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DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING PUBLIC SCHOOL CHOICE
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~~**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. §§ 6-18-227 and 6-18-1901 et seq.

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 ~~"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.~~ "Lack of capacity" means a school district has reached the maximum student-to-teacher ratio allowed under federal law, state law, the rules for the standards for accreditation, state rules, or other applicable federal regulations.

1-2.03 "Nonresident District" means a school district other than a student's resident district to which a student transfers or seeks to transfer.

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.

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.

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.

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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.

1-2.08 "Sibling" means each of two (2) or more children having a parent in common by blood, adoption, marriage, or foster care; and

1-2.09 "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.

1-2.10 "Uniformed service member" means an active or reserve component member of the:

1-2.10.1 United States Army, United States Navy, United States Air Force, United States Marine Corps, United States Space Force, or United States Coast Guard;

1-2.10.2 National Oceanic and Atmospheric Administration Commissioned Officer Corps; or

1-2.10.3 United States Commissioned Corps of the Public Health Service.

1-2.11 "Uniformed service veteran" means a former uniformed service member who has been discharged under conditions other than dishonorable.

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~~**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.~~ A school district shall not deny a student the ability to attend a 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.

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~~ the maximum student-to-teacher ratio allowed under federal law, state law, the rules for standards of accreditation, or other applicable regulations;

2-1.04.2.1 A lack of capacity claim must be consistent with state and federal law.

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.

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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 district shall not require an ~~applicant to file~~ in-person filing of an application ~~in person~~.

2-1.07 A nonresident district shall:

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

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

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:

2-1.08.1 Availability of the program;

2-1.08.2 Application deadline;

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

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.

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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.

2-2.06 A student who transfers to a nonresident school district under this chapter shall not be:

2-2.06.1 Denied participation in an extracurricular activity at the nonresident school district to which he or she transfers based exclusively on his or her decision to transfer to the nonresident school district; or

2-2.06.2 Disciplined in any manner based exclusively on the exercise of his or her right to transfer to another nonresident school district under this subchapter.

2-2.07 A student who transfers to a nonresident school district under this section shall complete a Changing Schools/Athletic Participation form pursuant to the requirements of Ark. Code Ann. §6-18-227(m).

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 and to the student's resident district;

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

2-3.01.3 Postmarked or delivered 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, except as otherwise provided for dependents of uniformed service members and uniformed service veterans in Chapter 4 of this rule.

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 the limitations of Section 2-4.00 applies to the application.~~:~~

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~~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~~ this rule 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~~ 2-3.03.1 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.~~ for each application received under this rule, the nonresident 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 nonresident district's receipt of the application.

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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.~~

2-3.04.2 A transfer under this chapter is effective:

2-3.04.2.1 At the time the non-resident district provides notice that the application is accepted; or

2-3.04.2.2. At the time the application on appeal is approved by the State Board of Education.

2-3.04.3 A student who has an effective transfer under this chapter may:

2-3.04.3.1 Immediately transfer to the new district; or

2-3.04.3.2. Transfer to the new district at the beginning of the following school year.

2-3.04.3.2.a If the student elects to remain at the district the student attended at the time the application was filed for the remainder of the school year, the district shall continue to provide all educational services for that student for the remainder of the school year and the student shall continue to be counted towards the district's average daily attendance for the remainder of that school year.

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

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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:

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~~

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~~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 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:

Division of Elementary and Secondary Education
Attn: Legal Services Unit
Four Capitol Mall
Little Rock, AR 72201

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2-5.01.2 Contemporaneously with the filing of the written appeal with the 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.

2-5.01.3 In its written appeal, the appealing party shall state his or her basis for appealing the decision of the nonresident district.

2-5.01.4 The 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:

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 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 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 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:

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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 that wishes to participate in the hearing may take up to ~~twenty (20)~~ fifteen (15) minutes to present its case, beginning with the nonresident school district, followed by the resident school district, and then the appealing party. The Chairperson of the State Board may, for good cause shown and upon request of the party, allow additional time to present their cases.

2-6.03 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.

2-6.04 The State Board of Education will grant or deny the appeal based upon the totality of evidence presented.

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.

