an exhibit, and which is operating primarily to conserve, propagate and exhibit wild and exotic animals.

D. The driver of a vehicle approaching a legally blind pedestrian who is carrying a cane, predominately white or metallic in color, who is using a dog guide or service dog or who is assisted by a sighted person shall yield the right-of-way and take reasonable precautions to avoid injury to the pedestrian and the dog guide or service dog. The pedestrian has the same rights as any other person whether or not he is carrying the cane, using the dog guide or service dog or being assisted by a sighted person.

E. A driver who violates any provision of subsection D is liable for damages for any injury caused the pedestrian or his dog guide or service dog.

F. Any person who violates any provision of this section is guilty of a class 1 misdemeanor.

G. For purposes of this section:

1. "Dog guide" and "service dog" includes a dog guide or service dog in training.
2. "Dog guide trainer" and "service dog trainer" means any person working in conjunction with a dog guide or service dog training school, including salaried and volunteer trainers.
3. "Service dog" means a dog which has gone through a formal training program, which assists its owner in one or more daily living tasks associated with a productive life-style and which is sufficiently conditioned to be of no danger to the health and safety of the general public.

Program for Early Identification of Hearing Loss

Article 36 Public Health and Safety

36-899.21. Definitions (p. 70)

36-899.22. Program for early identification of hearing loss in neonates and infants; definitions (p. 70)

36-899.23. Hearing impaired children advisory committee; appointment; meetings; compensation; duties (p. 71)

36-899.21. Definitions

In this article, unless the context otherwise requires:

1. "Infant" means a child who is twenty-nine days to two years of age.
2. "Neonate" means a child who is newborn through twenty-eight days of age.

36-899.22. Program for early identification of hearing loss in neonates and infants; definition

A. A program for the early identification of hearing loss in neonates and infants is established in the department. This program shall include the following:

1. An identification procedure for neonates and infants to detect hearing loss.
2. A central register of infants who are at high risk for hearing loss.
3. A comprehensive child hearing loss education program for the general public, the medical community, child care providers and other professional groups.
4. Identification of audiology programs that provide diagnostic and rehabilitative services for neonates and infants. Requirements for identification shall include a review of all applicants by the hearing impaired children advisory committee.

B. For the purposes of this section "high risk" may include any of the following factors that a neonate may display:

1. An admission for more than seventy-two hours to a neonatal intensive care nursery.
2. An anatomical malformation that involves the head or neck and includes:
 - (a) A dysmorphic appearance.
 - (b) A morphologic abnormality of the pinna.
 - (c) An overt or submucous cleft palate.
 - (d) A syndromal or nonsyndromal abnormality.
3. A significant depression at birth which includes:

- (a) A neonate with an apgar score of zero to three who fails to institute spontaneous respiration within ten minutes.
 - (b) A neonate with hypotonia that persists during the first two hours of the neonate's life.
4. A bacterial meningitis, especially H. influenza.
 5. A birth weight of less than one thousand five hundred grams.
 6. A congenital perinatal infection, including cytomegalovirus, herpes, rubella, syphilis or toxoplasmosis.
 7. A family history of a congenital childhood hearing impairment.
 8. A hyperbilirubinemia at a level that exceeds indications for exchange transfusion.
 9. Persistent pulmonary hypertension.

36-899.23. Hearing impaired children advisory committee; appointment; meetings; compensation; duties

- A. The hearing impaired children advisory committee is established consisting of:
 1. An audiologist who holds a master's degree in audiology and who holds a certificate of clinical competence in audiology from the American speech, language and hearing association.
 2. A doctor of medicine who is licensed pursuant to title 32, chapter 13 and practices neonatology in a level III hospital.
 3. A doctor of medicine who is licensed pursuant to title 32, chapter 13 and practices pediatrics.
 4. A doctor of medicine who is licensed pursuant to title 32, chapter 13 and practices neurology.
 5. A doctor of medicine who is licensed pursuant to title 32, chapter 13 and practices otolaryngology.
 6. A representative from a statewide hearing aid society whose membership is open to all licensed and practicing hearing aid dispensers pursuant to chapter 17 of this title.
 7. A practicing registered nurse who is licensed pursuant to title 32, chapter 15 and has a subclinical specialty in education or child development.
 8. A representative of the department of education, division of special education.
 9. A representative of the state school for the deaf and the blind.
- B. All members shall be appointed by the director and shall have demonstrated competence and knowledge in the field of developmental hearing problems for children.
- C. The committee shall select a chairman from its members.

