

# Part II: Public School Choice

2008-2009

*Based on February 6, 2004 USDE Guidance*

# Public School Choice

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## Public School Choice

### INTRODUCTION

The *No Child Left Behind Act of 2001* (NCLB) responds to that need by giving parents of children enrolled in campuses that receive Title I funding and that are identified for “school improvement” the opportunity to transfer their children to a campus within the LEA that has not been so identified. These provisions of the statute, along with other elements that focus new attention and resources on turning around the campuses identified for improvement, are critical mechanisms for achieving the vision embodied in NCLB, a high-quality education for all children. It is important that school officials engage energetically both in efforts to improve low-achieving campuses and in implementing the public school choice provisions, so that this vision can be achieved.

*The No Child Left Behind Act* amended the Elementary and Secondary Education Act of 1965 (ESEA) in a number of areas to strengthen parent involvement and choice in education. The most critical amendments, and the subject of this guidance, require LEAs to provide the opportunity to transfer to another campus to students enrolled in campuses that administer Title I programs and that have been identified for (1) school improvement, (2) corrective action, or (3) restructuring (both in the planning year for restructuring and in any implementation years).

This part highlights important aspects of the public school choice component of Title I, and provides guidance on its provisions that may be useful in administering and implementing these requirements.

### A. GENERAL INFORMATION

#### A-1. Which campuses and local educational agencies (LEAs) are required to offer public school choice?

LEAs receiving funds under Title I, Part A are required to make choice available to all students who are enrolled in Title I campuses if their campus has been identified as in: (1) school improvement; (2) corrective action; or (3) restructuring. The LEA is responsible for paying all or a portion of the transportation necessary for students to attend their new campuses, subject to the limitations discussed in item J-3.

Note: Open-enrollment public charter schools are, by design, a school of choice. Public School Choice is not applicable to open-enrollment charter schools that are identified in school improvement or other types of campuses that are by design already a school of choice.

#### A-2. What if no other campus exists in the LEA to offer the school choice provision to parents?

See Questions E-10 and E-11 below for answers.

**A-3. What are the key principles that should form the foundation for a quality public school choice plan?**

A quality public school choice plan should embody the following principles:

1. Choice is an important opportunity for parents and children.
2. Choice is an important component of the overall district educational improvement plan.
3. An overriding goal is to provide students with access to quality instruction.
4. Communication with parents is timely and thorough.
5. Information on choices is provided to parents and students in a format that is easy to understand.
6. Real choice means giving parents more than one option from which to choose.

**B. TIMING AND DURATION OF CHOICES**

**B-1. For which students is an LEA required to offer public school choice?**

An LEA must offer all students enrolled in Title I campuses (that is, campuses that operate programs funded under Title I, Part A of the ESEA) the opportunity to transfer to another public school campus when those campuses fall within one of the stages of improvement detailed in the legislation and noted below. Beginning with the 2002-2003 school year, LEAs have been required to offer choice to students enrolled in campuses in the following categories:

1. Campuses that are in the first stage of school improvement.
2. Campuses that are in the second stage of school improvement.
3. Campuses that are in corrective action.
4. Campuses that are in restructuring (both the planning year for restructuring and any implementation years of alternative governance) [*Sections 1116(b)(5)(B), 1116(b)(7), and 1116(b)(8), and 34 C.F.R. Section 200.43(b)(2)*].

**B-2. When must an LEA make public school choice available to eligible students?**

Statute requires an LEA must make choice available for students not later than the first day of the school year following the school year in which the LEA administered the assessments that resulted in the campus being identified as in need of school improvement, corrective action, or restructuring [*Section 1116(b)(1)(E)*]. If possible, an LEA should notify parents about their available choices well before the beginning of the school year in which those choices will be available (See Question B-5 also).

**B-3. How should year-round schools meet the requirement to offer school choice by the beginning of the school year?**

In the case of year-round schools, choice must be offered before the beginning of the "school year" as that term is defined by the district. Parents of children attending these

campuses should be informed of their opportunity to choose another school as early as possible, and before the start of the new school year (See Question B-5 also).

**B-4. What is the responsibility of the TEA to ensure that public school choice is available at the start of a new school year?**

TEA must provide student assessment results, as well as lists of campuses identified for improvement, corrective action, and restructuring, to each LEA in a timely manner so that the LEA can, before the beginning of the new school year, identify those campuses whose students may transfer and inform parents that they may choose a different campus for their child.

