

ARKANSAS REGISTER

Transmittal Sheet

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Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Education

Department Legal Services

Contact Jennifer Davis E-mail jennifer.davis@arkansas.gov Phone 501-682-4227

Statutory Authority for Promulgating Rules Ark. Code Ann. 6-18-1901 et seq, as amended by Act 560 of 2015.

Rule Title: Arkansas Department of Education Rules Governing the Public School Choice Act of 2015

Intended Effective Date

(Check One)

Emergency (ACA 25-15-204)

30 Days After Filing (ACA 25-15-204)

Other _____
(Must be more than 30 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

April 16, 2015

May 18, 2015

July 15, 2015

July 9, 2015

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Jennifer Davis jennifer.davis@arkansas.gov

July 15, 2015

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

501-682-4227

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Phone Number

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Staff Attorney

Title

July 15, 2015

Date

**ARKANSAS DEPARTMENT OF EDUCATION RULES GOVERNING
THE PUBLIC SCHOOL CHOICE ACT OF 2015
August 2015**

1.00 PURPOSE

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Public School Choice Act of 2015.
- 1.02 The purpose of these rules is to set forth the process and procedures necessary to administer the Public School Choice Act of 2015.

2.00 AUTHORITY

- 2.01 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Ark. Code Ann. § 6-18-1901 et seq., as amended by Act 560 of 2015, and Ark. Code Ann. §§ 6-11-105 and 25-15-201 et seq.

3.00 DEFINITIONS

As used in these rules:

- 3.01 “Nonresident District” means a school district other than a student’s resident district;
- 3.02 “Parent” means a student’s parent, guardian, or other person having custody or care of the student;
- 3.03 “Resident district” means the school district in which the student resides as determined under Ark. Code Ann. § 6-18-202;
- 3.04 “Sibling” means each of two (2) or more children having a parent in common by blood, adoption, marriage, or foster care; and
- 3.05 “Transfer student” means a public school student in kindergarten through grade twelve (12) who transfers to a nonresident district through a public school choice option under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.

4.00 ESTABLISHMENT OF PUBLIC SCHOOL CHOICE PROGRAM

- 4.01 A public school choice program is established to enable a student in kindergarten through grade twelve (12) to attend a school in a nonresident district, subject to the limitations under Ark. Code Ann. § 6-18-1906 and Section 7.00 of these rules.
- 4.02 Each school district shall participate in a public school choice program consistent with Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.

- 4.03 These rules do not require a school district to add teachers, staff, or classrooms, or in any way to exceed the requirements and standards established by existing law.
- 4.04 The board of directors of a public school district shall adopt by resolution specific standards for acceptance and rejection of applications under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules. The standards:
- 4.04.1 May include without limitation the capacity of a program, class, grade level, or school building;
- 4.04.2 May include a claim of a lack of capacity by a school district only if the school district has reached at least ninety percent (90%) of the maximum authorized student population in a program, class, grade level, or school building under federal law, state law, the rules for standards of accreditation, or other applicable regulations;
- 4.04.3 Shall include a statement that priority will be given to an applicant who has a sibling or stepsibling who:
- 4.04.3.1 Resides in the same household; and
- 4.04.3.2 Is already enrolled in the nonresident district by choice.
- 4.04.4 Shall not include an applicant's:
- 4.04.4.1 Academic achievement;
- 4.04.4.2 Athletic or other extracurricular ability;
- 4.04.4.3 English proficiency level; or
- 4.04.4.4 Previous disciplinary proceedings, except that an expulsion from another district may be included under Ark. Code Ann. § 6-18-510.
- 4.04.5 A school district receiving transfers under the Public School Choice Act of 2013 and these rules shall not discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability.
- 4.05 A nonresident district shall:
- 4.05.1 Accept credits toward graduation that were awarded by another district; and

- 4.05.2 Award a diploma to a nonresident student if the student meets the nonresident district's graduation requirements.
- 4.06 The superintendent of a school district shall cause public announcements to be made over the broadcast media and either in the print media or on the Internet to inform parents of students in adjoining districts of the:
 - 4.06.1 Availability of the program;
 - 4.06.2 Application deadline; and
 - 4.06.3 Requirements and procedure for nonresident students to participate in the program.

