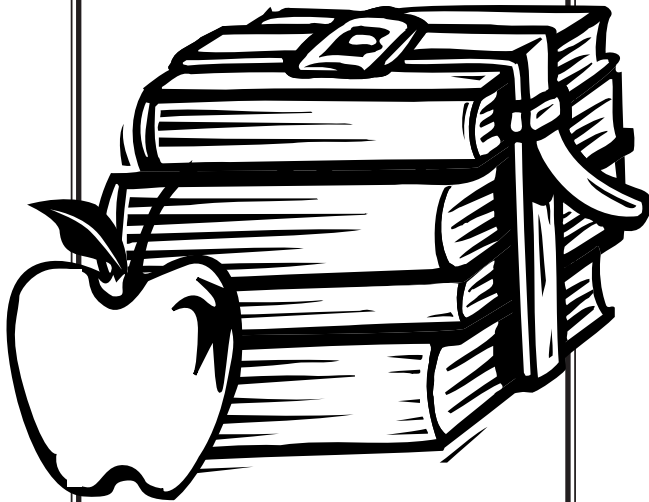


EMPLOYEE RIGHTS FOR ARIZONA TEACHERS



**A SUMMARY
OF ARIZONA LAW**



Introduction

January 2007

Arizona teachers often have questions about their employment rights. Many teachers come to Arizona from other states and assume that they have the same employment rights they had in their home states. That is a false assumption. Each state has its own laws regarding teachers, and those laws vary a great deal. Information about teacher rights in other states does not apply in Arizona.

This booklet contains the questions most frequently asked by teachers and brief answers according to Arizona law. Each answer summarizes a law or laws found in Title 15 of the Arizona Revised Statutes. Laws are often complex, and the summaries in this booklet cannot list every detail and exception in each cited law. You can review a specific law by asking your local association representative or your AEA Organizational Consultant. Many school district offices and all AEA Organizational Consultants have copies of these laws. You can search online for Arizona statutes at www.azleg.state.az.us.

For more information and assistance, contact your AEA Organizational Consultant. Organizational Consultants are full-time professionals devoted to helping AEA members and local associations. If you need the name and telephone number of your AEA Organizational Consultant, please call the Arizona Education Association at (602) 264-1774 or (800) 352-5411.

For over 100 years, the Arizona Education Association has been committed to helping Arizona teachers. This booklet is part of that continuing effort.

Alice Finn Gartell
AEA General Counsel

Susan Sendrow
AEA Staff Attorney

Table of Contents

Looking for Rights

Where should Arizona teachers look to determine their employment rights?4

How can teachers find Arizona statutes on the Internet?4

Tenure and Probationary Status

Who are “tenured” teachers?5

Who are “probationary” teachers?5

Are substitute teachers “probationary” teachers?5

Can part-time teachers earn tenure?6

Can teachers retain their tenured status if they work part-time or take a leave of absence?6

Can teachers at charter schools earn tenure?6

Can administrators and psychologists earn tenure? ...6

Contracts

When are teacher contracts offered?7

How can teachers accept contracts?7

Performance Evaluations

How often must teachers be evaluated?7

What are the requirements for a school district’s teacher performance evaluation system?7

What happens if teachers receive a poor evaluation? ..8

What can teachers do if they receive an inaccurate evaluation?8

Minor Discipline

What procedures govern minor disciplinary actions against teachers?9

Dismissals, Nonrenewals, and Suspensions

Longer Than 10 Days

How can probationary teachers be fired for inadequate performance?9

How can tenured teachers be dismissed for inadequate classroom performance?10

What is inadequacy of classroom performance?11

How can a district nonrenew the contracts of probationary teachers for reasons other than inadequate classroom performance?12

Can a district nonrenew the contracts of tenured teachers?12

When do teachers have the right to a formal hearing and decision by the governing board?12

What procedures govern teacher dismissals and suspensions longer than 10 days?13

Can teachers appeal the governing board’s decision in a dismissal hearing?14

Resignation

Should teachers resign if they are facing nonrenewal, suspension, or dismissal?15

Salary Reductions and Reductions in Force

Can a district reduce teachers’ salaries?15

What rights do teachers have if they are rified?15

Resources16

This booklet is a general guide for AEA members and is not intended to provide complete information or legal advice on specific problems. Changes in laws and cases may modify the information provided.