**B-5. If any LEA does not receive from TEA, prior to the start of the school year, student achievement results or the list of campuses identified for improvement, corrective action, and restructuring, when must it offer public school choice?**

The law requires TEA to ensure that TAKS results are available to LEAs before the beginning of the school year (that is, before the start of the school year that follows the school year in which the TAKS tests were administered) [Section 1116(a)(2)]. It also requires LEAs to offer choice to eligible students prior to the beginning of the school year.

*If, however, an LEA does not receive the information in time to offer choice before the beginning of the school year, it must make choices available as quickly as possible, so that parents can exercise choice and students can enter new campuses before the school year gets well underway. The specific schedule for 2004-05 was mailed to applicable LEAs on September 14, 2004.*

Under no circumstances should an LEA wait until the next school year before providing the opportunity to transfer to eligible students. For example, an LEA that receives its listing of campuses identified for improvement in the fall might offer choice to students immediately or for the second semester [34 C.F.R. Section 200.32(f)]. Although parents must be notified immediately when the school improvement status is released during the school year, the parent may decide to have their student remain at the original campus for the remainder of the school year and begin implementing school choice with the start of the following school year.

**B-6. How long must an LEA continue to offer students in eligible Title I campuses the option to attend another public school?**

An LEA must offer choice to all students in an eligible Title I campus until the campus is no longer identified for improvement, corrective action, or restructuring, i.e., until the campus makes AYP for two consecutive years.

**B-7. How long must students who change campuses be allowed to attend the campus of their choice?**

If an eligible student exercises the option to transfer to another public school campus, an LEA must permit the student to remain in that campus until he or she has completed the highest grade in the campus. However, the LEA is no longer obligated to provide transportation for the student after the end of the school year in which the student's campus of origin is no longer identified for school improvement, corrective action, or restructuring [34 C.F.R. Section 200.44(g)].

In addition, the statute does not require students who change campuses to remain in their new campus through the highest grade of the school. To the extent feasible, those students should have the opportunity to return to the original campus if their parents decide that would be in their educational interest.

If an eligible student has transferred out of a campus that is in school improvement status and the student's original campus leaves that status after the school year has begun (as a result of an appeal being approved), the LEA must allow the student to continue to attend his or her current school of choice through the final grade of that school, but no longer is required to provide transportation. Since the school year will already be underway, however, the LEA should give parents reasonable time to come up with other options rather than immediately terminating the provision of transportation. For example, it might want to continue to provide transportation until the semester break.

**B-8. What opportunities for public school choice must an LEA provide to a student who has changed campuses under the Title I choice provisions and whose new campus of choice is subsequently identified as in need of improvement?**

Like other children enrolled in campuses identified for improvement, that child must be offered the choice of attending another campus that has not been so identified and, subject to the limitations described in Section J, offered the opportunity to receive transportation to such campus. Note, however, that this policy must be read together with the policy set forth in item B-7; if a child's original campus is no longer on the State's school improvement list, the LEA is not required to provide transportation to that child.

**B-9. If an eligible student changes campuses but, in a subsequent year, moves out of the attendance area for his or her original campus and no longer lives in the attendance area of a campus identified for improvement (but continues to live in the same school district), must the LEA continue to allow that student to attend the new campus and continue to provide transportation?**

As with students whose original campus is no longer identified as in need of improvement, students who change campuses and then move out of the attendance zone served by a campus in improvement status must be permitted to continue attending their new campus until they have completed the highest grade at that campus. However, once they move, the LEA is no longer obligated to provide for transportation.

**B-10. What can an LEA do to plan for public school choice even before assessment results and identifications of campuses in need of improvement are available?**

An LEA has several options that may facilitate planning for public school choice before assessment results are available. For example, transportation and communication plans can be developed before implementation is required.

An LEA will know in advance many of the campuses that must offer choice, since a campus in improvement status must make AYP for two consecutive years before it no longer has to offer choice. For campuses that will continue to be in improvement status for at least an additional year, plans can be made and parents can be notified well before the end of the school year.