D. Members shall serve staggered three year terms.

E. The committee shall:
loss in neonates and infants.

F. Members of the committee are entitled to reimbursement of expenses pursuant to title 38, chapter 4, article 2.

TITLE 9. HEALTH SERVICES

CHAPTER 26. ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING

(Authority: A.R.S. §§ 36-1946 and 36-1947 et. seq)

ARTICLE 1. GENERAL

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R9-26-101. Definitions

ARTICLE 2. APPLICATION, DISTRIBUTION, AND CONDITIONS FOR USE

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R9-26-202. Distribution, Repair, and Training
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ARTICLE 5. INTERPRETER CERTIFICATION

(Authority: A.R.S. § 36-1946(A))

Article 5, consisting of Sections R9-26-501 through R9-26-511, adopted effective April 4, 1997 (Supp. 97-2).

Section
R9-26-501. Definitions
R9-26-502. Process for Obtaining Interpreters
R9-26-503. Sign Language Interpreter Certification
R9-26-504. Temporary Sign Language Interpreter Certification
R9-26-505. Grandfathering Sign Language Interpreters
R9-26-506. Oral Interpreter Certification
R9-26-507. Realtime Reporter Certification
R9-26-508. Application Processing Procedures; Issuance; Denial
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ARTICLE 1. GENERAL

R9-26-101. Definitions

In addition to the definitions listed in A.R.S. § 36-1941, the following terms apply to this Chapter:

1. "Audiologist" means a person who is licensed under A.R.S. § 36-1940 by the Arizona Department of Health Services.
2. "Commission" means the Arizona Commission for the Deaf and Hard of Hearing.
3. "Deaf" means those persons who cannot generally understand speech sounds with or without a hearing aid when in optimal listening conditions. A.R.S. § 36-1941(F)(1).
4. "Deafblind" means a person who is either deaf or hard of hearing and:
 - a. Has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or
 - b. A field defect where the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or

- c. A progressive visual loss having a prognosis leading to 1 or both of the conditions stated in subsections (4)(a) and (4)(b).
- 5. "Device" means 1 of the following:
 - a. "Amplified telephone" is a telecommunication device, used by individuals with mild to profound hearing loss or speech impairment, that eliminates most noise background, has a volume control that clarifies inbound hearing or outbound speech, and includes a standard telephone with hearing aid compatible handsets.
 - b. "Augmented speech device" is a telecommunication device used by a person with a speech impairment.
 - c. "Modem" is an electronic device installed into a personal computer that is baud and baudot compatible.
 - d. "Signal device" is an electric or electronic device that alerts a deaf, hard of hearing, deafblind or speech-impaired person of an incoming telephone call.
 - e. "Teletype (TTY)" is an electric or electronic device used with a telephone that contains a keyboard, acoustic coupler, display or Braille screen to transmit and receive messages with or without a modem.
 - f. "Voice carry-over" is a telecommunication device that enables a deaf or hard of hearing person to talk on a standard telephone while the conversation of the hearing person is typed by a relay operator.
- 6. "Director" means the Executive Director of the Arizona Commission for the Deaf and Hard of Hearing.
- 7. "Distribution center" means a facility authorized by the Commission to distribute and repair devices.
- 8. "*Hard of hearing*" means those persons who have a degree of hearing loss greater than 40 dB PTA-2, but less than 85 dB, PTA-2 in the better ear. A.R.S. § 36-1941(F)(2).
- 9. "*Hearing aid dispenser*" means any person who engages in the practice of fitting and dispensing hearing aids. A.R.S. § 36-1901(8).
- 10. "Recipient" means a person who receives a device.
- 11. "Relay operator" means a person hired by a telecommunication relay center to transmit a conversation between a deaf, hard of hearing, deafblind, or speech-impaired person and another person who uses a standard telephone.
- 12. "Speech impaired" means a disability that prevents a person from articulating speech audibly or clearly.
- 13. "Telecommunication relay center" means a facility authorized by the Commission to provide telecommunication services telephones through a 3rd party to a deaf, hard of hearing, deafblind, or speech-impaired person and to any other person who uses a standard telephone.
- 14. "Vocational rehabilitation counselor" means a Department of Economic Security employee who has a Master's degree in rehabilitation counseling from a university accredited by the National Council on Rehabilitation Education and who is certified by the Commission on Rehabilitation Counseling.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 2. APPLICATION, DISTRIBUTION, AND CONDITIONS FOR USE

