

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING PUBLIC SCHOOL CHOICE
January 2020 Effective:**

TABLE OF CONTENTS

Chapter 1—Regulatory Authority, Purpose, and Definitions

1-1.00 Regulatory Authority and Purpose 2

1-2.00 Definitions 2

Chapter 2— The Arkansas Public School Choice Act of 2015

2-1.00 Establishment of Public School Choice Program 4

2-2.00 General Provisions 5

2-3.00 Application for Transfer 6

2-4.00 Limitations 8

2-5.00 Appeal and Reporting 10

2-6.00 State Board Hearing Procedures 11

Chapter 3—The Opportunity School Choice Act

3-1.00 General Requirements 13

3-2.00 Reporting Requirements 16

3-3.00 Funding Considerations 17

3-4.00 Appeal Procedures 18

Chapter 4—School Choice for Military Families

4-1.00 ~~Opportunity~~ School Choice for Military Families 21

4-2.00 ~~Public School Choice for Military Families~~ 21

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING PUBLIC SCHOOL CHOICE**

**CHAPTER 1:
REGULATORY AUTHORITY, PURPOSE, AND DEFINITIONS**

1-1.00 REGULATORY AUTHORITY AND PURPOSE

- 1-1.01 These rules shall be known as the Division of Elementary and Secondary Education Rules Governing Public School Choice.
- 1-1.02 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Ark. Code Ann. §§~~6-1-106~~, 6-18-227 and 6-18-1901 et seq., ~~as amended by Acts 171 and 754 of 2019.~~
- 1-1.03 The purpose of these rules is to set forth the process and procedures necessary to administer the Public School Choice Act of 2015 and the Opportunity Public School Choice Act.

1-2.00 DEFINITIONS

As used in these rules:

- 1-2.01 “Division” means the Division of Elementary and Secondary Education.
- ~~1-2.02 “Eligible District” means a public school district that has been classified by the State Board of Education as a district in need of Level 5 intensive support.~~
- ~~1-2.03 “Eligible School” means a public school that has a rating of “F” under Ark. Code Ann. §§6-15-2105 and 6-15-2106.~~
- ~~1-2.04~~ 1-2.02 “Military Family” means the family of a student whose parent or guardian is an active duty member of the military who has been transferred to and resides on a military base.
- ~~1-2.05~~ 1-2.03 “Nonresident District” means:
- ~~1-2.05.1 Under the Public School Choice Act of 2015, a school district other than a student’s resident district to which a student transfers or seeks to transfer.~~
- ~~1-2.05.2 Under the Opportunity School Choice Act, a public school district, or open enrollment public charter school, to which a student transfers or seeks to transfer.~~

- ~~1-2.06~~ 1-2.04 “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, or a public school within a nonresident district ~~or an open-enrollment public charter school.~~
- ~~1-2.07~~ 1-2.05 “Parent or guardian” means a student’s parent, legal guardian, person having lawful control of the student, or person standing in loco parentis; ~~or other person having custody or care of the student;~~
- ~~1-2.08~~ 1-2.06 “Resident district” means the school district in which the student resides as determined under Ark. Code Ann. § 6-18-202 and from which the student seeks to transfer.
- ~~1-2.09~~ 1-2.07 “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.
- ~~1-2.10~~ 1-2.08 “Sibling” means each of two (2) or more children having a parent in common by blood, adoption, marriage, or foster care; and
- ~~1-2.11~~ 1-2.09 “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.