In other instances, an LEA may choose to introduce or expand programs that allow open enrollment, which can then be modified to accommodate students who will be eligible to transfer if their campus is identified for improvement.

**B-11. May an LEA that is required to offer school choice (but not supplemental educational services) to students enrolled in a particular campus offer those students the opportunity to receive supplemental educational services?**

An LEA may give students enrolled in campuses in their first stage of improvement the opportunity to obtain supplemental educational services, so long as they also offer those students the opportunity to change campuses. However, because the law requires the provision of choice (but not supplemental educational services) to these students, all students who want to change campuses must be able to do so, and their transportation needs must be met (subject to the 20 percent limit discussed in item J-3) before any of these students are given supplemental educational services. LEAs that offer parents of those students the option of having their child change campuses or receive supplemental educational services must make it clear to the parents that, depending on the demand for choice (and the cost of transporting students to their new campuses), supplemental services might or might not be provided.

In addition, if an LEA has both campuses in their first stage of improvement and campuses in their second stage of improvement or undergoing corrective action or restructuring, it must give priority for supplemental educational services to students enrolled in the campuses in their second stage of improvement or in corrective action or restructuring (the students who, under the statute, are entitled to be given the opportunity to receive those services).

## C. ELIGIBLE STUDENTS

### C-1. Which students are eligible to change campuses under the Title I public school choice provisions?

All students enrolled in Title I campuses identified for school improvement, corrective action, or restructuring are eligible to transfer to another public school campus within the district (which may be a charter school) that is not in school improvement. This requirement for all students applies whether the campus in which a child is enrolled administers Title I as a schoolwide program [Section 1114] or as a targeted assistance program [Section 1115]. The only exception applies in the situations discussed in item E-12, when there are no other campuses in the district (or outside the district) to which students could transfer.

In the case of a campus that operates a targeted assistance program, all students in the campus, not just those receiving Title I services, must have the opportunity to change campuses.

### C-2. Are students who plan to attend, but are not yet “enrolled” in, a campus eligible to take advantage of the Title I choice provisions?

The Title I statute requires that choice be made available to all students enrolled in campuses identified for improvement (or corrective action or restructuring), but does not define “enrollment.” The USDE believes, however, that students planning to enter a campus for the first time, such as entering kindergartners, or students moving from elementary to middle school, or those who have just moved into the school attendance area served by a Title I campus, should generally have the same opportunity to exercise choice as students previously enrolled in a campus.

### C-3. What does the law mean when it says that the LEA shall “give priority to the lowest achieving children from low-income families”?

The LEA must give all students in a campus identified for improvement the opportunity to transfer to another public school. In implementing this option to transfer, however, there may be circumstances in which the LEA needs to give priority to the lowest-achieving children from low-income families [Section 1116(b)(1)(E)(ii)]. For example, if not all students can attend their first choice of campuses, an LEA would give first priority in assigning spaces to the low-achieving low-income students. Similarly, if an LEA does not have sufficient funding to provide transportation to all students who wish to transfer, it would apply this priority in determining which students can receive transportation.

### C-4. In applying this priority, how does an LEA determine which students are from low-income families?

The statute requires that LEAs make this determination using the same data that they use in allocating Title I funds to campuses [Section 1116(e)(12)(A)].

**C-5. May LEAs use information from the National School Lunch Program in determining which students are from low-income families and thus may be eligible for the priority for public school choice?**

Because the law requires LEAs, in determining which students are eligible for the priority, to use the same data they use in making Title I allocations, and because most LEAs use school lunch data in calculating those allocations, most LEAs will, in fact, have to use school lunch data in identifying students as eligible for the priority.

LEAs should do so, however, in a manner that protects the confidentiality of school lunch data, as provided for in the Richard B. Russell National School Lunch Act. They should establish procedures that allow release of information on school lunch eligibility only to officials who need that information for proper administration and enforcement of the school choice program and should include safeguards to protect family privacy. Additional information on this issue is provided in a December 17, 2002, letter from the U.S. Departments of Education and Agriculture (available at <http://www.ed.gov/programs/titleiparta/letter121702.html>).