R9-26-201. Application Procedure

- A.** Any person who is deaf, hard of hearing, deafblind, or speech impaired may apply for a device by providing the distribution center with the following information on an application form obtained from the Commission or distribution center:
 - 1. The name, social security number, address, and telephone number of the applicant;
 - 2. The mailing address of the applicant, if different from subsection (A)(1);
 - 3. The signature of the applicant or the applicant's legal guardian;
 - 4. The applicant's current mode of communication;
 - 5. The type of equipment requested;
 - 6. Verification of the hearing or speech impairment by 1 of the following people:
 - a. A person practicing medicine in Arizona,
 - b. An audiologist,
 - c. A speech pathologist, registered by the Arizona Department of Health Services,
 - d. A hearing aid dispenser, or
 - e. A vocational rehabilitation counselor.
- B.** After the hearing or speech impairment is verified and the application form deemed complete, the distribution center shall notify the applicant in writing of:
 - 1. The date and time of a training session for the device, if an original application; and
 - 2. The location where a device may be picked up.
- C.** Denial of application:
 - 1. The Commission shall deny an application if:
 - a. The information required in subsection (A) is not provided; or
 - b. The applicant has previously been issued a device; and
 - i. The device has been abused, misused, or has unauthorized repairs;
 - ii. The device is stolen and the applicant fails to provide a police report of the stolen device; or

- iii. The applicant has lost the device.
2. The Director shall send the applicant a notice by certified mail, with return receipt, specifying the reason for the denial and of the applicant's right to a fair hearing.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-202. Distribution, Repair, and Training

- A.** A distribution center shall:
1. Issue a device to any person who is eligible under R9-26-201 and who resides within the distribution center's area of coverage,
 2. Obtain from the applicant a signed Conditions of Acceptance form provided by the Commission,
 3. Maintain all application forms and Condition of Acceptance forms,
 4. Notify the Director if an applicant fails to report for training or to pick up a device,
 5. Notify the Director if an application is denied and the reason for the denial,
 6. Maintain an accurate inventory of all devices distributed to applicants,
 7. Distribute a device to and train any applicant whose mobility prevents the applicant from coming to the distribution center.
- B.** Neither the distribution center nor the Director shall:
1. Provide replacement paper or light bulbs for a device;
 2. Pay for a recipient's monthly telephone bill; or
 3. Purchase or lease a telephone for the recipient.
- C.** Repair.
1. A distribution center shall accept all devices needing repair.
 2. If a device has been abused, misused, or has had unauthorized repair, a distribution center shall not provide a replacement device until the recipient pays for the repair in advance.
 3. A distribution center shall deny a recipient a device replacement if the recipient has had 2 previous replacements that were damaged.
- D.** If a recipient has a device that is 5 years or older, the recipient or legal guardian may return the device to the closest distribution center for replacement.
- E.** Training.
1. A distribution center shall provide training to all recipients or the recipient's legal guardians.
 2. A device shall not be issued until an applicant or the applicant's legal guardian:
 - a. Demonstrates an ability to send and receive messages, and
 - b. Completes the required training.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-202 renumbered from R9-26-301 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-203. Ownership and Liability

- A.** All devices are the property of the state of Arizona.
- B.** A recipient or the recipient's legal guardian shall return a device to the closest distribution center when the recipient:
1. No longer intends to reside in Arizona,
 2. Does not need the device, or
 3. Has been notified by the Director to return the device.
- C.** A recipient is liable for any damage to or loss of a device issued under R9-26-202.
- D.** If a recipient moves to a location in Arizona other than the address specified on the Conditions of Acceptance form, the recipient or the recipient's legal guardian shall notify the Commission of the new address with 10 calendar days.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-203 renumbered from R9-26-304 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-204. Restrictions

- A.** A person shall not remove a device from the state for longer than 90 days without written permission from the Director.
- B.** The Director shall grant permission to remove a device from the state for more than 90 days if the Director determines it is in the best interest of the recipient.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-204 renumbered from R9-26-305 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-205. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-302 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-206. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-301 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-207. Repealed

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 3. ADMINISTRATIVE PROCEDURES

R9-26-301. Hearings

- A. Within 30 days of a notice of denial from the Director, the applicant or recipient may file a notice of appeal under A.R.S. § 41-1092.03 with the Commission. The notice shall identify the party, the party's address, the agency, the action being appealed, and shall contain a concise statement of the reasons for the hearing.
- B. The hearing shall be conducted by the Office of Administrative Hearings as prescribed in A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-202; new Section R9-26-301 renumbered from R9-26-206 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-302. Informal Settlement Conference