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~~**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 or older, a student may transfer from his or her resident district or public school to another school district or public school under Opportunity School Choice if, at the time of the request either:

3-1.01.1 The resident public school district 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 has a rating of "F" under Ark. Code Ann. §§ 6-15-2105 and 6-15-2106; and

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

3-1.02 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 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."

3-1.03 If a student is 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

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support or a public school within the resident district that has a rating of "F," the 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" and that is nearest the legal residence of the student. 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."

3-1.04 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 and the resident district 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 by July 1.~~ for each application received under this chapter, the nonresident 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 nonresident district's receipt of the application. The notification shall be sent via First-Class Mail to the address on the application.

3-1.0-4.1 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.

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

3-1.04.3 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.

3.1.04.4 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

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is made, ninety-five percent (95%) or more of the seats at the grade level at the nonresident school are filled.

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.~~ A school district receiving transfers under this rule shall not discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability.

3-1.04.6 An applicant may appeal a school district's decision to deny a student admission to a school in the student's school district of choice due to a lack of capacity to the State Board of Education by postmarking or delivering the appeal within ten (10) days after the applicant receives written notice from the nonresident district that admission has been denied.

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.

3-1.05 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:

3-1.05.1 The student completes high school; or,

3-1.05.2 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.

3-1.06 Except as provided in Chapter 4 of this rule, ~~Section 4-1.03 of these Rules,~~ a transfer under this Chapter is effective at the beginning of the next ~~academic~~ school year.

3-1.07 Students with disabilities who are eligible to receive services from the transferring school district under federal or state law, including students receiving additional funding through federal title programs specific to the Elementary and Secondary Education Act of 1965, 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.

3-1.08 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 3-1.08.1 and 3-1.08.2 of these rules.

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3-1.08.1 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 3-1.08 of these rules.

3-1.08.2 Upon the transferring public school district's removal from classification as a public school district in need of Level 5 – 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.

3-1.09 Unless excused by the school for illness or other good cause:

3-1.09.1 Any student participating in the Opportunity Public School Choice option shall remain in attendance throughout the school year and shall comply fully with the receiving school's code of conduct; and

3-1.09.2 The parent or guardian of each student participating in the Opportunity Public School Choice option shall comply fully with the receiving school's parental involvement requirements.

3-1.09.3 A participant who fails to comply with this section shall forfeit the Opportunity School Choice option.

3-1.10 A receiving district shall accept credits toward graduation that were awarded by another district.

3-1.11 The receiving district shall award a diploma to a student transferred under these rules if the student meets the receiving district's graduation requirements.

3-1.12 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.

3-1.13 A student who transfers to another public school or a nonresident school district under this chapter shall not be:

3-1.13.1 Denied participation in an extracurricular activity at the public school or nonresident school district to which he or she transfers based

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exclusively on his or her decision to transfer to the public school or nonresident school district; or

3-1.13.2 Disciplined in any manner based exclusively on the exercise of his or her right to transfer to another public school or a nonresident school district under this subchapter.

3-1.14 A student who transfers to a nonresident school district under this section shall complete a Changing Schools/Athletic Participation form pursuant to the requirements of Ark. Code Ann. §6-18-1904(f).

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.

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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 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:

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 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.

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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:

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 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.

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

CHAPTER 4:
SCHOOL CHOICE FOR ~~MILITARY FAMILIES~~ UNIFORMED SERVICE MEMBERS

4-1.00 ~~PUBLIC~~ SCHOOL CHOICE FOR ~~MILITARY FAMILIES~~ STUDENTS OF UNIFORMED SERVICE MEMBERS

~~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 school choice transfer under Chapters 2 and 3 of these 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:~~

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

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

~~4-1.02 A military family's application for a transfer is not subject to the January 1 through May 1 time restriction under these rules if the student's parent or legal guardian:~~

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

~~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 the resident district and the nonresident district.~~

~~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.~~

4-1.01 A child shall be eligible for enrollment in the public school district of his or her choice if he or she is a dependent of a:

4-1.01.1 Uniformed service member in full-time active-duty status;

4-1.01.2 Surviving spouse of a uniformed service member;

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4-1.01.3 Reserve component uniformed service member during the period six (6) months before until six (6) months after a Title 10, Title 32, or state active duty mobilization and service; or

4-1.01.4 Uniformed service veteran who is returning to civilian status at the conclusion of the uniformed service veteran's active duty status.