**C-6. How may LEAs that operate school lunch programs under Provisions 2 and 3 of the National School Lunch Act determine which students are from low-income families and thus may be eligible for the priority?**

“Provision 2” and “Provision 3” allow campuses that offer students lunches at no charge, regardless of the students’ economic status, to certify students as eligible for free or reduced price lunches once every four years and longer, under certain conditions. National School Lunch Program regulations prohibit schools that make use of these alternatives from collecting eligibility data and certifying students on an annual basis for other purposes.

For the purpose of identifying students as eligible for the priority for public school choice under Title I, school officials may deem all students enrolled in Provision 2 and Provision 3 schools as “low-income.” For additional information, see the U.S. Department of Education-Department of Agriculture letter on this issue (available at <http://www.ed.gov/programs/titleiparta/22003.html>).

**C-7. How does an LEA determine which students are “lowest achieving”?**

LEAs have flexibility in determining which students from low-income families are lowest achieving and thus must be given a priority for public school choice. Eligible students might be rank-ordered, based on their achievement levels as determined using objective educational measures, such as the State assessment administered under ESEA section 1111. (However, students may not be rank-ordered by family income level, because this method would not give priority to the lowest-achieving educational students.)

Alternatively, the LEA might allow all eligible students who receive less than a certain score on TAKS (for instance, all those students not making the passing standard on TAKS reading or mathematics) to change campuses. This method could be used to focus attention on subject areas where the campus or LEA did not meet State AYP goals. Another option might be to base the determination on student grades, or on the scores students receive on other tests.

For Title I, Part A Targeted Assistance campuses, the campus should use procedures for all students that align to their existing Title I procedures for ranking students as greatest need for Title I services.

**C-8. What if a particular student attends a campus that has been identified for improvement, but has been assigned to that campus by a court order or for disciplinary reasons?**

This issue is difficult to answer in general terms, because it is dependent upon the particular circumstances surrounding a student's placement and can and should be resolved on a case-by-case basis.

For issues related to court-ordered desegregation plans, please see section G.

**D. NOTIFICATION OF PARENTS**

**D-1. When should parents be notified that their children are eligible for public school choice?**

Parents should be notified by the LEA well before the beginning of the school year or school term in which choice will be offered. (See questions B-2 and B-5 above.)

**D-2. How must an LEA notify parents that their children are eligible for public school choice?**

An LEA must provide an explanation of the choice option to all parents of students enrolled in Title I campuses that have been identified for school improvement, corrective action, or restructuring. This notification must be in a comprehensive, easy-to-understand format and, to the extent practicable, in a language the parents can understand. At a minimum, this notification must:

1. Inform parents that their child is eligible to attend another public school campus due to the identification of the current campus as in need of improvement;
2. Identify each public school campus, which may include campus charter schools, that the parent can select;
3. Include information on the academic achievement of the campuses that the parent may select [34 C.F.R. 200.37(b)(4)].

The LEA should also include an explanation of why the choices made available to parents may have been limited.

An LEA may provide additional information on the campuses to which the student may transfer, such as a description of any special academic programs or facilities, the availability of before- or after-school programs, and the professional qualifications of teachers. Such additional information should be presented in an unbiased manner that does not seek to dissuade parents from exercising their opportunity to choose a new campus. In addition to mailing notices directly to parents, the LEA must provide information about choice options through broader means, including newspapers, posters, and the Internet.

**D-3. What should parents look for when they are given the option of school choice?**

Parents should focus on the academic achievement results produced by the campuses they are considering. As noted above, when they are notified about the opportunity to choose a different campus for their child, parents must receive information regarding student academic achievement at the campuses from which they may choose. In addition, parents may want to request more detailed information and to ask to see a campus' academic report card, if available.

District officials should urge parents to consult a variety of sources for information about the campuses that are available to accept transfer students. These sources of information might include other parents, school visits, and information available on campus AEIS reports. Parents should match the strengths of a particular campus with the needs of their child, so that the child will be able to receive appropriate instruction geared toward improving his or her academic achievement.

Questions parents may wish to ask the campuses they are considering include:

1. How do you address the needs of struggling students?
2. What will you do to help my child achieve at higher levels?
3. What is the academic achievement level of your students in reading/language arts/English and math, as well as in other subjects?
4. How has this achievement changed over time?
5. How do you teach reading? Do you follow scientifically based strategies?
6. What percentage of your teachers are highly qualified?
7. Does your campus offer challenging coursework or other academic challenges at the middle or high school level?