- A. An applicant or recipient whose request for an original or replacement device is denied and who has filed an appeal under A.R.S. § 41-1092.03, may request in writing that the Director hold an informal settlement conference.
- B. The informal settlement conference shall be held within 15 days after receiving the request and shall follow the procedures under A.R.S. § 41-1092.06.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section R9-26-302 renumbered from R9-26-205 and amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-303. Rehearing or Review of Decision

- A. Any party to a case who is aggrieved by a decision rendered in the case may, within 30 days after the date of the Commission's decision, file with the Director a written request for a rehearing or review of the decision. The request shall specify the particular grounds for the rehearing or review. The requesting party shall serve copies upon all other parties. A request for rehearing or review under this Section may be amended at any time before it is ruled upon by the Director.
- B. The opposing party may file a response to the request for a rehearing or review within 15 days after the written request is received.
- C. A rehearing or review of the decision may be granted for any of the following causes which materially affect the requesting party's rights:
 - 1. Irregularity in the proceedings or any abuse of discretion that deprives the requesting party of a fair hearing;
 - 2. Misconduct of the hearing officer or the prevailing party;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
 - 5. Excessive or insufficient penalties;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring during the proceedings;
 - 7. That the decision is the result of passion or prejudice; or
 - 8. That the decision is not supported by the evidence or is contrary to law.
- D. Upon examination of a request for rehearing or review and any response, the Director may affirm or modify the decision.
- E. Within 15 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-304. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-203 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-305. Renumbered

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section renumbered to R9-26-204 by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 4. RELAY SERVICES

R9-26-401. Telecommunication Relay Centers

A telecommunication relay center shall:

1. Operate 7 days a week, 24 hours a day, including holidays; and
2. Hire relay operators who are salaried employees and not volunteers.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-402. Confidentiality

- A. A telecommunication relay center shall protect the privacy of any person to whom relay services are provided.
- B. A relay operator shall maintain the confidentiality of all telephone messages.
- C. The confidentiality and privacy of any person using a relay service is protected under the Mandatory Minimum Standards of 47 CFR 64.604, 1999 Edition. This information is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Arizona Commission for the Deaf and Hard of Hearing and the Office of the Secretary of State.
 1. A telecommunication relay center shall not maintain permanent copies of messages relayed by a relay operator or allow the content of a telephone message to be communicated to, or accessible to, a non-staff member.
 2. Any person using a relay service is not required to provide identifying information until the party the person is calling is on the line. The person's identity shall then be revealed to the extent necessary to fulfill the purpose of the call.
 3. A relay operator shall not leave a message with a 3rd party unless instructed by the person making the call.
 4. Any person using a relay service may file a complaint about the relay service with the telecommunication relay center or with the Commission. All complaints shall be reviewed by the Director.

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Amended by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

R9-26-403. Repealed

Historical Note

Adopted effective May 12, 1986 (Supp. 86-3). Section repealed by final rulemaking at 6 A.A.R. 3827, effective September 15, 2000 (Supp. 00-3).

ARTICLE 5. INTERPRETER CERTIFICATION

R9-26-501. Definitions

The following definitions apply in this Article:

1. "Applicant" means an individual who submits a completed application, and documentation to the Council to obtain a certificate of competency.
2. "Application" means a form provided to applicants by the Council, requiring the following information:
 - a. A photograph, measuring not less than 1 inch by 1 inch, of the applicant that was taken within 5 years of the date of filing the application;
 - b. The applicant's full current name and any former names;
 - c. The applicant's current address and telephone number;
 - d. The applicant's social security number;
 - e. Whether the applicant previously has applied for a certificate of competency;
 - f. The applicant's notarized signature, attesting to the truthfulness of the information provided by the applicant; and