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING PUBLIC SCHOOL CHOICE**

**CHAPTER 2:
THE ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 2015**

2-1.00 ESTABLISHMENT OF PUBLIC SCHOOL CHOICE PROGRAM

- 2-1.01 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 2-4.00 of these rules.
- 2-1.02 Each school district shall participate in a public school choice program consistent with Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.
- 2-1.03 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.
- 2-1.04 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:
- 2-1.04.1 May include without limitation the capacity of a program, class, grade level, or school building;
 - 2-1.04.2 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;
 - 2-1.04.3 Shall include a statement that priority will be given to an applicant who has a sibling or stepsibling who:
 - 2-1.04.3.1 Resides in the same household; and
 - 2-1.04.3.2 Is already enrolled in the nonresident district by choice.
 - 2-1.04.4 Shall not include an applicant's:
 - 2-1.04.4.1 Academic achievement;
 - 2-1.04.4.2 Athletic or other extracurricular ability;

2-1.04.4.3 English proficiency level; or

2-1.04.4.4 Previous disciplinary proceedings, except that an expulsion from another district may be included under Ark. Code Ann. § 6-18-510.

2-1.04.5 A school district receiving transfers under the Public School Choice Act of 2015 and these rules shall not discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability.

2-1.05 Each school district shall have a policy stating the method by which a parent or guardian of a student may submit a school choice application, including without limitation:

2-1.05.1 Regular mail;

2-1.05.2 Email; and

2-1.05.3 Hand delivery.

2-1.06 A public school shall not require an applicant to file an application in person.

2-1.07 A nonresident district shall:

~~2-1.05.1~~ 2-1.07.1 Accept credits toward graduation that were awarded by another district; and

~~2-1.05.2~~ 2-1.07.2 Award a diploma to a nonresident student if the student meets the nonresident district's graduation requirements.

~~2-1.06~~ 2-1.08 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:

~~2-1.06.1~~ 2-1.08.1 Availability of the program;

~~2-1.06.2~~ 2-1.08.2 Application deadline;

~~2-1.06.3~~ 2-1.08.3 Requirements and procedure for nonresident students to participate in the program; and

~~2-1.06.4~~ 2-1.08.4 The primary point of contact at the District for school choice questions.

2-2.00 GENERAL PROVISIONS

- 2-2.01 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.
- 2-2.01.1 Districts that are subject to a federal court order requiring the districts to abide by the provisions of the Arkansas Public School Choice Act of 1989 and the corresponding rules are not subject to the requirements of the Public School Choice Act of 2015 or these rules.
- 2-2.02 A student may accept only one (1) school choice transfer per school year.
- 2-2.02.1 A student who accepts a public school choice transfer may return to his or her resident district during the school year.
- 2-2.02.2 If a transferred student returns to his or her resident district or enrolls in a private or home school, the student's transfer is voided, and the student shall reapply if the student seeks a future school choice transfer.
- 2-2.03 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.
- 2-2.03.1 A present or future sibling of a student who continues enrollment in the nonresident district under Section 2-2.03 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.
- 2-2.03.2 A present or future sibling of a student who continues enrollment in the nonresident district and who enrolls in the nonresident district under Section 2.03 of these rules may complete all remaining years at the nonresident district.
- 2-2.04 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.

2-2.04.1 The nonresident district may enter into a written agreement with the student, the student's parent, or the resident district to provide the transportation.

2-2.05 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.

2-3.00 APPLICATION FOR TRANSFER

2-3.01 If a student seeks to attend a school in a nonresident district, the student's parent or guardian, or student over the age of eighteen (18), shall submit an application:

2-3.01.1 To the nonresident district ~~with a copy~~ and to the student's resident district;

2-3.01.2 On the form approved by the Division; and

2-3.01.3 ~~Postmarked no~~ No earlier than January 1 and no later than May 1 of the year in which the student seeks to begin the fall semester at the nonresident district.

2-3.02 Both the resident district and the nonresident district shall, upon receipt of the application, place a date and time stamp on the application that reflects the date and time each district received the application.

2-3.03 Before accepting or rejecting an application, a nonresident district shall determine whether:

2-3.03.1 One of the limitations under Ark. Code Ann. § 6-18-1906 and Chapter 2, Section 2-4.00 of these rules applies to the application; and

2-3.03.2 The resident district has met its numerical net maximum limit on school choice transfers under Ark. Code Ann. § 6-18-1906.