4-1.02 If a student eligible under Section 4-1.01 seeks to attend a school in a nonresident district, the student's parent, legal guardian, or person standing in loco parentis to the student shall submit an application approved by the Division of Elementary and Secondary Education by regular mail, electronic mail, or in person to the student's nonresident district and resident district, which includes:

4-1.02.1 A copy of the identification card of the student's parent, legal guardian, or person standing in loco parentis that qualifies the student under this section; and

4-1.02.2 A copy of the official orders, assignment notification, or notice of mobilization of the student's parent, legal guardian, or person standing in loco parentis.

4-1.03 An application deadline required under this rule shall not apply to a school transfer under this chapter.

4-1.04 A student eligible for a school transfer under this chapter shall be permitted only one (1) school transfer per school year under this rule.

4-1.05 The parent, legal guardian, or person standing in loco parentis to a student eligible for a school transfer under this rule shall be responsible for the transportation of his or her child to and from a nonresident district.

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CHAPTER 5:
REPORTING REQUIREMENT

5-1.00 General Provisions

5-1.01 A school district shall submit a report to the Division of Elementary and Secondary Education, satisfying the requirements of Section 5-1.02, if the total number of students who have transferred to a contiguous school district using a school choice or legal transfer provision is greater than twenty (20) percent of the current number of students attending the district.

5-1.01.1 A student will not be included in the calculation required under Section 5-1.01 or the report required under Section 5-1.01 if, according to the school district's records, that student is 18 years of age or older.

5-1.02 A report required under Section 5-1.01 shall include the following information:

5-1.02.1 The total number of students who have transferred to a contiguous school district using a school choice or legal transfer provision;

5-1.02.2 The number of students who have transferred to each contiguous school district using a school choice or legal transfer provision; and

5-1.02.3 The age and approximant geographic area of each student who has transferred to a contiguous school district using a school choice or legal transfer provision.

5-1.03 A report required under Section 5-1.01 shall be submitted in writing to the Office of School Choice by mail using the information provided:

Arkansas Department of Education
Attn: Office of School Choice
Four Capitol Mall
Little Rock, Arkansas 72201

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QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT Department of Education
BOARD/COMMISSION State Board of Education
BOARD/COMMISSION DIRECTOR Sec. Jacob Oliva
CONTACT PERSON Andres Rhodes
ADDRESS Four Capitol Mall, Little Rock, AR 72201
PHONE NO. (501) 682-4234 **EMAIL** andres.rhodes@ade.arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Andres Rhodes; Daniel Shults
PRESENTER EMAIL(S) andres.rhodes@ade.arkansas.gov; daniel.shults@ade.arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

****

1. What is the official title of this rule?
DESE Rules Governing Public School Choice

2. What is the subject of the proposed rule? Legal Mechanisms for Students to Change Public Schools

3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☑

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☑ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

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

On what date does the emergency rule expire?_____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☑

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

6. Is this rule required to comply with a *state* statute or rule? Yes ☑ No ☐

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

Ark. Code Ann. § 6-18-227(k)

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☑

If yes, please list the rules being repealed.
If no, please explain.

While the department is seeking to repeal several rules, an exceptions is being requested do to the legislative rule making requirements of the 2023 Session.

8. Is this a new rule? Yes ☐ No ☑

Does this repeal an existing rule? Yes ☐ No ☑
If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☑ No ☐
If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

Ark. Code Ann. § 6-18-227(k)

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☑ No ☐

If yes, please provide the year of the act(s) and act number(s).

Act 129 of 2023; Act 237 of 2023 (Sec 38 and 39); Act 649 of 2023; Act 768 of 2023; & Act 790 of 2023.

11. What is the reason for this proposed rule? Why is it necessary?

This rule various school choice provision of State law. The proposed amendment is required to implement statutory changes from the 94th General Assembly. The primary change implemented by this rule is the removal of the net maximum limit of 3% of enrollment under school choice in favor of a limit based on the capacity of the receiving district to educate the students. These changes also include provisions designed to making it easier for children of military families to take advantage of school choice and harmonize the two school choice processes regarding athletics and extracurriculars.

