

# ARKANSAS REGISTER

## Transmittal Sheet

\* Use only for **FINAL** and **EMERGENCY RULES**



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 Lori Freno E-mail lori.freno-engman@arkansas.gov Phone 501-682-4227

Statutory Authority for Promulgating Rules Ark. Code Ann. § 6-18-227 (Acts 600, 1227 and 1429 of 2013)

Rule Title: ADE Rules Governing the Opportunity Public School Choice Act

**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 Legislatice 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

Phone Number

lori.freno-engman@arkansas.gov

E-mail Address

Deputy General Counsel

Title

05/21/2013

Date

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

**1.00 PURPOSE**

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

**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. §§ 6-11-105, 6-18-227, 6-15-430, 25-15-201 et seq., and Acts 600, 1227 and 1429 of 2013.

**3.00 DEFINITIONS**

As used in these rules:

- 3.01 “Department” means the Arkansas Department of Education.
- 3.02 “Nonresident or receiving district” means 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.
- 3.03 “Nonresident or receiving school” means 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.
- 3.04 “Resident or transferring district” means 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.
- 3.05 “Resident or transferring school” means 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.
- 3.06 “Public school or school district in academic distress” means a public school or school district that has been classified by the State Board of Education as a public school or school district in academic distress.

#### **4.00 GENERAL REQUIREMENTS**

- 4.01 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 district or public school to another school district or public school under these rules if:
- 4.01.1 The resident public school or school district has been classified by the State Board of Education as a public school or school district in academic distress; and
  - 4.01.2 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.
- 4.02 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 programs.
- 4.03 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 public school or school district that has been classified by the State Board of Education as a public school or school district in academic distress may choose as an alternative to enroll the student in a legally allowable public school or school district that is not classified as a public school or school district in academic distress and that is nearest to the student's legal residence. That school or school district shall accept the student and report the student for purposes of the funding under applicable state law.
- 4.04 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. The notification shall be sent via First-Class Mail to the address on the application.
- 4.04.1 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.
  - 4.04.2 If the application is rejected, the nonresident school/district shall state in the notification letter the specific reasons for the rejection.
  - 4.04.3 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.
  - 4.04.4 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.

4.04.5 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.

4.04.6 Pursuant to Section 7.00 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 of Education after the student or the student's parent or guardian receives written notice from the nonresident district that admission has been denied.

4.04.7 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.

4.05 For each student enrolled in or assigned to a public school or school district that has been classified by the State Board of Education as a public school or school district in academic distress, a school district shall:

4.05.1 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 under these rules; and

4.05.2 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 or school district that has not been classified by the State Board of Education as a public school or school district in academic distress.

4.05.3 The opportunity to continue attending the public school or school district that is not classified as a public school or school district in academic distress shall remain in force until the student graduates from high school.

4.06 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:

4.06.1 The student completes high school; or,

4.06.2 The parent or guardian, or the student if the student is over eighteen (18) years of age, timely makes application under a provision of law governing attendance in or transfer to another public school or school district other than the student's assigned school or resident district.

- 4.07 A transfer under these rules is effective at the beginning of the next academic year.
- 4.08 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, Pub. L. No. 89-10, 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 the student shall be transferred to the school district to which the student transfers.
- 4.09 The receiving public school or school district may transport students to and from the transferring public school or school district, and the cost of transporting students shall be the responsibility of the transferring public school or school district except as provided under Sections 4.09.1 and 4.09.2 of these rules.
- 4.09.1 A transferring public school or school district shall not be required to spend more than four hundred dollars (\$400) per student per school year for transportation required under Section 4.09 of these rules.
- 4.09.2 Upon the transferring public school or school district's removal from classification as a public school or school district in academic distress, the transportation costs shall no longer be the responsibility of the transferring public school or school district, and the student's transportation and the costs of transportation shall be the responsibility of the parent or guardian or of the receiving public school or school district if the receiving public school or school district agrees to bear the transportation costs.
- 4.10 Unless excused by the school for illness or other good cause:
- 4.10.1 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
- 4.10.2 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.
- 4.11 The parent or guardian shall ensure that the student participating in the opportunity public school choice option takes all statewide assessments, including, but not limited to, benchmark exams, required pursuant to Ark. Code Ann. § 6-15-433.
- 4.12 A student failing to comply with the requirements of these rules shall forfeit the Opportunity Public School Choice option.
- 4.13 A receiving district shall accept credits toward graduation that were awarded by another district.

- 4.14 The receiving district shall award a diploma to a student transferred under these rules if the student meets the receiving district's graduation requirements.
- 4.15 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.