2-3.03.2.1 The nonresident district shall contact the resident district to determine whether the resident district has met its net maximum limit on school choice transfers.

2-3.03.2.2 In determining whether a resident district has met its net maximum limit on school choice transfers, the nonresident district shall review and make a determination on each application in the order in which the application was received by the nonresident district.

- 2-3.03.2.3 If the resident district has met its numerical net maximum limit on school choice transfers, the nonresident district shall issue a rejection of the affected school choice application.
 - 2-3.03.2.4 If an applicant under this section has been rejected due to the numerical net maximum limit, then the applicant shall retain priority for a transfer under these rules until July 1 and be reconsidered when the resident district is no longer at the numerical net maximum limit.
 - 2-3.03.2.5 The resident district shall promptly notify the nonresident district when it is no longer at its numerical net maximum limit.
 - 2-3.03.2.6 Nothing in this section shall be construed to require a student transfer before the end of the school year.
- 2-3.04 Except as provided in Chapter 4, Section 4-2.00 of these rules, 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.
- 2-3.04.1 If the application is rejected, the superintendent of the nonresident district shall state in the notification letter the reason for the rejection.
 - 2-3.04.2 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.

2-4.00 LIMITATIONS

- 2-4.01 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, either of which explicitly limits the transfer of students between school districts, the provisions of the order or plan shall govern.
- 2-4.01.1 Annually by January 1, a school district that claims a conflict under Section 2-4.01 of these rules submit proof from a federal court to the Division of Elementary and Secondary Education that the school district has a genuine conflict under an active

desegregation order or active court-approved desegregation plan that explicitly limits the transfer of students between school districts.

- 2-4.01.2 A school district shall provide the information required under Section 2-4.01.1 of these rules to:

~~Office of the Commissioner~~
~~ATTN: Arkansas Public School Choice Act Appeals~~
Division of Elementary and Secondary Education
Attn: Legal Services Unit
 Four Capitol Mall
 Little Rock, AR 72201

- 2-4.01.3 Proof submitted under Section 2-4.01.1 of these rules shall contain the following:

2-4.01.3.1 Documentation that the desegregation order or court-approved desegregation plan is still active and enforceable; and

2-4.01.3.2 Documentation showing the specific language the school district believes limits its participation in the school choice provisions of the Public School Choice Act of 2015.

- 2-4.01.4 Within thirty (30) calendar days of receipt of proof submitted under Section 2-4.01.1, the Division shall notify the school district whether it is required to participate in the school choice provisions of the Public School Choice Act of 2015.

2-4.01.4.1 The Division may reject incomplete submissions.

2-4.01.4.2 If the Division does not provide a written exemption to the school district, then the district shall be required to participate in the school choice provisions of the Public School Choice Act of 2015.

- 2-4.01.5 The Division shall maintain on its website a list of school districts that are not required to participate in the school choice provisions of the Public School Choice Act of 2015.

- 2-4.01.6 The State Board of Education may review a decision of the Division upon written petition of the affected school district and may affirm or reverse the decision of the Division.

2-4.02 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 1 of the immediately preceding school year.

- 2-4.02.1 If the application for a transfer that causes the school district to meet or exceed the three percent (3%) numerical net maximum limit under Section 2-4.02 is on behalf of a sibling group, then the school district shall allow all siblings in the sibling group to exercise school choice under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.
- 2-4.02.2 A student eligible to transfer to a nonresident district under Ark. Code Ann. §§ 6-18-227, 6-18-233, or 6-21-812 shall not count against the cap of three percent (3%) of the resident or nonresident district.
- 2-4.02.3 Annually by December 15, the Division of Elementary and Secondary Education shall report to each school district the net maximum number of school choice transfers for the next school year.
- 2-4.02.4 If a student is unable to transfer due to the limits under Section 2-4.02 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 2-4.02 of these rules in the order that the resident district receives notices of applications under Ark. Code Ann. § 6-18-1905 and Section 2-3.00 of these rules, as evidenced by a notation made by the district on the applications indicating date and time of receipt.