- g. The documentation required by this Article.
3. "ASL" means American Sign Language, the visual language used by deaf persons in the United States to communicate.
 4. "CDI" means a certified deaf interpreter certificate, a certification issued by RID, evidencing that the certificate holder is deaf or hard-of-hearing, and performs at or above RID standards for deaf interpreters, but provides interpretation services with a hearing qualified interpreter.
 5. "Certificate of competency" means a certificate issued by the Council indicating that the certificate holder has met the criteria set forth in this Article for the provision of interpretation services to deaf persons in court proceedings, government entity proceedings, and law enforcement encounters.
 6. "Certification" means a currently valid card issued by RID, with the word "certified", and the categories in which the cardholder is certified, listed under the cardholder's name.
 7. "Certified copy" means having a copy of the original document notarized as being a true and accurate copy of the original.
 8. "CI" means certificate of interpretation, issued by RID, evidencing that the certificate holder performs at or above RID standards for sign language interpreters who interpret between ASL and English in both sign-to-voice and voice-to-sign.
 9. "Continuing legal education" means seminars sponsored by a bar association, law firm, law department, or government entity, at which attendance is not limited to members of the association, firm, department, or entity, and that constitute an organized program of learning, dealing with matters directly related to the practice of law, and following an agenda defined by written materials or exercises distributed as part of the program.
 10. "Council" means the Council for the Hearing Impaired.
 11. "Court" means a place where people are officially assembled for the administration of justice, including all proceedings before every Grand Jury, Municipal Court, Justice Court, Magistrate Court, Superior Court, Court of Appeals, and Supreme Court in Arizona.
 12. "CRR" means a certified realtime reporter certification issued by the NCRA, reflecting that the certificate holder has the training, experience, skills, and equipment to provide realtime on-screen translation, with at least 96% accuracy, for a deaf person in a proceeding.
 13. "CSC" means a comprehensive skills certificate issued by RID, evidencing that the certificate holder performs at or above RID standards for sign language interpreters who interpret between ASL and English, and convert spoken English to an English-based sign system, in both sign-to-voice and voice-to-sign.
 14. "CT" means a certificate of transliteration issued by RID and evidencing that the certificate holder performs at or above RID standards for sign language interpreters who convert spoken or written English to an English-based sign system, in both sign-to-voice and voice-to-sign.
 15. "Custody" means that a person in a law enforcement encounter is not free to leave.
 16. "Deaf person" means a person who is unable to fully process linguistic information through hearing, including any person who has an average pure tone decibel loss greater than 20dB in the better ear, any person who is observed by a court, government entity, or law enforcement personnel, without an interpreter, to need communication assistance to effectively participate in the proceeding, or any person who is hard-of-hearing, regardless of whether they wear hearing aids.
 17. "English-based sign system" means using conceptually accurate American signs in English syntax. This is distinguishable from finger spelling using the alphabet, and from ASL, which also uses American signs, but not necessarily in conceptually accurate English syntax.
 18. "Executive Secretary" means the executive officer of the Council who is responsible for implementing the Council's programs and activities, under A.R.S. § 36-1942.
 19. "Government entity" means any department, board, commission, agency, or licensing authority of Arizona, or a political subdivision of Arizona.
 20. "Intermediary interpreter" means a person holding a CDI certificate, an RSC certificate, or any person that a deaf person chooses to assist with interpretation services between the deaf person and a qualified interpreter.
 21. "Law enforcement encounter" means any situation where a deaf person is questioned, arrested, or taken into custody for any alleged violation of Arizona criminal law, by any law enforcement personnel.
 22. "NCRA" means the National Court Reporters Association.
 23. "OIC" means an oral interpretation certificate issued by RID, evidencing that the certificate holder performs at or above RID standards for oral interpreters.
 24. "Oral Interpreter" means a person who mouths a spoken message so that a deaf person can accurately speech read and understand the intent of the spoken message, and who accurately verbalizes the message and intent of the deaf person's speech and mouth movements.
 25. "Party" means a deaf person who is a parent of a juvenile, a witness, complainant, defendant, or attorney in a court proceeding; a deaf person who is a principal party of interest, or a witness in a government entity proceeding; or a deaf person who is a defendant, or a criminal suspect in a law enforcement encounter.
 26. "Proceeding" means any civil, criminal, or grand jury proceeding; any government entity proceeding; or any law enforcement encounter.

