

**ARKANSAS DEPARTMENT OF EDUCATION  
RULES GOVERNING THE GUIDELINES, PROCEDURES AND  
ENFORCEMENT OF THE ARKANSAS OPPORTUNITY  
PUBLIC SCHOOL CHOICE ACT**

December 12, 2011

**1.00 PURPOSE**

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Guidelines, Procedures, and Enforcement of the Arkansas Opportunity Public School Choice Act.
- 1.02 The purpose of these rules is to provide enhanced opportunity for students in Arkansas to gain the knowledge and skills necessary for postsecondary education, a technical education, or careers.

**2.00 AUTHORITY**

- 2.01 The Arkansas State Board of Education's authority for promulgating these rules is pursuant to Ark. Code Ann. §§ 6-11-105, 6-18-227, 25-15-201 et seq., and Acts 1124 and 1147 of 2011.

**3.00 DEFINITIONS**

- 3.01 Department - the Arkansas Department of Education.
- 3.02 Level 1 school - a school which, according to the classification system established in Ark. Code Ann. § 6-15-2103, is classified by the Arkansas Department of Education as a “school in need of immediate improvement.” Under the classification system established in Ark. Code Ann. § 6-15-2103, Level 1 is the lowest ranking that a school may receive, and Level 5 is the highest ranking.
- 3.03 Level 3 school - a school which, according to the classification system established in Ark. Code Ann. § 6-15-2103, is classified by the Arkansas Department of Education as a “school meeting standards.”
- 3.04 Nonresident or receiving district - the public school district, or open-enrollment public charter school, to which a student transfers or seeks to transfer under the provisions of Ark. Code Ann. § 6-18-227.
- 3.05 Nonresident or receiving school – the public school to which a student transfers or seeks to transfer under the provisions of Ark. Code Ann. § 6-18-227. A nonresident or receiving school may be a public school within the resident district, a public school within a nonresident district, or an open-enrollment public charter school.

- 3.06 Resident or transferring district - the public school district in which the student resides and from which the student seeks to transfer under the provisions of Ark. Code Ann. § 6-18-227.
- 3.07 Resident or transferring school – the public school in which the student is enrolled at the time of application and from which the student seeks to transfer under the provisions of Ark. Code Ann. § 6-18-227.

#### **4.00 EFFECTIVE DATE**

Opportunity Public School Choice under these rules shall take effect with the implementation of the school performance levels found in Ark. Code Ann. § 6-15-2103. *The 2012-2013 school year will be the first school year during which student transfers under these rules will be possible.*

#### **5.00 GENERAL REQUIREMENTS**

- 5.01 Upon the request of a parent or guardian, or the student if the student is over eighteen (18) years of age, a student may transfer from his or her resident school to another public school in accordance with the provisions of these rules if:
- 5.01.1 The resident public school has been designated pursuant to Ark. Code Ann. § 6-15-2103 as a Level 1 school for two (2) or more consecutive school years;
  - 5.01.2 The parent or guardian, or the student if the student is over eighteen (18) years of age, has notified the Department of Education and both the transferring and receiving school districts of the request to transfer no later than July 30 of the first year in which the student intends to transfer; and
  - 5.01.3 The receiving public school has been designated pursuant to Ark. Code Ann. § 6-15-2103 as a Level 3 school or higher in the most recent annual school classification made by the Department of Education.
- 5.02 Each school district board of directors shall offer the Opportunity Public School Choice option within the public schools. The Opportunity Public School Choice option shall be offered in addition to other existing choice options.
- 5.03 The parent or guardian of a student, or the student if the student is over eighteen (18) years of age, enrolled in or assigned to a school that has been designated as a school in Level 1 under Ark. Code Ann. § 6-15-2103

for two (2) or more consecutive school years, may choose as an alternative to enroll the student in the public school nearest to the student's legal residence that has been designated pursuant to Ark. Code Ann. § 6-15-2103 as a Level 3 school or higher in the most recent annual school classification made by the Department of Education. *Subject to the requirements of Sections 5.04.3 and 5.04.4 below*, the school or school district shall accept the student and report the student for purposes of funding pursuant to applicable state law.