5.00 GENERAL PROVISIONS

- 5.01 The transfer of a student under the Arkansas Public School Choice Act of 1989 (Ark. Code Ann. § 6-18-206 [repealed]) or the Public School Choice Act of 2013, is not voided by Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules and shall be treated as a transfer under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.
- 5.02 A student may accept only one (1) school choice transfer per school year.
 - 5.02.1 A student who accepts a public school choice transfer may return to his or her resident district during the school year.
 - 5.02.2 If a transferred student returns to his or her resident district, the student's transfer is voided, and the student shall reapply if the student seeks a future school choice transfer.
- 5.03 A transfer student attending a nonresident school under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules may complete all remaining school years at the nonresident district.
 - 5.03.1 A present or future sibling of a student who continues enrollment in the nonresident district under Section 5.03 of these rules and applies for a school choice transfer under Ark. Code Ann. § 6-18-1905 may enroll in the nonresident district if the district has the capacity to accept the sibling without adding teachers, staff, or classrooms or exceeding the regulations and standards established by law.
 - 5.03.2 A present or future sibling of a student who continues enrollment in the nonresident district and who enrolls in the nonresident district under Section 5.03 of these rules may complete all remaining years at the nonresident district.

- 5.04 The transfer student or the transfer student's parent is responsible for the transportation of the transfer student to and from the school in the nonresident district where the transfer student is enrolled.
- 5.04.1 The nonresident district may enter into a written agreement with the student, the student's parent, or the resident district to provide the transportation.
- 5.04.2 The State Board of Education may resolve disputes concerning transportation arising under Section 5.04 of these rules.
- 5.05 For purposes of determining a school district's state aid, a transfer student is counted as part of the average daily membership of the nonresident district where the transfer student is enrolled.

6.00 APPLICATION FOR TRANSFER

- 6.01 If a student seeks to attend a school in a nonresident district, the student's parent shall submit an application:
- 6.01.1 To the nonresident district which shall notify the resident district of the filing of the application;
- 6.01.2 On the form that is attached to these rules as Attachment 1; and
- 6.01.3 Postmarked no later than May 1 of the year in which the student seeks to begin the fall semester at the nonresident district.
- 6.02 A nonresident district that receives an application under Section 6.01 of these rules shall, upon receipt of the application, place a date and time stamp on the application that reflects the date and time the nonresident district received the application.
- 6.03 A nonresident district shall review and make a determination on each application in the order in which the application was received by the nonresident district.
- 6.04 Before accepting or rejecting an application, a nonresident district shall determine whether one of the limitations under Ark. Code Ann. § 6-18-1906 and Section 7.00 of these rules applies to the application.
- 6.05 By July 1 of the school year in which the student seeks to enroll in a nonresident district under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules, the superintendent of the nonresident district shall notify the parent and the resident district in writing as to whether the student's application has been accepted or rejected.

- 6.05.1 If the application is rejected, the superintendent of the nonresident district shall state in the notification letter the reason for the rejection.
- 6.05.2 If the application is accepted, the superintendent of the nonresident district shall state in the notification letter a reasonable deadline by which the student shall enroll in the nonresident district and after which the acceptance notification is null.

7.00 LIMITATIONS

- 7.01 If the provisions of Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules conflict with a provision of an enforceable desegregation court order or a district's court-approved desegregation plan regarding the effects of past racial segregation in student assignment, the provisions of the order or plan shall govern.
- 7.01.1 If a school district claims a conflict under Section 7.01 of these rules, the school district shall immediately submit proof from a federal court to the Department of Education that the school district has a genuine conflict under an active desegregation order or active court-approved desegregation plan with the interdistrict school choice provisions of this subchapter.
- 7.01.2 A school district shall provide the information required under Section 7.01.1 of these rules to:
- Office of the Commissioner
ATTN: Arkansas Public School Choice Act
Four Capitol Mall
Little Rock, AR 72201
- 7.02 There is established a numerical net maximum limit on school choice transfers each school year from a school district, less any school choice transfers into the school district under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules of not more than three percent (3%) of the enrollment that exists in the school district as of October 15 of the immediately preceding school year.
- 7.02.1 For the purpose of determining the percentage of school choice transfers under Section 7.02 of these rules, siblings who are counted in the numerator as transfer students shall count as one (1) student.
- 7.02.2 A student eligible to transfer to a nonresident district under Ark. Code Ann. §§ 6-15-430(c)(1), 6-18-227, or 6-21-812 shall not count against the cap of three percent (3%) of the resident or nonresident district.