27. "Qualified interpreter" means a person who has a certificate of competency issued by the Council, and who is a court reporter who provides realtime translation, a sign language interpreter, or an oral interpreter.
28. "Realtime translation" means a court reporter's computer- aided method of accurately and simultaneously translating and displaying spoken words, including punctuation, in live proceedings, within 5 seconds of steno type input, for a deaf person to read.
29. "RID" means Registry of Interpreters for the Deaf.
30. "RSC" means a reverse skills certificate, which is the prior name of a CDI, and is synonymous with CDI.
31. "SC:L" means specialist certificate: legal issued by RID, evidencing that the certificate holder has specialized knowledge of the legal system, and performs at or above RID standards for interpreting in proceedings.
32. "Sign language interpreter" means a person who has a: (1) CI and CT; (2) CSC; (3) CDI; (4) RSC; or (5) SC:L certification from RID.
33. "Speech read" means determining what a person is saying by the person's mouth movements, body language, and the context of the conversation.
34. "Supervision" means that the supervising qualified interpreter has direct, in person contact with the interpreter that he or she is supervising, and provides orientation information to the supervisee about providing interpreter services in proceedings, observes the supervisee providing interpretation services in proceedings, has the supervisee observe the supervisor providing interpretation services in proceedings, and provides feedback to the supervisee about the supervisee's performance.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).

R9-26-502. Process for Obtaining Interpreters

- A. The court, government entity, or law enforcement personnel responsible for obtaining a qualified interpreter in any proceeding where a deaf person is a party, shall follow the steps stated in subsection (B).
- B. The court, government entity, or law enforcement personnel shall:
 1. Determine whether a party is a deaf person, either based on the party's request, or on the observation of the court, governmental entity, or law enforcement personnel;
 2. Once a party is determined to be deaf, determine from the deaf person whether the deaf person needs sign language interpretation, oral interpretation, court reporter realtime translation, or a combination of interpretation services;
 3. Determine, for sign language interpretation services, whether the deaf person needs ASL or an English-based sign system;
 4. Arrange for a qualified interpreter to provide interpretation services; and
 5. Determine from the deaf person whether the qualified interpreter meets the deaf person's communication needs at the outset of the proceeding or encounter, either upon complaint by the deaf person, or by observation of the court, government entity, or law enforcement personnel.
- C. The deaf person may object to the qualified interpreter because the interpreter cannot meet the deaf person's communication needs. The court, government entity, or law enforcement personnel shall then appoint either an intermediary interpreter to work with the qualified interpreter or may provide another qualified interpreter that can meet the deaf person's communication needs.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).

R9-26-503. Sign Language Interpreter Certification

- A. The Council may issue a certificate of competency to an applicant who files an application with the Council, and submits all of the following:
 1. A certified copy of the applicant's sign language interpreter RID certification;
 2. An affidavit signed by the applicant, and notarized, attesting whether the applicant:
 - a. Is a CI and CT, CSC, or SC:L certificate holder and has at least 2,000 hours of sign language interpreting experience within the 5 years immediately preceding the date of filing the affidavit with the Council, or is a CDI or RSC certificate holder and has at least 50 hours of sign language interpreting experience within the 5 years immediately preceding the date of filing the affidavit with the Council;
 - b. Has ever been disciplined, or is currently the subject of any disciplinary action, in any jurisdiction or before RID relating to providing interpreting services or adhering to the RID Code of Ethics, set forth in subsection (C);
 - c. Has ever been named, or is currently named, as a defendant in any law suit alleging the applicant was negligent in providing the applicant's interpreter services or alleging that the applicant violated the RID Code of Ethics, set forth in subsection (C);
 - d. Follows the RID Code of Ethics, set forth in subsection (C), including the obligation to be absolutely neutral in all proceedings;
 - e. Understands that the applicant shall ensure that the applicant's interpreting skills meet the deaf person's communication needs, and that failure to do so may be grounds for revocation of the applicant's certifi-

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).