- 5.04 Within thirty (30) days from receipt of an application from a student seeking admission under these rules, the superintendent of the nonresident district shall notify in writing the parent or guardian, or the student if the student is over eighteen (18) years of age, whether the Opportunity Public School Choice application has been accepted or rejected.
- 5.04.1 If the application is accepted, the nonresident school/district shall state in the notification letter the deadline by which the student must enroll in the receiving school.
- 5.04.2 If the application is rejected, the nonresident school/district shall state in the notification letter the specific reasons for the rejection.
- 5.04.3 A school district shall not deny a student the ability to transfer to a nonresident school under these rules unless there is a lack of capacity at the nonresident school.
- 5.04.4 A lack of capacity may be claimed by a school district only if the nonresident school has reached the maximum student-to-teacher ratio allowed under federal law, state law, the rules for standards of accreditation, or other applicable regulations. For the purposes of these rules, a school district may claim a lack of capacity if, as of the date the application for opportunity school choice is made, ninety-five percent (95%) or more of the seats at the grade level at the nonresident school are filled.
- 5.04.5 The race or ethnicity of a student shall not be used to deny a student the ability to attend a nonresident school under these rules.
- 5.04.6 Pursuant to Section 8.00 of these rules, a parent or guardian, or the student if the student is over eighteen (18) years of age, may appeal a school district's decision to deny admission to a nonresident school to the State Board after the student or the student's parent or guardian receives written notice from the nonresident district that admission has been denied.

- 5.04.7 The provisions of these rules and all student choice options created under these rules shall comply with Ark. Code Ann. § 6-18-206(d), (e), and (i) and shall not be subject to any other limitation or restriction provided by law.
- 5.04.8 If any provision of these rules conflicts with the provisions of a federal desegregation court order applicable to a school district, the provisions of the federal desegregation order shall govern.
- 5.05 For each student enrolled in or assigned to a school that has been designated a Level 1 school for two (2) or more consecutive school years, a school district shall:
- 5.05.1 Timely notify the parent or guardian, or the student if the student is over eighteen (18) years of age, as soon as practicable after the designation is made, of all options available pursuant to these rules; and
- 5.05.2 Offer the parent or guardian, or the student if the student is over eighteen (18) years of age, an opportunity to enroll the student in any public school that has been designated by the Department of Education pursuant to Ark. Code Ann. § 6-15-2103 as a Level 3 school or higher in the most recent annual school classification made by the Department of Education. The opportunity to continue attending the higher performing public school shall remain in force until the student graduates from high school.
- 5.06 For the purposes of continuity of educational choice, a transfer under these Rules shall operate as an irrevocable election for each subsequent entire school year and shall remain in force until:
- 5.06.1 The student completes high school; or,
- 5.06.2 The parent or guardian, or the student if the student is over eighteen (18) years of age, makes application *no later than July 30* for attendance or transfer as provided by Ark. Code Ann. §§ 6-18-202, 6-18-206 and 6-18-316. *Such a transfer shall be effective at the beginning of the next academic year.*
- 5.07 Students with disabilities who are eligible to receive services from the transferring school district under federal or state law, including students receiving additional funding through federal title programs specific to the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., and who participate in the Opportunity Public School Choice Act program, shall remain eligible to receive services from the receiving

school district as provided by state or federal law. Any funding for such a student shall be transferred to the receiving district.

- 5.08 The receiving district or charter school may transport students to and from the transferring district or charter school, and the cost of transporting students shall be the responsibility of the transferring district or charter school except as provided under Sections 5.08.1 and 5.08.2 of these rules.
- 5.08.1 A transferring district or charter school shall not be required to spend more than four hundred dollars (\$400) per student per school year for transportation required under 5.08 of these rules.
- 5.08.2 Upon the transferring school's being designated by the Department of Education pursuant to Ark. Code Ann. § 6-15-2103 as a Level 3 school or higher in the most recent annual school classification made by the Department of Education, the transportation costs shall no longer be the responsibility of the transferring district, and the student's transportation and the costs of transportation shall be the responsibility of the parents.
- 5.09 Unless excused by the school for illness or other good cause:
- 5.09.1 Any student participating in the Opportunity Public School Choice option shall remain in attendance throughout the school year and shall comply fully with the receiving school's code of conduct; and
- 5.09.2 The parent or guardian of each student participating in the Opportunity Public School Choice option shall comply fully with the receiving school's parental involvement requirements.
- 5.10 A student failing to comply with the requirements of these rules shall forfeit the Opportunity Public School Choice option.
- 5.11 A receiving district shall accept credits toward graduation that were awarded by *another* district.
- 5.12 The receiving district shall award a diploma to a student transferred under these rules if the student meets the receiving district's graduation requirements.
- 5.13 A district under this program shall request public service announcements to be made over the broadcast media and in the print media at such times and in such a manner as to inform parents or guardians of students in adjoining districts of the availability of the program, the application deadline, and the requirements and procedure for nonresident students to participate in the program.