Where should Arizona teachers look to determine their employment rights?

Most employment rights of Arizona teachers are found in individual contracts, district policies, and district agreements with local associations. These contracts, policies, and agreements vary greatly from district to district.

Some districts distribute this information to teachers in an employee handbook or consensus agreement. Other districts keep district policies and agreements in administrative offices or libraries. This information is public and should be available upon request. Teachers are expected to follow district policies, whether or not they have received a copy of them.

Some state and federal laws provide rights to many employees, not just teachers. For example, federal laws require most employers to provide reasonable accommodation to qualified disabled individuals (ADA) and provide up to 12 weeks of unpaid leave for personal and family illnesses (FMLA). This booklet does not summarize these laws that apply to broad groups of employees.

However, some Arizona laws only apply to teachers employed by public school districts. These laws primarily are found in Title 15, Chapter 5, of the Arizona Revised Statutes. This booklet summarizes many of the laws that apply only to Arizona public school teachers.

Teachers seeking answers to employment questions generally should: 1) first, seek answers in their contracts, district policies, and district agreements with their local association; 2) second, seek answers in the specific Arizona laws for teachers that are summarized in this booklet; and 3) third, seek answers in general state and federal laws that apply to many employees. For assistance and information, teachers should contact their local association representatives and AEA Organizational Consultants.

How can teachers find Arizona statutes on the Internet?

Search for the Arizona Legislative Information Service or go to www.azleg.state.az.us.

Who are “tenured” teachers?

School employees often refer to teachers employed by a school district for more than 3 years as “tenured” or “continuing” and refer to newer teachers as “probationary” or “noncontinuing.” These words do not appear in Arizona law. However, “tenured” and “probationary” are an easy way of describing the legal rights of these two different types of teachers.

“Tenured” teachers

1. Hold a certificate from the Arizona Board of Education;
2. Are employed under contract in a school district;
3. Are employed in a position which requires certification (excluding psychologists and administrators unless they teach at least 50% of their time);
4. Have been employed by the same school district for the major portion of 3 consecutive school years (employed for a full day or full class load for 51% of the school days); and
5. Have completed the third consecutive school year without receiving a notice of intent not to reemploy by April 15.

See A.R.S. § 15-501.

Who are “probationary” teachers?

“Probationary” teachers

1. Hold a certificate from the Arizona Board of Education;
2. Are employed under contract in a school district;
3. Are employed in a position which requires certification (excluding psychologists and administrators unless they teach at least 50% of their time); and
4. Have been employed by a school district for less than 3 consecutive school years or have been employed on a part-time basis (less than a full class load for 51% of the school days).

**Are substitute teachers “probationary” teachers?**

No. Substitute teachers work on a day-to-day basis without a contract and have no legal rights to continued employment. In contrast, probationary teachers work under contract, usually for a full school year.

Can part-time teachers earn tenure?

Most part-time teachers do not earn tenure. However, a few part-time teachers earn tenure by working a full school day or having a full class load for 51% of the school days for 3 consecutive years. In other words, teachers who work full days on Mondays, Wednesdays and Fridays for over 3 consecutive years will earn tenure, but teachers who work less than a full school day for 10 years will not earn tenure. See A.R.S. § 15-501(3), (5).

Can teachers retain their tenured status if they work part-time or take a leave of absence?

Part-time teachers will retain their tenured status if they work at least 40% of the school day or have 40% of the normal class load. See A.R.S. § 15-502(D).

Teachers also retain their tenured status after they return from a leave or sabbatical granted by their school district governing board. School district governing boards can grant teachers a leave of absence or sabbatical for up to one year. See A.R.S. § 15-510.

Can teachers at charter schools earn tenure?

No. Charter schools are exempt from the Arizona laws that provide for teacher tenure and other teacher protections. See A.R.S. § 15-183(E)(5). The answers in this booklet do not apply to teachers at charter schools. Charter school teachers have the

employment rights described in their contracts or in the school's policies, employee handbooks, and charter. A few charter school teachers have contract rights similar to probationary or tenured teachers. Many charter school teachers have minimal employment rights and can be fired "at-will," without any reason or notice.

Can administrators and psychologists earn tenure?