R9-26-507. Realtime Reporter Certification

- A.** The Council may issue a realtime reporter certificate of competency to an applicant who files an application with the Council, and submits the following:
1. A certified copy of the applicant's Superior Court certification issued pursuant to A.R.S. § 12-222, and a notarized affidavit, signed by the applicant, attesting that the applicant has provided realtime translation in at least 2 trials in state or federal court; or
 2. A certified copy of the applicant's NCRA Registered Professional Reporter, Registered Merit Reporter, or Registered Diplomate Reporter certification, and a notarized affidavit, signed by the applicant, attesting that the applicant has provided realtime translation in at least 2 trials in state or federal court; or
 3. A certified copy of the applicant's CRR, and a notarized affidavit, signed by the applicant, attesting that the applicant follows the NCRA ethical requirements, set forth in subsection (C); and
 4. A statement on the applicant's affidavit that the applicant understands that the applicant shall obtain NCRA CRR certification by January 1, 2005, if not already obtained, and shall complete the continuing education requirements necessary to maintain current NCRA CRR certification.
- B.** After January 1, 2005, NCRA CRR certification shall be the only certification that shall satisfy subsection (A).
- C.** Realtime translators shall comply with the following NCRA Code of Professional Ethics, Section II: Realtime Reporter as Assistive Technology in Legal Proceeding requirements:
1. Explain, before beginning realtime reporting, who has hired the reporter, what is to be reported, and that the realtime is to be used as assistive technology, not as a verbatim record of the proceeding;
 2. Determine, before beginning realtime reporting, who owns the residual computer file;
 3. Keep all assistive, assignment-related information confidential;
 4. Render as near a verbatim translation as possible, conveying the content and spirit of the speaker, using substitute language that is computer-translatable for the deaf person to understand, and using parentheticals to describe to the deaf person all sounds during the proceeding;
 5. Maintain absolute neutrality in all proceedings, by not counseling, advising, or interjecting personal opinions;
 6. Accept assignments using discretion with regard to their skills, the setting, the deaf person being assisted, and accurately assessing the reporter's qualifications for realtime translation;
 7. Know how to operate the software and hardware being used, including being able to troubleshoot anticipated problems that occur with software and hardware;
 8. Further their knowledge and skills by participating in workshops, professional meetings, interaction with professional colleagues, reading current literature, and achieving additional state or national realtime certifications; and
 9. Save a hard copy or computer disk of the actual translation that the deaf person saw on screen. If the translation is saved on computer disk, it shall be in text, or American standard code for information interchange format.
 10. In addition to the ethical requirements in subsections (C)(1) through (9), realtime reporters shall not simultaneously act in a dual capacity as a realtime reporter for the benefit of a deaf person, and the stenographer who is recording the official verbatim record of the proceeding.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).

R9-26-508. Application Processing Procedures; Issuance;

Denial

- A.** Within 15 calendar days of receiving an initial or renewal certificate of competency application of any type, the Council shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B.** An applicant with an incomplete package shall supply the missing information within 10 calendar days from the date of the notice. If the applicant fails to do so, the Council may close the file. An applicant whose file has been closed shall begin the application process anew.
- C.** Upon receipt of all missing information within 10 calendar days, the Council shall notify the applicant, in writing, that the application is complete.
- D.** The Council shall not process a certificate of competency application until the applicant has fully complied with the requirements of this Article.
- E.** The Council shall notify an applicant, in writing, whether the certificate of competency is granted or denied, no later than 30 calendar days after the postmark date of the notice advising the applicant that the package is complete.
- F.** The Council may deny a certificate of competency for any of the following reasons:
1. Failure to provide complete documentation,
 2. Providing false or misleading information, or
 3. Failure to meet the requirements stated in this Article.

- G. The notice of denial shall include the following:
 - 1. Reasons for the denial, with citations to the statutes or rules on which the denial is based;
 - 2. The applicant's right to request reconsideration pursuant to subsection (H); and
 - 3. The name and telephone number of an agency contact person who can answer questions regarding the application process.
- H. The following time-frames shall apply for initial and renewal certificate of competency applications:
 - 1. Administrative completeness review time-frame: 15 calendar days.
 - 2. Substantive review time-frame: 30 calendar days;
 - 3. Overall time-frame: 45 calendar days.
- I. Within 15 calendar days of the mailing date of the Council's notice of denial, the applicant may submit a request for reconsideration to the Council, setting forth the facts that justify reconsideration of the denial. The Council shall review all documentation, and interview any persons with information relevant to issuing or denying the applicant's certificate.
- J. Within 10 calendar days of receiving the applicant's request for reconsideration, the Council shall notify the applicant, in writing, whether the denial is upheld. If a denial is upheld, the Council's notice upholding the denial shall include the following:
 - 1. Reasons for the denial, with citations to the statutes or rules on which the denial is based;
 - 2. The applicant's right to appeal the denial, including the number of days in which the applicant has to file a request for hearing to challenge the denial, and the right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06;
 - 3. The name and telephone number of an agency contact person who can answer questions regarding the appeal process.
- K. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, judicial review pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).