- 7.02.3 Annually by December 15, the Department of Education shall report to each school district the net maximum number of school choice transfers for the next school year.
- 7.02.4 If a student is unable to transfer due to the limits under Section 7.02 of these rules, the resident district shall give the student priority for a transfer in the first school year in which the district is no longer subject to Ark. Code Ann. § 6-18-1906(b)(1) and Section 7.02 of these rules in the order that the resident district receives notices of applications under Ark. Code Ann. § 6-18-1905 and Section 6.00 of these rules, as evidenced by a notation made by the district on the applications indicating date and time of receipt.

8.00 APPEAL, DATA COLLECTION AND REPORTING

- 8.01 A student whose application for a transfer under Ark. Code Ann. § 6-18-1905 and Section 6.00 of these rules is rejected by the nonresident district may request a hearing before the State Board of Education to reconsider the transfer.
- 8.01.1 A request for a hearing before the State Board of Education shall be in writing and shall be postmarked no later than ten (10) calendar days, excluding weekends and legal holidays, after the student or the student's parent receives a notice of rejection of the application under Ark. Code Ann. § 6-18-1905 and Section 6.00 of these rules and shall be mailed to:
- Office of the Commissioner
ATTN: Arkansas Public School Choice Act Appeals
Four Capitol Mall
Little Rock, AR 72201
- 8.01.2 Contemporaneously with the filing of the written appeal with the Office of the Commissioner, the student or student's parent must also mail a copy of the written appeal to the superintendent of the nonresident school district.
- 8.01.3 In its written appeal, the student or student's parent shall state his or her basis for appealing the decision of the nonresident district.
- 8.01.4 The student or student's parent shall submit, along with its written appeal, a copy of the notice of rejection from the nonresident school district.
- 8.01.5 As part of the review process, the student or student's parent may submit supporting documentation that the transfer would be in the best educational, social, or psychological interest of the student.
- 8.01.6 The nonresident district may submit, in writing, any additional information, evidence, or arguments supporting its rejection of the

student's application by mailing such response to the State Board of Education. Such response shall be postmarked no later than ten (10) days after the nonresident district receives the student or parent's appeal. The response of the nonresident district shall be mailed to:

Office of the Commissioner
 ATTN: Arkansas Public School Choice Act Appeals
 Four Capitol Mall
 Little Rock, AR 72201

8.01.7 Contemporaneously with the filing of its response with the Office of the Commissioner, the nonresident district must also mail a copy of the response to the student or student's parent.

8.01.8 If the State Board of Education overturns the determination of the nonresident district on appeal, the State Board of Education shall notify the parent, the nonresident district, and the resident district of the basis for the State Board of Education's decision.

8.02 The Department of Education shall collect data from school districts on the number of applications for student transfers under Section 8.00 of these rules and study the effects of school choice transfers under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules, including without limitation the net maximum number of transfers and exemptions, on both resident and nonresident districts for up to two (2) years to determine if a racially segregative impact has occurred to any school district.

8.03 Annually by October 1, the Department of Education shall report its findings from the study of the data under Section 8.02 of these rules to the Senate Committee on Education and the House Committee on Education.

9.00 STATE BOARD HEARING PROCEDURES

The following procedures shall apply to hearings conducted by the State Board of Education pursuant to Ark. Code Ann. § 6-18-1907 and Section 8.00 of these rules:

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

9.02 All persons wishing to testify before the State Board of Education shall first be placed under oath by the Chairperson of the State Board.

9.03 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, for good cause shown and upon request of either party, allow either party additional time to present their opening statements.