## **5.00 REPORTING REQUIREMENTS**

- 5.01 The Department of Education shall develop an annual report on the status of school choice and deliver the report to the State Board of Education, the Governor, and the Legislative Council at least ninety (90) days prior to the convening of the regular session of the General Assembly.
- 5.02 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.
- 5.03 All school districts shall report to the Department of Education on an annual basis the race and gender of each student identified in Section 5.02 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.
- 5.03.1 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.
- 5.03.2 A copy of the report shall be provided to the Joint Interim Committee on Education.
- 5.04 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.

## **6.00 FUNDING CONSIDERATIONS**

- 6.01 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.
- 6.02 The maximum Opportunity Public School Choice funds granted for an eligible student shall be calculated based on applicable state law.
- 6.03 The public school that provides services to students with disabilities shall receive funding as determined by applicable federal and state law.

## **7.00 APPEAL PROCEDURES**

- 7.01 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 of Education pursuant to this section.
- 7.02 The student or the student's parent or guardian (hereinafter the appealing party) must present a written appeal to the State Board of Education via certified mail, return receipt requested, no later than ten (10) calendar days, excluding weekends and legal holidays, after the appealing party receives notice of rejection from the nonresident school/district in accordance with Section 4.04 of these rules.
- 7.02.1 The written appeal should be sent to:
- Office of the Commissioner  
ATTN: Opportunity School Choice Appeal  
Four Capitol Mall  
Little Rock, Arkansas 72201
- 7.02.2 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.
- 7.02.3 In its written appeal, the appealing party shall state his or her basis for appealing the decision of the nonresident district.
- 7.02.4 The appealing party must submit, along with its written appeal, a copy of the rejection letter from the nonresident school/district.
- 7.02.5 Any request for a hearing before the State Board of Education must be made in the written appeal.
- 7.03 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 via certified mail, return receipt requested to the State Board of Education no later than ten (10) days after receiving the appealing party's written appeal.

7.03.1 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

7.03.2 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.

7.03.3 If the appealing party did not request a hearing before the State Board of Education, the nonresident district may request a hearing in its response.

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

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

7.06 State Board of Education Hearing Procedures

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

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

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

7.06.4 Each party will be given twenty (20) minutes to present their cases, beginning with the nonresident district. The Chairperson of the State Board of Education may, for good cause shown and upon request of either party, allow either party additional time to present their cases.

7.06.5 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 of Education as a witness during the hearing. The State Board of Education may accept testimony by affidavit, declaration, or deposition.



- 7.06.6 Every witness may be subject to direct examination, cross examination and questioning by the State Board of Education.
- 7.06.7 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).
- 7.06.8 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).
- 7.06.9 The nonresident district shall have the burden of proof in proving the basis for the denial of the transfer.
- 7.06.10 The State Board of Education may sustain the rejection of the nonresident school/district or grant the appeal.
- 7.06.11 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 of Education shall provide a written decision to the Department of Education, the appealing party, and the nonresident district within fourteen (14) calendar days of announcing its decision under this section.

## **8.00 EMERGENCY CLAUSE**

- 8.01 WHEREAS, Acts 600, 1227, 1770 contained emergency clauses and are currently in effect; and
- 8.02 WHEREAS, Ark. Code Ann. § 6-18-227 authorizes the State Board of Education to promulgate rules necessary for the implementation of the Arkansas Opportunity Public School Choice Act; and
- 8.03 WHEREAS, these rules are immediately necessary to provide guidance to students and parents to participate in the Opportunity School Choice program;
- 8.04 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 SCHOOL  
OR SCHOOL DISTRICT UNDER THE ARKANSAS OPPORTUNITY  
PUBLIC SCHOOL CHOICE ACT**

**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 AND SCHOOL DISTRICT OF APPLICANT**

District and School Name:

County Name:

Address:

Phone:

**NONRESIDENT SCHOOL/SCHOOL DISTRICT APPLICANT WISHES TO ATTEND**

District and School Name:

County Name:

Address:

Phone:

**ATTACHMENT 1**

<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 public school or school district that has been classified as a public school or school district in academic distress.</p>		
<b>DISTRICT USE ONLY</b>		
Date and Time Received by Nonresident District:		
Resident District LEA #:	Nonresident District LEA#:	
Resident School LEA#:	Nonresident School LEA#:	
Student's State Identification #:		
Application	Accepted	Rejected
Reason for Rejection (If Applicable):		
Date Notification Sent to Parent/Guardian of Applicant:		