**D-4. How much time should parents have to consider their options?**

An LEA might set different timelines for parents to make their decisions on choice, depending on the circumstances in the LEA and its campuses. For example, the LEA might permit parents to exercise choice at various times during the school year (e.g., in the spring of the prior school year, at the beginning of the school year, and at the beginning of the second semester). Alternatively, the LEA may establish a "window" during which parents must exercise their choice option. Whatever the case, the LEA must set a

reasonable deadline by which parents must apply and ensure that the parents have sufficient time and information to make an informed decision about selecting a campus. The LEA should work with parents to ensure that they have ample information and time to take advantage of the opportunity to choose a different public school for their child.

In any case, the LEA should allow a minimum of 30 calendar days for parents to choose to take advantage of the school choice provision.

**D-5. What procedures should LEAs establish for enabling parents to communicate their choice of campus?**

An LEA should ensure that its policies for receiving choice-related communications from parents do not impede parents' opportunities to exercise choice options. For example, parents should not have to appear in person to state their choices. Rather, parents should be able to communicate their choices in a variety of ways, including by standard mail, email, or fax. The LEA should confirm with parents that it has received their communication regarding choice.

**D-6. If there are no campuses to which students can transfer, must parents still be notified?**

Yes, parents must be notified that their child's campus is identified for improvement. Such notification might also inform parents of the option of receiving supplemental educational services for those children who are eligible or other campus reform strategies that may be implemented. (See also item E-11 and E-12)

**E. SCHOOLS OF CHOICE**

**E-1. Which campuses may be offered to students as transfer options?**

Except in the situations described in items E-9 and E-12, students must be given the option to transfer to other public school campuses, which may be campus charter schools, within the LEA. The choices made available to students may not include campuses identified for improvement (or corrective action or restructuring) under Title I or identified by the State as persistently dangerous.

Open-enrollment charter schools that fall within the boundaries of an LEA, but are not authorized by the LEA, may also be included as transfer options, in coordination and with the agreement of the individual charter school. The public schools from which students may choose may be, but are not required to be, public schools that operate Title I programs [34 C.F.R Section 200.44(a)(3)].

**E-2. How many choices of campuses is an LEA required to offer to students?**

If more than one campus that meets the requirements outlined in item E-1 is available, the LEA must offer more than one choice to eligible students. LEAs should strive to provide a

full menu of choices to students and parents, and must take into account parents' preferences among the choices offered [34 C.F.R. Section 200(a)(4)(ii)].

**E-3. May specialty schools, such as schools for the performing arts, be offered to students as transfer options?**

Yes. However, LEAs do not need to disregard entrance requirements when identifying transfer options for students. For example, an LEA may require students wishing to transfer to a fine arts magnet school or to a campus for gifted students to meet the normal eligibility requirements for those campuses, even if there are no other choices available to eligible students in the district.

**E-4. When an LEA offers parents multiple choices of campuses, who makes the final decision on which campus a child attends, and how is it made?**

While the final decision on the campus each child will attend is up to the LEA, and while not all parents will necessarily receive their first choice, LEAs must take parents' preferences into consideration in making these decisions. In addition, in making final decisions on assignments, LEAs must give priority to the lowest-achieving eligible children. LEAs might allow parents to rank-order their preferences among the campuses that are available to receive transfer students. LEAs should respect those preferences, to the extent practicable, when assigning students to campuses or when making decisions about transportation.

Once an LEA has made its decision, parents must have the option to decline the opportunity to move their child to the new campus identified by the LEA. If the child's current campus is in stage 2 school improvement and is subject to both the public school choice and supplemental educational services requirements, some parents, once they understand the transfer options, might elect to have their child remain in his or her original campus and receive supplemental educational services.

**E-5. Must an LEA that believes it does not have the physical capacity within its campuses to accept transferring students implement the Title I public school choice provisions?**

An LEA may not use lack of capacity to deny students the option to transfer but may take capacity into consideration in deciding which choices to make available to eligible students [34 C.F.R. 200.44(d)]. Note that this is a change from the Title I public school choice policy that applied prior to the enactment of *No Child Left Behind*.