2-5.00 APPEAL AND REPORTING

2-5.01 A parent or guardian, or student if the student is over eighteen (18) years of age, whose application for a transfer under Ark. Code Ann. § 6-18-1905 and Section 2-3.00 of these rules is rejected ~~by the nonresident district~~ may request a hearing before the State Board of Education to reconsider the application for transfer.

- 2-5.01.1 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 or guardian (hereafter "appealing party") receives a notice of rejection of the application under Ark.

Code Ann. § 6-18-1905 and Section 2-3.00 of these rules and shall be mailed to:

~~Office of the Commissioner~~
~~ATTN: Arkansas Public School Choice Act Appeals~~
Division of Elementary and Secondary Education
Attn: Legal Services Unit
 Four Capitol Mall
 Little Rock, AR 72201

- 2-5.01.2 Contemporaneously with the filing of the written appeal with the ~~Office of the Commissioner~~ Division's Legal Services Unit, the ~~student or student's parent~~ appealing party must also mail a copy of the written appeal to the superintendent of the nonresident school district.
- 2-5.01.3 In its written appeal, the ~~student or student's parent~~ appealing party shall state his or her basis for appealing the decision of the nonresident district.
- 2-5.01.4 The ~~student or student's parent~~ appealing party shall submit, along with its written appeal, a copy of the notice of rejection from the nonresident school district.
- 2-5.01.5 Upon receipt of the written appeal, the Division of Elementary and Secondary Education shall notify the nonresident and resident districts of the appeal. Both districts 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 districts receive notice of the student or parent's appeal. Any response shall be mailed to:

~~Office of the Commissioner~~
~~ATTN: Arkansas Public School Choice Act Appeals~~
Division of Elementary and Secondary Education
Attn: Legal Services Unit
 Four Capitol Mall
 Little Rock, AR 72201

- 2-5.01.6 The Division shall notify the ~~student or student's parent~~ appealing party, the nonresident district, and the resident district of the date, time, and location of the hearing before the State Board of Education.

2-5.01.7 As part of the review process, the ~~student or student's parent~~ appealing party may submit supporting documentation that the transfer would be in the best educational, social, or psychological interest of the student.

2-5.01.8 If the State Board of Education overturns the determination of the nonresident district on appeal, the State Board of Education shall notify the ~~parent~~ appealing party, the nonresident district, and the resident district of the basis for the State Board of Education's decision.

2-5.02 An applicant is not permitted to request a hearing before the State Board if his or her application for a transfer is rejected due to the application not being timely received by both the resident district and nonresident district.

2-6.00 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 2-5.00 of these rules:~~

2-6.01 All persons wishing to testify before the State Board of Education shall first be placed under oath by the Chairperson of the State Board.

~~2-6.02 Each party shall have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the nonresident school district. If the resident district chooses to participate in the hearing, they shall have like time to present an opening statement after the nonresident district. The Chairperson of the State Board may, for good cause shown and upon request of the party, allow additional time to present their opening statements.~~

~~2-6.03~~ 2-6.02 Each party that wishes to participate in the hearing shall be given may take up to twenty (20) minutes to present their cases its case, beginning with the nonresident school district, followed by the resident school district, and then the appealing party. f the resident district chooses to participate in the hearing, they shall have like time to present their case after the nonresident district. The Chairperson of the State Board may, for good cause shown and upon request of the party, allow additional time to present their cases.

~~2-6.04~~ 2-6.03 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.