No. Administrators and psychologists are not tenured, unless they devote at least 50% of their time to teaching. School district governing boards can nonrenew the contracts of administrators and psychologists by giving them a nonrenewal notice on or before April 15 of the last year of their contracts. Superintendents and principals can receive contracts for up to 3 years in duration, although all other school employees are limited to contracts no longer than 1 year. See A.R.S. §§ 15-501(2), 15-502(A), 15-503(B).

**When are teacher contracts offered?**

Districts must offer written contracts for the following year between March 15 and May 15 to all probationary and tenured teachers, unless 1) the probationary teachers have received a notice of intent not to reemploy (nonrenewal notice) by April 15; 2) the tenured teachers have received a notice of intent to dismiss (dismissal notice); or 3) the teachers have received notice of a reduction in personnel. See A.R.S. §§ 15-536(A), 15-538.01, 15-544. When school districts delay offering contracts until after the dates specified in Arizona law, teachers are entitled to the contracts and therefore have contractual rights to employment for the following year.

How can teachers accept contracts?

Teachers accept a contract from a school district by signing and returning it within 30 days from the date of the written contract. They also can accept a contract by sending a written letter accepting the contract to the governing board. If teachers do not accept within 30 days, the district has no obligation to employ them. If teachers add terms to the written contract, they have not accepted it, and the district has no obligation to honor the amended contract. See A.R.S. §§ 15-536(A), 15-538.01.

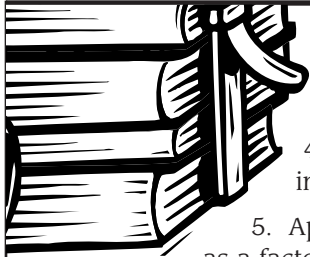
Performance Evaluations**How often must teachers be evaluated?**

Probationary teachers must be evaluated at least twice a year. Tenured teachers must be evaluated at least once a year. See A.R.S. § 15-537(C).

What are the requirements for a school district's teacher performance evaluation system?

The school district governing board must adopt a system for evaluating teacher performance. Arizona law requires that the governing board involve its certificated teachers in the development and periodic evaluation of the teacher performance system. The nature of the teachers' involvement is not specified. The teacher performance evaluation system must include the following:

1. A reliable evaluation instrument including specific criteria for measuring effective teaching performance;
2. An assessment of the competencies of teachers as they relate to the specific criteria;



3. A specified minimum number and minimum duration of actual classroom observations;
4. Specific and reasonable plans for the improvement of teacher performance; and
5. Appeal procedures if the evaluation is used as a factor in establishing compensation.

See A.R.S. § 15-537(B).

In most districts, this means that teachers can appeal an evaluation only if it is used to determine career ladder compensation or performance-based pay or to deny a salary step. Teachers should check policies in their districts to determine if they can appeal an evaluation.

Additionally, the governing board must designate qualified evaluators to evaluate teachers. Teacher evaluations must be in writing and given to the teacher within 5 days of completion. Teachers can submit a written response or rebuttal to the evaluation. See A.R.S. § 15-537(D), (E).

What happens if teachers receive a poor evaluation?

If areas of improvement are noted in the evaluation, then the “board designee” (usually a principal or other administrator) must:

1. Confer with the teachers to make specific recommendations as to areas of improvement;
2. Provide assistance and opportunities for the teachers to improve performance; and
3. Follow up after a reasonable period to ascertain whether the teachers are demonstrating adequate classroom performance.

See A.R.S. § 15-537(F).

What can teachers do if they receive an inaccurate evaluation?

Teachers can and should write a response or rebuttal to an inaccurate evaluation. See A.R.S. § 15-537(E). The rebuttal should be concise, factual, and well-written. An AEA member should ask a local association representative or AEA Organizational Consultant to review the rebuttal before it is submitted. The AEA Organizational Consultant often has additional suggestions and materials to help teachers respond to poor or inaccurate evaluations.

In most districts, teachers only can grieve errors in the evaluation procedure and cannot grieve or appeal the substance of the evaluation. Teachers should check with their local association representative or AEA Organizational Consultant and review district policies to determine their rights to appeal or grieve an unfair evaluation.

If the evaluation is vague or difficult to understand, the teachers should ask the evaluator for clarification and request the specific criteria that will be used to measure satisfactory performance. In extreme situations leading towards nonrenewal or dismissal, teachers should consider requesting an independent evaluator instead of or in addition to the designated evaluator. A local association representative and the AEA Organizational Consultant can help teachers with these problems.