The bottom line, then, is that every student enrolled in a Title I school in improvement who wishes to transfer to a campus that is not in need of improvement must have that opportunity. Moreover, an LEA's provision of a priority to the lowest-achieving eligible children (as described in Items C-3 and C-7) does not diminish the requirement for the LEA to provide choice to *all* students in its Title I schools that are in school improvement status. Thus, if an LEA does not have sufficient capacity in its campuses that are not identified for improvement (or as persistently dangerous) to accommodate the demand for

transfers by all eligible students, the LEA must create additional capacity or provide choices of other campuses.

**E-6. If an LEA does not have the physical capacity to offer transfers to all eligible students, how can it create additional capacity as described above?**

When capacity is an issue, school officials will need to employ creativity and ingenuity in creating capacity in campuses to receive additional students. Guidance on school choice located on the USDE website discusses several possible options in question E-4 which might assist the LEA in exploring appropriate options.

**E-7. What if State laws have the effect of limiting choice?**

The only type of State law that can limit or exempt an LEA from implementing the Title I public school choice requirements is a law that specifically prohibits public school choice through restrictions on public school assignments or the transfer of students from one public school to another [34 C.F.R. Section 200.44(b)]. Other laws, such as those that mandate specific student-teacher ratios, may make providing choice options more difficult, but may not be used to prohibit parental choices.

For issues regarding desegregation orders, see section G of this document.

**E-8. What if existing local transfer policies prohibit school choice?**

The Title I requirements supersede local laws and local school board policies that limit school choice and are inconsistent with the requirement to provide the option to transfer to all students enrolled in campuses identified for improvement, corrective action, or restructuring.

**E-9. What if choice might create health or safety problems?**

As indicated in the answers to earlier questions, LEAs have broad latitude in determining which transfer options to offer for parental consideration. They may consider health and safety factors in determining the transfer options. However, as indicated in the answer to question E-5, lack of capacity and health and safety concerns -- including overcrowding problems -- do not excuse an LEA from meeting the Title I public school choice requirement. The expectation is that an LEA will need to find ways to provide choice, consistent with its obligations to provide a healthy and safe learning environment.

**E-10. May an LEA provide eligible students with an option to transfer to campuses outside of the district?**

Yes. In fact, the law states that if all public school campuses within an LEA to which a child may transfer are identified for school improvement, corrective action, or restructuring, the LEA must, to the extent practicable, establish a cooperative agreement with other LEAs in the area that are willing to accept its students as transfers. In addition, LEAs that

are not in this situation may want to include inter-district transfers in their plans, in order to broaden the range of student choices or mitigate capacity concerns in the district, or both.

**E-11. What if providing the option to transfer to another campus within the district is not possible?**

A number of LEAs may have no campuses available to which students can transfer. This situation might occur when all campuses at a grade level are in school improvement or when the LEA has only a single campus at that grade level. It may also occur in rural areas where an LEA's campuses are so remote from another that choice is impracticable. For example, if the only other elementary school is over 50 miles away, then choice is likely impracticable. On the other hand, if other potential elementary school choices are located outside an LEA-defined attendance zone or internal boundary, these LEA defined boundaries may not be used to prevent student transfers.

In these cases, the LEA must, to the extent practicable, enter into cooperative agreements with other LEAs in the area (or with open-enrollment charter schools in the State) that can accept its students as transfers [*Section 1116(b)(11)*]. The LEA may also wish to offer supplemental services or other campus reform strategies to students attending campuses in their first stage of improvement who cannot be given the opportunity to change campuses [*34 C.F.R. Section 200.44(h)(2)*].

**E-12 If an LEA cannot provide school choice to students in a campus in stage 1 of school improvement (because there are no eligible campuses to which students could transfer) and the LEA voluntarily decides to offer supplemental educational services a year early, do the supplemental services requirements in section 1116 apply?**

No. Because an LEA is not required to offer supplemental educational services to eligible students enrolled in a campus in its first stage of school improvement, the requirements of section 1116(e) do not apply. In other words, such an LEA would not need to provide supplemental educational services only to low-income students, to contract only with State-approved providers, or to fund supplemental educational services at the per-student amount set forth in that subsection.

However, because the LEA will be required to offer supplemental educational services (that meet all the statutory requirements) to students in that campus the next year if the campus remains in improvement status, it would help avoid confusion and administrative complexity if the LEA, in that first year, abides by the requirements of section 1116(e) as much as possible. In addition, if the LEA uses Title I funds to provide supplemental educational services, it must meet all the requirements governing the use of those funds in schoolwide and targeted assistance programs.