## **6.00 REPORTING REQUIREMENTS**

- 6.01 The Department of Education shall develop an annual report on the status of school choice and deliver the report to the State Board, the Governor, and the Legislative Council at least ninety (90) days prior to the convening of the regular session of the General Assembly.
- 6.02 Each school district board of directors shall annually report the number of students applying for and attending the various types of public schools of choice in the district, including schools such as magnet schools, according to these rules. The school district board of directors shall report this data through its cycle reports as prescribed by the Commissioner of Education.
- 6.03 All school districts shall report to the Department of Education on an annual basis the race and gender of each student identified in Section 6.02 above, and other pertinent information needed to properly monitor compliance with the provisions of these rules. The reports may be on forms prescribed by the Department of Education, or the data may be submitted electronically by the district using a format authorized by the Department of Education. The school districts shall report this data through its cycle reports as prescribed by the Commissioner of Education.
- 6.03.1 The Department of Education may put on probation the superintendent of any school district that fails to file its report each year or fails to file any other information with a published deadline requested from school districts by the Department of Education so long as thirty (30) calendar days are given between the request for the information and the published deadline.
- 6.03.2 A copy of the report shall be provided to the Joint Interim Committee on Education.
- 6.04 The receiving school district shall report all students who transfer from another public school under this program. The students attending public schools pursuant to the Opportunity Public School Choice option shall be reported separately from those students reported for purposes of compliance with applicable state law.

## **7.00 FUNDING CONSIDERATIONS**

- 7.01 For the purposes of determining a school district's state funding, the nonresident student shall be counted as a part of the average daily membership of the receiving district.

- 7.02 The maximum Opportunity Public School Choice funds granted for an eligible student shall be calculated based on applicable state law.
- 7.03 The public school that provides services to students with disabilities shall receive funding as determined by applicable federal and state law.

## **8.00 APPEAL PROCEDURES**

- 8.01 A parent or guardian, or the student if the student is over eighteen (18) years of age, may appeal a school district's decision to deny admission to a nonresident school due to a lack of capacity to the State Board pursuant to this section.
- 8.02 The student or the student's parent or guardian (hereinafter the appealing party) must present a written appeal to the State Board via certified mail, return receipt requested, no later than ten (10) days after the appealing party receives notice of rejection from the nonresident school/district in accordance with Section 5.04 of these rules.
  - 8.02.1 The written appeal should be sent to:

Office of the Commissioner  
ATTN: Opportunity School Choice Appeal  
Four Capitol Mall  
Little Rock, Arkansas 72201
  - 8.02.2 Contemporaneously with the filing of the written appeal with the Office of the Commissioner, the appealing party must also mail a copy of the written appeal to the superintendent of the nonresident school/district.
  - 8.02.3 The appealing party shall set forth its arguments and evidence in support of its appeal.
  - 8.02.4 The appealing party must submit, along with its written appeal, a copy of the rejection letter from the nonresident school/district.
  - 8.02.5 Any request for a hearing before the State Board must be made in the written appeal.
- 8.03 The nonresident school/district may submit, in writing, any additional information, evidence or arguments supporting its rejection of the student's application by mailing such response via certified mail, return receipt requested to the State Board no later than ten (10) days after receiving the appealing party's written appeal.

8.03.1 Any response from the nonresident school/district should be sent to:

Office of the Commissioner  
ATTN: Opportunity School Choice Appeal  
Four Capitol Mall  
Little Rock, Arkansas 72201

8.03.2 Contemporaneously with the filing of the written response with the Office of the Commissioner, the nonresident school/district must also mail a copy of the written response to the appealing party.

8.03.3 If the appealing party did not request a hearing before the State Board, the nonresident school/district may request a hearing in its response.

8.04 If a hearing is requested by either party, the State Board shall schedule the hearing for the next regularly scheduled State Board meeting in accordance with its procedures for the submission of agenda items.

8.05 If no hearing is requested by either party, the State Board shall consider the appeal during its next regularly scheduled State Board meeting in accordance with its procedures for the submission of agenda items.