Minor Discipline

What procedures govern minor disciplinary actions against teachers?

The governing board adopts policies and procedures for minor disciplinary actions against teachers, including suspensions without pay up to 10 days. The policies and procedures may vary from district to district, but must include notice, hearing and appeal provisions. See A.R.S. § 15-341(A)(23). The superintendent or assistant superintendent often is the final hearing officer for discipline up to a 10-day suspension. A local association representative and AEA Organizational Consultant can assist teachers with minor disciplinary problems.

Dismissals, Nonrenewals, and Suspensions Longer Than 10 Days

How can probationary teachers be fired for inadequate performance?

The governing board or its representative must give probationary teachers a written preliminary notice of inadequacy of classroom performance at least 90 days prior to service of a notice of intent not to reemploy or to dismiss. The preliminary notice must specify the nature of the inadequacies with sufficient “particularity” or specificity so that the teacher has an opportunity to correct them.

School districts often choose not to renew the contracts of

probationary teachers, rather than dismiss them mid-year. To not renew probationary teachers' contracts for the following year, governing boards must vote to issue notices of intent not to re-employ (nonrenewal notices). These final notices must be personally delivered to the teacher or postmarked by April 15.

In the most typical nonrenewal situation, a probationary teacher learns about evaluation problems in the fall, receives a preliminary notice of inadequate classroom performance by January 15, follows an improvement plan for a few months, receives another poor evaluation, and receives a nonrenewal notice by April 15. Teachers who receive a nonrenewal notice will have jobs until the end of the school year, but will not receive contracts for the following year. Probationary teachers do not have the right to a hearing to object to a nonrenewal. See A.R.S. § 15-536(C).

Occasionally, school districts seek to dismiss probationary teachers in the middle of the school year. Probationary teachers can receive a preliminary notice of inadequate performance at any time, as long as it is at least 90 days before service of the governing board's final notice of intent to dismiss. If the district seeks to dismiss probationary teachers mid-year, it must give notice of its intent to dismiss and provide an opportunity to request a hearing. Mid-year probationary teacher dismissals involve hearings and procedures similar to that provided for all tenured teacher dismissals.

How can tenured teachers be dismissed for inadequate classroom performance?

In order to dismiss tenured teachers for inadequate performance, the governing board or its representative must give tenured teachers a written preliminary notice of inadequacy of classroom performance. This preliminary notice must specify the nature of the inadequacies with sufficient "particularity" or specificity so that the teachers have an opportunity to correct them. The written preliminary notice of inadequacy must: 1) be based on a valid evaluation according to school district procedure; 2) include a written copy of any pertinent evaluation; 3) state the date by which the teachers must overcome the inadequacy; and 4) provide the teachers with at least 85 instructional days to improve. This preliminary notice must be delivered at least 10 instructional days before the start of the improvement period.

See A.R.S. § 15-539(C).

In a typical situation, a preliminary notice is delivered to a tenured teacher in May (at least 10 instructional days prior to the start of the improvement period), and the teacher has 85 instruc-

tional days to improve. However, the preliminary notice can be delivered at any time — as long as the tenured teacher has 10 instructional days before the start of the improvement period and 85 instructional days to improve.

If the teacher does not correct the noted inadequacies during the improvement period, then the superintendent can present to the governing board a statement of charges alleging inadequacy of classroom performance. The governing board votes whether to issue a notice of intent to dismiss at the expiration of 30 days after the notice is served on the teacher. The teacher can request a hearing by appealing within the 30-day period after service of the notice. See A.R.S. §§ 15-539, 15-541 and the question below on procedures at teacher dismissal hearings.



What is inadequacy of classroom performance?

Sometimes it is difficult to determine what conduct constitutes "classroom performance," requiring notice and an opportunity to improve. The Arizona Supreme Court has decided that "classroom performance ... does not define the place where the activity occurs, but instead includes those factors which pertain to teaching ability, technique, and effectiveness. It encompasses the broad scope of a teacher's professional activities that enhance or detract from the instructional process." *Wheeler v. Yuma School Dist. No. One*, 156 Ariz. 102, 107, 750 P.2d 860, 865 (1988). The Supreme Court concluded that communication skills with parents are part of "classroom performance."

