

ARKANSAS REGISTER

Transmittal Sheet

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Education

Department Legal Services

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Statutory Authority for Promulgating Rules Act 1227 of 2013

Rule Title: ADE Rules Governing the Public School Choice Act of 2013

Intended Effective Date

(Check One)

Date

Emergency (ACA 25-15-204) Legal Notice Published

30 Days After Filing (ACA 25-15-204) Final Date for Public Comment

Other _____ Reviewed by Legislative Council

(Must be more than 30 days after filing date)

Adopted by State Agency

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Lori Freno lori.freno-engman@arkansas.gov 05/21/2013
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

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

Signature

501-682-4227 lori.freno-engman@arkansas.gov
Phone Number E-mail Address

Deputy General Counsel

Title

05/21/2013

Date

**ARKANSAS DEPARTMENT OF EDUCATION EMERGENCY RULES GOVERNING
THE PUBLIC SCHOOL CHOICE ACT OF 2013**
May 13, 2013

1.00 PURPOSE

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Public School Choice Act of 2013
- 1.02 The purpose of these rules is to set forth the process and procedures necessary to administer the Public School Choice Act of 2013.

2.00 AUTHORITY

- 2.01 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Act 1227 of 2013 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 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 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 Shall include a statement that priority will be given to an applicant who has a sibling or stepsibling who:
- 4.04.2.1 Resides in the same household; and
- 4.04.2.2 Is already enrolled in the nonresident district by choice.
- 4.04.3 Shall not include an applicant's:
- 4.04.3.1 Academic achievement;
- 4.04.3.2 Athletic or other extracurricular ability;
- 4.04.3.3 English proficiency level; or
- 4.04.3.4 Previous disciplinary proceedings, except that an expulsion from another district may be included under Ark. Code Ann. § 6-18-510.
- 4.04.4 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]), 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 may enroll in or continue enrollment in the nonresident district until the sibling of the transfer student completes his or her secondary education, 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.

5.04 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 with a copy to the resident district;

6.01.2 On the form that is attached to these rules as Attachment 1; and

6.01.3 Postmarked no later than June 1 of the year in which the student seeks to begin the fall semester at the nonresident district.

6.02 By August 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. The notification shall be sent via First-Class Mail to the address on the application.

6.02.1 If the application is rejected, the superintendent of the nonresident district shall state in the notification letter the reason for the rejection.

6.02.2 If the application is accepted, the superintendent of the nonresident district shall state in the notification letter:

6.02.2.1 A reasonable deadline by which the student shall enroll in the nonresident district and after which the acceptance notification is null; and

6.02.2.2 Instructions for the renewal procedures established by the nonresident district.

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.

7.02 A school district annually may declare an exemption under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules if the school district is subject to the

desegregation order or mandate of a federal court or agency remedying the effects of past racial segregation.

7.02.1 An exemption declared by a board of directors under Section 7.02 of these rules is irrevocable for one (1) year from the date the school district notifies the Department of Education of the declaration of exemption.

7.02.2 After each year of exemption, the board of directors may elect to participate in public school choice under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules if the school district's participation does not conflict with the school district's federal court-ordered desegregation program.

7.02.3 A school district shall notify the Department of Education by April 1 if in the next school year the school district intends to:

7.02.3.1 Declare an exemption under Section 7.02 of these rules; or

7.02.3.2 Resume participation after a period of exemption.

7.02.3.3 A school district shall provide the notifications under Section 7.02.3.1 or 7.02.3.2 to:

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

7.03 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 school district's three-quarter average daily membership for the immediately preceding school year.

7.03.1 For the purpose of determining the percentage of school choice transfers under Section 7.03 of these rules, siblings who are counted in the numerator as transfer students shall count as one (1) student, and siblings who are counted in the denominator as part of the average daily membership shall count as one (1) student.

7.03.2 Annually by June 1, the Department of Education shall report to each school district the net maximum number of school choice transfers for the current school year.

7.03.3 If a student is unable to transfer due to the limits under Section 7.03 of these rules, the resident district shall give the student priority for a transfer

in the following year 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 EFFECTIVE DATE

The provisions of the Arkansas Public School Choice Act of 2013 and these rules shall remain in effect until July 1, 2015.

10.00 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:

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

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

10.03 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.

10.04 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.

- 10.05 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.
- 10.06 Every witness may be subject to direct examination, cross examination and questioning by the State Board of Education.
- 10.07 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).
- 10.08 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).
- 10.09 The nonresident school district shall have the burden of proof in proving the basis for denial of the transfer.
- 10.10 The State Board of Education may sustain the rejection of the nonresident district or grant the appeal.
- 10.11 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.

11.00 EMERGENCY CLAUSE

- 11.01 WHEREAS, Act 1227 of 2013 contained an emergency clause and became effective on April 16, 2013; and
- 11.02 WHEREAS, Act 1227 of 2013 authorizes the State Board of Education to promulgate rules to implement the Act; and
- 11.03 WHEREAS, these rules are immediately necessary to achieve the purposes of Act 1227 of 2013 to resolve uncertainty in the law before the 2013-2014 school year and preserve existing student transfers;
- 11.04 THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-204 that imminent peril to the welfare of Arkansas public school students, parents and school districts will result without the immediate promulgation of these rules.

ATTACHMENT 1

**APPLICATION FOR TRANSFER TO A NONRESIDENT DISTRICT
"ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 2013"
(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?

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 (with a copy to the resident district) or postmarked no later than June 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 2013 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 :		