~~2-6.05 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).~~

~~Documents offered by the responding party shall be clearly marked in sequential numbers (1, 2, 3).~~

~~2-6.06 The nonresident school district shall have the burden of proof in proving the basis for denial of the transfer.~~

~~2-6.07~~ 2-6.04 The State Board of Education ~~may~~ will grant or deny the appeal based upon the totality of evidence presented. ~~sustain the rejection of the nonresident district or grant the appeal.~~

~~2-6.08~~ 2-6.05 The State Board of Education may announce its decision immediately after hearing all arguments and evidence or may take the matter under advisement. All discussion shall take place in an open meeting. The State Board shall provide a written decision to the Division of Elementary and Secondary Education, the appealing party, the nonresident district, and the resident district within fourteen (14) days of announcing its decision under this section.

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING PUBLIC SCHOOL CHOICE**

**CHAPTER 3:
THE OPPORTUNITY SCHOOL CHOICE ACT**

3-1.00 GENERAL REQUIREMENTS

3-1.01 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~~ Opportunity School Choice if, at the time of the request either:

3-1.01.1 The resident public school district is ~~an eligible school district which~~ has been classified by the State Board of Education as a public school district in need of Level 5—Intensive support under § 6-15-2913 or 6-15-2915; or

3-1.01.2 The resident public school is ~~an eligible school which~~ has a rating of “F” under Ark. Code Ann. §§ 6-15-2105 and 6-15-2106; and

~~3-1.02~~ 3-1.01.3 Except as provided in Chapter 4, ~~Section 4-1.01~~ of these rules, a parent or guardian, or the student if the student is over eighteen (18) years of age, ~~must notify the Division and~~ has notified both the ~~transferring resident and receiving nonresident~~ school districts of any the request to transfer no earlier than January 1 and no later than May 1 of the year before school year before the school year in which the student intends to transfer.

~~3-1.03~~

3-1.02 ~~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. For each student enrolled in or assigned to a public school district that is classified by the State Board as a public school district in need of Level 5 – Intensive support or a public school within the resident district that has a rating of “F,” the school district shall:~~

3-1.02.1 ~~Timely notify the a 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 the options available under Chapter 3 of these rules;

- 3-1.02.2 Offer that person an opportunity to submit an application no earlier than January 1 and no later than May 1 (except as provided in Chapter 4 of these Rules) to enroll the student in the upcoming school year in any public school district that is not classified as in need of Level 5 – Intensive support or public school within the resident district that does not have a rating of “F.”

3-1.04

3-1.03 If a student is 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 an eligible public school or school district 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 district in need of Level 5 – intensive support or a public school that does not have a rating of “F” 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. enrolled in or assigned to a public school district that is classified by the State Board as a public school district in need of Level 5 – Intensive support or a public school within the resident district that has a rating of “F,” the a parent or guardian, or student if the student is over eighteen (18) years of age, may choose to:

- 3-1.03.1 Apply to enroll the student in a legally allowable public school district that is not classified as a public school district in need of Level 5 – Intensive support; or
- 3-1.03.2 Apply to enroll the student in a public school within the resident district that does not have a rating of “F.” If there is no public school within the resident district that does not have a rating of “F,” the parent or guardian, or the student if the student is over eighteen (18) years of age, may apply to enroll the student in a nonresident public school district and, if accepted, be placed in a public school that does not have a rating of “F.”

3-1.05 3-1.04 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. Except as provided in Chapter 4 of

these rules, by July 1 of the school year in which the student seeks to enroll in a nonresident district, the nonresident district shall notify the applicant in writing as to whether the application has been accepted or rejected. If the applicant has applied to attend a school within the student's resident district, the resident district shall notify the applicant in writing as to whether the student's application has been accepted or rejected within fifteen (15) calendar days of the application being received. The notification shall be sent via First-Class Mail to the address on the application.

~~3-1.05.1~~ 3-1.04.1 If the application is accepted, the superintendent of the nonresident district shall state in the notification letter the deadline by which the student must enroll in the receiving school.

~~3-1.05.2~~ 3-1.04.2 If the application is rejected, the superintendent of the nonresident district shall state in the notification letter the specific reasons for the rejection.