R9-26-509. Certification Renewal

Certification of competency holders shall renew their certificates on or before January 1 of every year. If January 1 is a Saturday, Sunday, or legal holiday, the renewal deadline is the 1st business day following the Saturday, Sunday, or legal holiday. To renew certificates of competency, the certificate holder shall file all the following documentation with the Council:

- 1. A certified copy of the certificate holder's current RID, or NCRA, certification;
- 2. A notarized affidavit, signed by the certificate holder, attesting that since the Council issued the certificate, whether the certificate holder:
 - a. Has been disciplined or is currently the subject of any disciplinary action in any jurisdiction, or before RID or NCRA, as applicable, relating to providing interpretation or realtime reporting services, respectively, or adhering to the RID or NCRA ethical requirements of R9-26-503(C) or R9-26-507(C), respectively;
 - b. Has been named as a defendant in any law suit alleging that the certificate holder was negligent in providing interpretation services, or alleging the certificate holder violated the RID ethical requirements of R9-26-503(C), or alleging the certificate holder was negligent in providing realtime reporting services, or alleging the certificate holder violated the NCRA ethical requirements of R9-26-507(C);
 - c. Follows the RID ethical requirements of R9-26-503(C), or NCRA ethical requirements of R9-26-507(C), as applicable;
 - d. Understands that it is the certificate holder's duty to ensure that the certificate holder's interpreting, or translating, skills meet the deaf person's communication needs, and that failure to do so may be grounds for revocation of the certificate holder's certificate of competency;
 - e. Has completed the requirements necessary to maintain RID, or NCRA certification and understands the certificate holder shall continue to maintain current RID, or NCRA certification;
 - f. Has completed at least 3 clock hours of continuing legal education since the effective date, or the last renewal date of the certificate of competency, whichever is more recent; and
 - g. Has maintained accurate records of compliance with the continuing legal education requirements of this Article, and shall make these records available for examination upon this Council's request.
- 3. The certificate holder's current name, address, and telephone number.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).

R9-26-510. Certification Revocation

A. The Council may revoke a certificate of competency based on a complaint from any person alleging any of the following reasons:

1. The certificate holder has falsified any application or renewal information; or
 2. The certificate holder has violated the RID or NCRA ethical requirements of R9-26-503(C) or R9-26-507(C), respectively.
- B.** A complaint alleging any of the reasons for revocation shall be in writing, with the name, address, telephone number, and signature of the person filing the complaint. A complaint may be written by someone on behalf of the complainant, but also shall include the complainant's name, address, telephone number, and signature, indicating that the complaint is filed by the complainant. A complaint may be videotaped, with the complainant signing the complaint, but also shall include the complainant's name, address, and telephone number.
 - C.** Within 20 calendar days of receiving a complaint, the Council shall mail the complaint to the certificate holder, and request the certificate holder to respond.
 - D.** The certificate holder shall file a written response to the complaint with the Council, in writing, within 20 calendar days of the date that the complaint was mailed to the certificate holder.
 - E.** The Council shall investigate the complaint and either dismiss the complaint, or send the matter to a formal hearing, within 60 calendar days of receiving the complaint. If no grounds are found to support the complaint, the Council shall dismiss the complaint.
 - F.** If the complaint is sent to a formal hearing, the hearing shall be conducted pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10. A party to the hearing has an opportunity for rehearing or review, and judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 12, Article 6.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).

R9-26-511. Rehearing or Review of Decisions

- A.** If a party to an appealable agency action or contested case files a Motion for Rehearing or Review with the Council, it shall be filed not later than 30 calendar days after service of the decision, and shall specify the particular grounds for the motion. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.
- B.** A rehearing or review may only be granted for any of the following reasons materially affecting the moving party's rights, or ability to receive a fair hearing;
 1. Any irregularity in the administrative hearing, any order or abuse of discretion by the administrative law judge or the Council;
 2. Misconduct of the Council, or the administrative law judge, or prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not have been discovered with reasonable diligence and produced at the original 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; or
 7. A decision which is not justified by the evidence or is contrary to law.
- C.** Not later than 15 calendar days after the Council's receipt of a motion for rehearing or review, the Council may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Council may grant a rehearing or review for a reason not stated in the party's motion. An order modifying a decision or granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.
- D.** Not later than 15 calendar days after a decision is rendered, the Council may on its own initiative order a rehearing or review for any of the reasons stated in subsection (B), after giving the parties or their counsel notice and an opportunity to be heard.
- E.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party shall have 10 calendar days from the date of service to serve opposing affidavits. This period may be extended by the Council for good cause up to 20 calendar days, or by written stipulation of the parties. If reply affidavits are permitted, they shall be served within 5 calendar days of service of the opposing affidavits.

Historical Note

Adopted effective April 4, 1997 (Supp. 97-2).