In addition, wherever possible, changes have been made to make the various processes under the legal transfer rule and the school choice rule as uniform as legally permissible. The rule also requires the district to notify DESE if more than 20 percent of the district's resident students have utilized a school choice or legal transfer provision to attend another school.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

https://dese.ade.arkansas.gov/Offices/legal/rules/pending

13. Will a public hearing be held on this proposed rule? Yes ☑ No ☐

If yes, please complete the following:

Date: April 17, 2024

Time: 10:00am

Place: ADE Arch Ford Building, Four Capitol Mall

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. April 24, 2024

15. What is the proposed effective date for this rule? July 1, 2024

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes ☐ No ☑

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Education
BOARD/COMMISSION State Board of Education
PERSON COMPLETING THIS STATEMENT Daniel Shults
TELEPHONE NO. 501-682-4202 **EMAIL** daniel.shults@ade.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE DESE Rules Governing Public School Choice

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 no, please explain:

   (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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

   (d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

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

Current Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $0

Next Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $0

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

Current Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $0

Next Fiscal Year

General Revenue_____
Federal Funds_____
Cash Funds_____
Special Revenue_____
Other (Identify)_____

Total $0

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

Current Fiscal Year
$ $0

Next Fiscal Year
$ $0

6. What is the total estimated cost by fiscal year to a state, county, or 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
$ $0

Next Fiscal Year
$ $0

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

Yes ☐ No ☑

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

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:
(a) justifies the agency's need for the proposed rule; and
(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
(a) the rule is achieving the statutory objectives;
(b) the benefits of the rule continue to justify its costs; and
(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

SUMMARY OF RULE AMENDMENT

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES GOVERNING PUBLIC SCHOOL CHOICE

This amendment to the DESE Rules Governing Public School Choice is promulgated in order to update the rule as required by Act 129 of 2023; Act 237 of 2023 (Sec 38 and 39); Act 649 of 2023; Act 768 of 2023; & Act 790 of 2023. The primary change implemented by this rule is the removal of the net maximum limit of 3% of enrollment under school choice in favor of a limit based on the capacity of the receiving district to educate the students. These changes also include provisions designed to remove time limitations for military families to take advantage of school choice and harmonize the two school choice processes regarding athletics and extracurricular activities. Act 790 also gave all school choice transfers immediate effect. The rule allows the transferring student to choose whether to transfer immediately or to complete the school year at their current school.

In addition, wherever possible, changes have been made to make the various processes under the legal transfer rule and the school choice rule as uniform as legally permissible. The rule also requires the district to notify DESE if more than 20 percent of the district's resident students have utilized a school choice or legal transfer provision to attend another school.

POST-PUBLIC COMMENT

Notice of Rulemaking

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Division of Elementary and Secondary Education is considering new administrative rules. Public comment hearings will be held for the following rules: DESE Rule Governing Public School Choice on April 17, 2024, at 10:00 a.m.; DESE Rule Governing Petitions for Student Transfers on April 17, 2024 at 1:00 p.m.; DESE Rule Governing Public School Policies Relating to Overnight Trips and Use of Public School Lavatories on April 18, 2024 at 10:00 a.m.; DESE Rule Governing the Student Protection Act on April 18, 2024 at 1:00 p.m.; DESE Rule Governing Educator Performance on April 19, 2024 at 10:00 a.m.; DESE Rule Governing Community Service on April 19, 2024 at 1:00 p.m.; DESE Rule Governing the Right to Read Act on April 19, 2024 at 3:00 p.m. All hearings will be held at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201. The public comment period for these rules ends on April 24, 2024. Written comments regarding these proposed rules may be mailed to ADE Legal Services, Four Capitol Mall, Room 302A, Little Rock, AR, 72201. Comments also may be emailed to ADE.RulesComments@ade.arkansas.gov. A copy of the proposed rules can be found on the Division of Elementary and Secondary Education's website at: https://dese.ade.arkansas.gov/Offices/legal/rules/pending. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address or via phone at (501) 683-1390.