~~3-1.05.3~~ 3-1.04.3 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.

~~3-1.05.4~~ 3-1.04.4 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 Governing the Standards for Accreditation, or other applicable federal 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.

~~3-1.05.5~~ 3-1.04.5 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.

~~3-1.05.6~~ 3-1.04.6 ~~Pursuant to Section 3-4.00 of this Chapter, a parent or guardian, or the student if the student is over eighteen (18) years of age, An applicant may appeal a school district's decision to deny a student admission to a nonresident school to the State Board of Education by postmarking or delivering the appeal within ten (10) days after the applicant the student or the student's parent or guardian receives written notice from the nonresident district that admission has been denied.~~

~~3-1.05.7~~ 3-1.04.7 If any provision of these rules conflicts with a federal desegregation court order applicable to a school district, the federal desegregation court order shall govern.

~~3-1.06~~ For each student enrolled in or assigned to an eligible public school or school district under these rules, a school district shall:

~~3-1.06.1~~ — 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

~~3-1.06.2~~ — 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 need of Level 5 — intensive support or does not have a rating of “F”.

~~3-1.06.3~~ — The opportunity to continue attending the nonresident public school or district to which the student has transferred shall remain in force until the student graduates from high school.

3-1.07 For the purposes of continuity of educational choice, a transfer under this Chapter shall operate as an irrevocable election for each subsequent entire school year and shall remain in force until:

3-1.07.1 The student completes high school; or,

3-1.07.2 The parent or guardian, or 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.

3-1.08 Except as provided in Chapter 4, Section 4-1.03 of these Rules, a transfer under this Chapter is effective at the beginning of the next academic year.

3-1.09 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.

3-1.10 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 3-1.10.1 and 3-1.10.2 of these rules.

3-1.10.1 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 3-1.10 of these rules.

3-1.10.2 Upon the transferring public school district's removal from classification as a public school district in need of Level 5 – ~~intensive~~ Intensive support or the transferring public school's receipt of a rating other than "F," 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 district if the receiving public school district agrees to bear the transportation costs.

3-1.11 Unless excused by the school for illness or other good cause:

3-1.11.1 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

3-1.11.2 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.

3-1.11.3 A participant who fails to comply with this section shall forfeit the Opportunity School Choice option.

3-1.12 A receiving district shall accept credits toward graduation that were awarded by another district.

3-1.13 The receiving district shall award a diploma to a student transferred under these rules if the student meets the receiving district's graduation requirements.

3-1.14 A district under the Opportunity Public School Choice 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.

3-2.00 REPORTING REQUIREMENTS

3-2.01 The Division of Elementary and Secondary Education shall develop an annual report on student participation in public school choice and opportunity school choice and deliver the report to the State Board of Education, the Governor, the House Committee on Education, the Senate Committee on Education, and the Legislative Council at least sixty (60) days prior to the convening of the regular session of the General Assembly.

3-2.02 The annual report shall include without limitation:

3-2.02.1 The number of public school students participating in:

3-2.02.1.1 Public School Choice under Ark. Code Ann. § 6-18-1901 et seq.; and

3-2.02.1.2 Opportunity School Choice under Ark. Code Ann. § 6-18-227, disaggregated by whether the transfer was from within a public school district or outside a public school district.

3-2.02.2 Aggregate data of the race and gender of students participating in public school choice and opportunity school choice.

3-2.03 Each public school district shall annually report to the Division:

3-2.03.1 The number of students applying for a transfer to a nonresident school district under Public School Choice;

3-2.03.2 The number of students applying for a transfer to a nonresident school within the resident district under Opportunity School Choice; and

3-2.03.3 The number of students applying for a transfer to a nonresident school outside of the resident district under Opportunity School Choice.

3-2.04 The school district shall report the data required by Section 3-2.03 above through its cycle reports as prescribed by the Commissioner of Education.