8.06 State Board Hearing Procedures

8.06.1 A staff member of the Department of Education shall introduce the agenda item.

8.06.2 Each party shall have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the nonresident school/district. The Chairperson of the State Board may, only for good cause shown and upon the request of either party, allow either party additional time to present their opening statements.

8.06.3 Each party will be given thirty (30) minutes to present their cases, beginning with the nonresident school/district. The Chairperson of the State Board may, only for good cause shown and upon request of either party, allow either party additional time to present their cases.

8.06.4 The State Board, at its discretion, shall have the authority to require any person associated with the application (student, parent, guardian, nonresident school/district employee, or resident district employee) to appear in person before the State Board as a witness

during the hearing. The State Board, at its discretion, may accept testimony by affidavit, declaration, or deposition.

- 8.06.5 Every witness giving oral testimony must be sworn under oath by the court reporter and shall be subject to direct examination, cross examination, and questioning by the State Board.
- 8.06.6 For the purposes of the record, documents offered during the hearing by the nonresident school/district shall be clearly marked in sequential, numeric order (1, 2, 3).
- 8.06.7 For the purposes of the record, documents offered during the hearing by the appealing party shall be clearly marked in sequential, alphabetic letters (A, B, C).
- 8.06.8 The nonresident/school district shall have the burden of proof in proving the basis for the denial of the transfer.
- 8.06.9 The State Board may sustain the rejection of the nonresident school/district or grant the appeal.
- 8.06.10 The State Board may announce its decision immediately after hearing all arguments and evidence or may take the matter under advisement. The State Board shall provide a written decision to the Department of Education, the appealing party, and the nonresident district within fourteen (14) calendar days of the appeal.

ATTACHMENT 1

## APPLICATION FOR TRANSFER PURSUANT TO THE ARKANSAS OPPORTUNITY SCHOOL CHOICE ACT

<b>APPLICANT INFORMATION</b>			
Applicant Name:			
Date of Birth:	Gender:	Male <input type="checkbox"/>	Female <input type="checkbox"/>
Grade for Upcoming School Year:			
Does the applicant require special needs or programs? Yes <input type="checkbox"/>		No <input type="checkbox"/>	
<b>ETHNIC ORIGIN (CHECK ONE) (See Note 1)</b>			
2 or More Races <input type="checkbox"/>	Asian <input type="checkbox"/>	Hispanic <input type="checkbox"/>	
African American <input type="checkbox"/>	Native Hawaiian/ Pacific Islander <input type="checkbox"/>	White <input type="checkbox"/>	
Native American/ Native Alaskan <input type="checkbox"/>			
<b>RESIDENT SCHOOL AND SCHOOL DISTRICT OF APPLICANT</b>			
District Name:		School Name:	
Address:			
Phone:			
<b>NON-RESIDENT SCHOOL/ SCHOOL DISTRICT APPLICANT WISHES TO ATTEND</b>			
District Name:		School Name:	
Address:			
Phone:			
<b>PARENT OR GUARDIAN INFORMATION</b>			
Name:		Home Phone:	
Address:		Work Phone:	
Parent/Guardian Signature			Date
<p><u>Note 1:</u> The race or ethnicity of a student shall not be used to deny the student to attend a school district of choice under the Arkansas Opportunity School Choice Act. This information is gathered for district reporting purposes only.</p> <p><u>Note 2:</u> Pursuant to Ark. Code Ann. § 6-18-227, reviewers of this application are hereby notified that a transfer under the Arkansas Opportunity School Choice Act shall operate as an irrevocable election for each subsequent entire school year and shall remain in force until the student completes high school or as otherwise provided by law.</p> <p><u>Note 3:</u> A school district shall not deny a student the ability to attend school in the student's school district of choice unless there is a lack of capacity at the school in the student's school district of choice as defined by Arkansas law and Arkansas Department of Education rules.</p> <p><u>Note 4:</u> Pursuant to Ark. Code Ann. § 6-18-227, a student may only transfer from a school that has been designated as a school in Level 1 under Ark. Code Ann. § 6-15-2103 for two (2) or more consecutive school years to a school that is classified as a Level 3 school or higher under Ark. Code Ann. § 6-15-2103 in the most annual school classification made by the Department of Education.</p>			
<b>DISTRICT USE ONLY</b>			
Application:	Accepted <input type="checkbox"/>	Rejected <input type="checkbox"/>	
Date Notification Sent to Parent/Guardian of Applicant:			
Date Notification Sent to Resident District (If Applicable):			