- 9.04 Each party shall be given twenty (20) minutes to present their cases, beginning with the nonresident school district. The Chairperson of the State Board may, for good cause shown and upon request of either party, allow either party additional time to present their cases.
- 9.05 The State Board of Education, at its discretion, shall have the authority to require any person associated with the application to appear in person before the State Board as a witness during the hearing. The State Board of Education may accept testimony by affidavit, declaration or deposition.
- 9.06 Every witness may be subject to direct examination, cross examination and questioning by the State Board of Education.
- 9.07 For the purposes of the record, documents offered during the hearing by the nonresident district shall be clearly marked in sequential, numeric order (1,2,3).
- 9.08 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).
- 9.09 The nonresident school district shall have the burden of proof in proving the basis for denial of the transfer.
- 9.10 The State Board of Education may sustain the rejection of the nonresident district or grant the appeal.
- 9.11 The State Board of Education 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, the nonresident district and the resident district within fourteen (14) days of announcing its decision under this section.

ATTACHMENT 1

***APPLICATION FOR TRANSFER TO A NONRESIDENT DISTRICT
 “ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 2013 2015”
 (Must Be Submitted to Non-Resident ~~and Resident~~ Districts)***

APPLICANT INFORMATION

Student Name:

Student Date of Birth:

Gender

Male Female

Grade:

Does the applicant require special needs or programs? Yes No Is applicant currently under expulsion? Yes No **ETHNIC ORIGIN (CHECK ONE)**

(For data reporting purposes only)

2 or More Races Asian African-American Hispanic Native American/
Native Alaskan Native Hawaiian/
Pacific Islander White **RESIDENT SCHOOL DISTRICT OF APPLICANT**

District Name:

County Name:

Address:

Phone:

NONRESIDENT SCHOOL DISTRICT APPLICANT WISHES TO ATTEND

District Name:

County Name:

Address:

Phone:

Does the applicant already have a sibling or step-sibling in attendance in this district pursuant to the Public School Choice Act of 2013 or the Public School Choice Act of 2015? If so, please list:

PARENT OR GUARDIAN INFORMATION			
Name:		Home Phone:	
Address:		Work Phone:	
Parent/Guardian Signature		Date:	
<p>Pursuant to standards adopted by a nonresident school board a nonresident district may reserve the right to accept and reject applicants based on capacity of programs, class, grade level, or school building. Likewise, a nonresident district's standards may provide for the rejection of an applicant based upon the submission of false or misleading information to the above listed request for information when that information directly impacts the legal qualifications of an applicant to transfer pursuant to the School Choice Act. However, a nonresident district's standards shall not include an applicant's previous academic achievement, athletic or other extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings, except that an expulsion from another district may be included pursuant to Ark. Code Ann. § 6-18-510. Priority will be given to applicants with siblings or step-siblings attending the district. The nonresident district shall accept credits toward graduation that were awarded by another district and award a diploma to a nonresident applicant if the applicant meets the nonresident district's graduation requirements. This application must be filed in the nonresident district or postmarked no later than May 1 of the year in which the applicant would begin the fall semester at the nonresident district. A student whose application for transfer is rejected by the nonresident district may request a hearing before the State Board of Education to reconsider the transfer by filing such a request in writing with the Commissioner of Education no later than ten (10) days after the student or student's parent receives a notice of rejection. (Consult Ark. Code Ann. § 6-18-1905 and the Arkansas Department of Education Rules Governing the Public School Choice Act of 2015 for specific procedures on how to file such an appeal).</p>			
DISTRICT USE ONLY			
Date and Time Received by Resident District:		Date and Time Received by Nonresident District:	
Resident District LEA #:		Nonresident District LEA#:	
Student's State Identification #:			
Application	Accepted	Rejected	
Reason for Rejection (If Applicable):			
Date Notification Sent to Parent/Guardian of Applicant:			
Date Notification Sent to Resident District :			

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Education

DIVISION Legal Services

PERSON COMPLETING THIS STATEMENT Jennifer Davis

TELEPHONE NO. 501-682-4227 **FAX NO.** 501-682-4249 **EMAIL:** jennifer.davis@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ADE Rules Governing the Public School Choice Act of 2015

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No

- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total 0

Total 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total 0

Total 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
 - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.