3-3.00 FUNDING CONSIDERATIONS

- 3-3.01 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.
- 3-3.02 The maximum Opportunity Public School Choice funds granted for an eligible student shall be calculated based on applicable state law.
- 3-3.03 The public school that provides services to students with disabilities shall receive funding as determined by applicable federal and state law.

3-4.00 APPEAL PROCEDURES

- 3-4.01 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.
- 3-4.02 The ~~student or the student's parent or guardian (hereinafter the appealing party)~~ 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 superintendent of the nonresident district in accordance with Section 3-1.05 of this Chapter.
 - 3-4.02.1 The written appeal should be sent to:
~~Office of the Commissioner~~
~~ATTN: Arkansas Public School Choice Act Appeals~~
Division of Elementary and Secondary Education
Attn: Legal Services Unit
 Four Capitol Mall
 Little Rock, AR 72201
 - 3-4.02.2 Contemporaneously with the filing of the written appeal with the ~~Office of the Commissioner~~ Division's Legal Services Unit, the appealing party must also mail a copy of the written appeal to the superintendent of the nonresident school district.
 - 3-4.02.3 In its written appeal, the appealing party shall state his or her basis for appealing the decision of the nonresident district.
 - 3-4.02.4 The appealing party must submit, along with its written appeal, a copy of the rejection letter from the nonresident district.
 - 3-4.02.5 Any request for a hearing before the State Board of Education must be made in the written appeal.

3-4.03 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.

3-4.03.1 Any response from the nonresident district should be sent to:

~~Office of the Commissioner~~
~~ATTN: Arkansas Public School Choice Act Appeals~~
Division of Elementary and Secondary Education
Attn: Legal Services Unit
 Four Capitol Mall
 Little Rock, AR 72201

3-4.03.2 Contemporaneously with the filing of the written response with the ~~Office of the Commissioner~~ Division's Legal Services Unit, the nonresident district must also mail a copy of the written response to the appealing party.

3-4.03.3 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.

3-4.04 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.

3-4.05 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.

3-4.06 State Board of Education Hearing Procedures shall be the same as set forth in Section 2-6.00 of these rules.

3-4.07 An applicant is not permitted to request a hearing before the State Board if his or her application for a transfer is rejected due to the application not being timely received by the nonresident district.

~~3-4.06.1 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.~~

~~3-4.06.2 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.~~

- ~~3-4.06.3 — 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.~~
- ~~3-4.06.4 — 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.~~
- ~~3-4.06.5 — Every witness may be subject to questioning by the State Board of Education.~~
- ~~3-4.06.6 — The nonresident district shall have the burden of proof in proving the basis for the denial of the transfer.~~
- ~~3-4.06.7 — The State Board of Education may sustain the rejection of the nonresident district or grant the appeal.~~
- ~~3-4.06.8 — The State Board of Education may announce its decision immediately after hearing all arguments and evidence or may take the matter under advisement. All discussion shall take place in an open meeting. The State Board of Education shall provide a written decision to the Division of Elementary and Secondary Education, the appealing party, and the nonresident district within fourteen (14) calendar days of announcing its decision under this section.~~

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING PUBLIC SCHOOL CHOICE**

**CHAPTER 4:
SCHOOL CHOICE FOR MILITARY FAMILIES**

~~4-1.0~~ OPPORTUNITY SCHOOL CHOICE FOR MILITARY FAMILIES

~~4-1.01 If a student has a parent or guardian who is an active-duty member of the military and who has been transferred to and resides on a military base, then the student's parent or guardian may submit a request for an Opportunity School Choice transfer under this Chapter and Chapter 3 of these Rules at any time during the calendar year.~~

~~4-1.02 An application for transfer under Opportunity School Choice under this Chapter shall:~~

~~4-1.02.1 Be filed with the nonresident school district within fifteen (15) days of the parents or guardians' arrival on the military base;~~