Each governing board adopts a definition of "inadequacy," in consultation with its certificated teachers. In some districts, one "unsatisfactory" mark or two "needs improvement" marks constitute inadequacy. In other districts, inadequacy requires "below minimum standard" marks in three areas. The district's definition of inadequacy must be met in order to dismiss a teacher or non-renew a teacher's contract for inadequacy of classroom performance. See A.R.S. § 15-539(D).

How can a district nonrenew the contracts of probationary teachers for reasons other than inadequate classroom performance?

A governing board can issue a notice of intent not to re-employ (a nonrenewal notice) to probationary teachers. This nonrenewal notice must be personally delivered or postmarked by April 15. The nonrenewal notice must incorporate a statement of reasons for the nonrenewal, but districts have a great deal of discretion in determining the reasons. See A.R.S. § 15-536.

Some probationary teachers' contracts are not renewed due to serious misconduct. However, many probationary teachers' contracts are not renewed because the teachers simply do not "fit" in a particular school or district. These probationary teachers often achieve success elsewhere the following year, once they find a setting more suited to their qualifications, personality, or educational philosophy.

Probationary teachers do not have a right to a hearing to object to the nonrenewal of their contracts and are not entitled to an improvement period to correct problems other than classroom performance. Teachers who receive a nonrenewal notice remain employed until the end of the school year, but do not receive a contract for the following school year.

Occasionally, districts seek to fire probationary teachers mid-year, during their contract periods. For these mid-year dismissals, the districts must use similar procedures that apply to the dismissal of tenured teachers. Generally, this involves the governing board voting to issue a notice of intent to dismiss 30 days after the date of service of the notice. The teachers can appeal and request a hearing within those 30 days. Teachers who request a hearing will remain employed until completion of the hearing process. See A.R.S. § 15-539.

Can a district nonrenew the contracts of tenured teachers?

No. Notices of intent not to reemploy (nonrenewal notices) apply only to probationary teachers.

When do teachers have the right to a formal hearing and decision by the governing board?

Tenured teachers can request a formal hearing and a decision by the governing board for dismissals and suspensions longer than 10 school days. See A.R.S. § 15-541.

Probationary teachers have no statutory right to a hearing to

object to a notice of intent not to employ, which is a nonrenewal notice that denies a contract for the following school year. Probationary teachers can request a formal hearing and a decision by the governing board when a district seeks to dismiss or suspend them for more than 10 school days during the school year contract term. See A.R.S. § 15-536(C).

Each district adopts its own procedures for lesser disciplinary matters. Usually these are more informal hearings, without involvement of the governing board.

What procedures govern teacher dismissals and suspensions longer than 10 days?

Arizona law specifies the procedures that apply to teacher dismissals and suspensions longer than 10 school days. These procedures apply to tenured teachers and to probationary teachers during the school year contract period. (Note: Probationary teachers are not entitled to hearings for nonrenewal of contracts for the following year.)

Prior to dismissal or suspension longer than 10 days, the superintendent must present a statement of charges to the governing board for approval. The charges must allege good and just cause for the dismissal or suspension. Usually the charges involve unprofessional conduct, violations of district rules or policies, or inadequacy of classroom performance.

The statement of charges must specify the relevant facts for each allegation so that the teacher can prepare a defense. The statement of charges also must list the laws or district policies that allegedly have been violated. See A.R.S. § 15-539(E).

After reviewing the statement of charges, the governing board almost always votes to issue a notice of intent to dismiss or suspend, effective 30 days after the date of service of the notice. Teachers can appeal the board's decision by submitting a written request for a hearing within 30 days after service of the notice. Dismissals and suspensions longer than 10 school days do not become effective until the hearing is completed and the board has voted to dismiss or suspend. Teachers continue to be paid until completion of the hearing. See A.R.S. § 15-539(G) Districts often place teachers on paid administrative leave pending the final decision. See A.R.S. § 15-540.

The hearing must be held 10-25 days after the request for the hearing, unless the parties agree to another date. Teachers must receive at least 3 days advance notice of the date of the hearing. See A.R.S. § 15-541(A).

The governing board can hold the hearing, or it can designate a hearing officer to hold the hearing, hear the evidence, and make a recommendation. If the governing board opts for a hearing officer, the parties either must agree on the hearing officer or if they cannot agree, then the governing board can select a hearing officer from a panel provided by the Department of Education or the American Arbitration Association. The hearing officer must make a recommendation to the governing board within 10 days after the hearing. See A.R.S. § 15-541(A).



At the hearing, the district must present testimony and evidence to support each charge alleged in the statement of charges. Attorneys can represent teachers at the hearings. The teachers (usually through their attorneys) can cross-examine the district's witnesses and also can present their own witnesses, evidence, and statements to refute each of the district's allegations.

Whether or not there is a hearing officer, the governing board makes the final decision. The governing board must determine "whether there existed good and just cause for the notice of dismissal or suspension." See A.R.S. § 15-541(A). The governing board must render its decision within 10 days after the hearing officer submits the recommendation, or within 10 days after completion of the hearing if the governing board holds the hearing.

Can teachers appeal the governing board's decision in a dismissal hearing?

Yes, but it is very difficult to succeed. Teachers can appeal the governing board's decision to superior court within 30 days of the date of the decision. See A.R.S. § 15-543. The court does not provide a new trial for the teacher. Rather, the court looks at the record of the dismissal hearing and determines whether the governing board abused its discretion or acted in an arbitrary or capricious manner. This is a very high standard. Typically, the teacher must convince the superior court that there was no credible evidence to support the governing board's decision, or that there were gross procedural errors that deprived the teacher of a fair hearing.

Resignation

Should teachers resign if they are facing nonrenewal, suspension, or dismissal?

Many teachers choose to resign and seek more pleasant working situations, rather than stay where they are having problems. Other teachers decide to fight to prove their innocence. Before resigning, teachers should ask their local association representative or AEA Organizational Consultant for advice and for a copy of the booklet "*Leaving Your Job? Questions to consider before resigning.*" AEA Organizational Consultants can help negotiate a resignation or can refer members for a legal consultation.

Although teachers always can opt to resign effective at the end of the school year, it is unprofessional conduct for teachers under contract to resign mid-year without board approval. Mid-year resignations without board approval can result in a report to the Arizona Department of Education for investigation and disciplinary action. See A.R.S. § 15-545.

Salary Reductions and Reductions in Force

Can a district reduce teachers' salaries?

Yes, but the district cannot reduce tenured teachers' salaries unless 1) there is a "general salary reduction...[which] shall be applied equitably among all such teachers," and 2) each certified teacher receives a notice of the general salary reduction by May 15. See A.R.S. § 15-544. The provisions of A.R.S. § 15-544 do not apply to classroom site fund (CSF) pay. School districts may reduce CSF pay because the CSF depends on sales tax revenue which varies from year to year.

What rights do teachers have if they are rified?

A governing board may eliminate teachers in a school district "in order to effectuate economies in the operation of the district or to improve the efficient conduct and administration of the schools." Often this is called a reduction in force, or rife. Both tenured and probationary teachers who have been rified have a preferred right of reappointment for 3 years, in the order of original employment. Teachers retain this right of reappointment even if they obtain work elsewhere. The law is not entirely clear, but the preferred right of reappointment likely exists whenever there is an outside vacancy for which the teacher is qualified. Rified teachers generally do not have a right to vacancies filled by internal transfers. See A.R.S. § 15-544(C).

Resources

AEA publishes a wide variety of booklets and informational materials for its members. These booklets are available in the Members Only section of the AEA Web site. Go to www.arizonaaea.org. The following AEA booklets contain information about legal issues of interest to school employees.

Sexual Harassment, Responses and Resources for School Employees

Violence and Threats at School, Help for Employees

Child Abuse, Information for School Employees

Employment Discrimination, Information for School Employees

Free Speech for School Employees

Leaving Your Job? Questions to consider before resigning

Tips for Witnesses

Should You Sue Your Employer?

Legal Services Programs, For AEA Members Only

ESP Employment Problems, Where to go, what to do

Requesting Public Records

Many workshops, seminars, and opportunities for professional development also are available from AEA. Contact your AEA Organizational Consultant for further information or assistance with a specific problem. If you need the name and telephone number of your Organizational Consultant, call AEA headquarters at (602) 264-1774 or (800) 352-5411 (toll free outside the Phoenix area).

16



Published September 1998, revised 1/07



Arizona
Education
Association

345 East Palm Lane
Phoenix, Arizona 85004-1532

602-264-1774 • 800-352-5411 • FAX 602-240-6887
Web site: www.arizonaaea.org