~~4-1.02.2 Include the parent's or guardian's military transfer orders; and~~

~~4-1.02.3 Include the parent's or guardian's proof of residency on the military base.~~

~~4-1.03 A transfer under this Chapter for a student who has a parent or guardian who is an active-duty member of the military and who resides on a military base is effective upon the approval of the accepting school board at its next meeting.~~

~~4-2.00~~ 4-1.00 PUBLIC SCHOOL CHOICE FOR MILITARY FAMILIES

~~4-2.01~~ 4-1.01 If a student has a parent or guardian who is an active duty member of the military and who has been transferred to and resides on a military base, then the student's parent or guardian may file an application for a Public School Choice school choice transfer under this Chapter and Chapter 2 Chapters 2 and 3 of these Rules rules within fifteen (15) days of the parent's or guardian's arrival on the military base, which shall include without limitation the parent's or guardian's:

~~4-2.01.1~~ 4-1.01.1 Military transfer orders; and

~~4-2.01.2~~ 4-1.01.2 Proof of residency on the military base.

~~4-2.02~~ 4-1.02 A military family's application for a transfer ~~under the Public School Choice Act of 2015~~ is not subject to the May 1 January 1 through May 1 deadline time restriction under Chapter 2, Section 2-3.01.3 of these Rules rules if the student's parent or legal guardian:

~~4-2.02.1~~ 4-1.02.1 Has been transferred to and resides on a military base; ~~and~~

~~4-2.02.2~~ 4-1.02.2 Provides military transfer orders that confirm the date of transfer to the military base; and

4-1.02.3 Postmarks or delivers the application within fifteen (15) days of arrival on the military base to both resident district and nonresident district.

~~4-2.03 The July 1 deadline under Chapter 2, Section 2-3.04 of these Rules does not apply in the case of an application received from a student who has a parent or guardian who is an active-duty member of the military and who has been transferred to and resides on a military base.~~

4-2.03 A transfer under this Chapter for a student who has a parent or guardian who is an active-duty member of the military and who resides on a military base is effective upon the approval of the accepting school board at its next meeting.

QUESTIONNAIRE
FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ FAX NO. _____ E-MAIL _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this
- D. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule?

2. What is the subject of the proposed rule?

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No

If yes, please provide the federal rule, regulation, and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes No

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes No

5. Is this a new rule? Yes No If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes No If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes No If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

7. What is the purpose of this proposed rule? Why is it necessary?

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes No If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. _____

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). _____

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

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

Next Fiscal Year

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

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

Total _____

Total _____

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

Current Fiscal Year

Next Fiscal Year

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

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

Total _____

Total _____

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

\$ _____

\$ _____

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

\$ _____

\$ _____

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.

SUMMARY OF AMENDMENTS

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING PUBLIC SCHOOL CHOICE

The amendments incorporate the provisions of Act 490 of 2021, which changes provisions of both the Opportunity Public School Choice (Ark. Code Ann. § 6-18-227) and the Public School Choice Act of 2015 (Ark. Code Ann. § 6-18-1901 et seq.). The amendments establish a school choice application “window” of January 1 through May 1 to provide a consistent application period statewide. Concerning Opportunity School Choice, the amendments clarify that an applicant whose student is enrolled in a school with a letter grade of “F” may seek to transfer to another school in his/her resident district that does not have that grade, and if none are available, to another school district for possible enrollment in a school in the nonresident district that does not have a letter grade of “F.” The amendments also incorporate the Act’s requirement that school districts must have a policy concerning the means by which it will accept school choice applications (e.g., in person, via facsimile, Email, regular mail), but prohibits districts from requiring in-person filing only. The amendments also provide that an applicant has no right to appeal a denial to the State Board of Education when the reason for the denial was that the application was not timely filed (i.e., by May 1) with the appropriate school district(s). The State Board hearing procedures also were changed to simplify them, and technical/clerical changes also were made.