## F. SPECIAL EDUCATION AND CHOICE

### F-1. What are the responsibilities of the campus that receives transfer students with disabilities?

LEAs must ensure that students with disabilities are provided a free appropriate public education (FAPE) consistent with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act (ADA Title II) in their campuses of choice. A campus to which a student transfers may elect to implement the individualized education program (IEP) or Section 504 plan (for students eligible only under Section 504 and Title II) developed by the prior campus, or to convene an IEP team meeting and develop a new IEP in consultation with the parents that meets the student's needs (or, for the Section 504/Title II-only eligible student, determine the regular and special education and related aids and services necessary to meet the student's needs).

Prior to the parents making a final decision on transferring their child to a new campus, LEAs should encourage them to discuss their child's specific needs with the prospective campus' staff and visit the prospective campus so that the parents are aware of the differences in school size, curriculum, faculty, and other factors that that may affect the ways in which the campus will provide a free appropriate education to their child. In addition, LEAs must ensure that campuses comply with the other provisions of Section 504 and the ADA, including accessibility provisions [34 C.F.R. Section 200.44(j)].

For information on funding for special education, see item I-4.

### F-2. What should parents be aware of in transferring their student?

Students with disabilities have special and specific needs. Along with the information suggested in D-3, parents should discuss their child's specific educational and developmental needs with, and visit, the prospective campus, so that every parent is aware of the school environment and its mission. While every student with a disability must be provided FAPE consistent with the IDEA, Section 504 and ADA Title II, the implementation and delivery of a free appropriate public education do not have to be identical at each campus. When a parent chooses to transfer a child to a different campus and prepares to develop or amend an IEP, the parent must recognize that there are different ways to address the needs of their child.

### F-3. Must students with disabilities be offered their choice of the same campuses as nondisabled students?

School districts must offer students with disabilities and those eligible under Section 504 the opportunity to be educated in a campus that has not been identified as in need of school improvement and has not been identified by the State as persistently dangerous, if nondisabled students have that opportunity.

However, an LEA is not required to offer students with disabilities the same choices of campuses as it offers to nondisabled students. In determining the choices available to such students, the LEA should match the abilities and needs of a student with disabilities with those campuses that have the ability to provide the student FAPE.

**F-4. Does the movement of a student with disabilities to a school of choice constitute a “change of placement” under the IDEA?**

A change in the location of delivery of services, in and of itself, does not constitute a “change of placement” as defined under the IDEA. The IDEA statute and implementing regulations contain specific requirements regarding “change of placement” provisions, and LEAs must comply with these requirements when they are triggered.

**G. DESEGREGATION AND CIVIL RIGHTS ISSUES**

**G-1. Must an LEA provide the option to transfer if the LEA is complying with a desegregation plan?**

Yes. If an LEA is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, the LEA is not exempt from offering students the option to transfer *[34 C.F.R. Section 200.44(c)(1)]*.

**G-2. What if a desegregation plan limits the opportunity for students to transfer?**

The LEA must still implement public school choice under Title I. However, the LEA should take into account the requirements of the plan in determining how to implement the Title I choice option *[34 C.F.R. Section 200.44(c)(2)]*.

**G-3. What if the desegregation plan is a court-ordered plan or a plan entered into with the USDE Office for Civil Rights?**

An LEA that is operating under a court-ordered plan should first determine whether it is able to offer choice within the parameters of its plan. If it is not able to do so, the LEA needs to seek court approval for amendments to the plan that permit a transfer option for students enrolled in campuses identified for school improvement, corrective action, or restructuring. If the LEA is unable to secure changes to the plan that permit a transfer option, the LEA will be out of compliance with Title I. If that occurs, it should notify TEA and the USDE Office for Civil Rights (OCR) of its request to the court and of the court’s decision *[34 C.F.R. Section 200.44(c)(3)]*.

If the plan has been agreed to with the Department’s Office for Civil Rights (OCR), OCR will work with the LEA to identify permissible amendments to the plan that will enable the LEA to comply with Title I public school choice requirements.

**G-4. How do Federal civil rights laws apply to LEAs implementing public school choice?**

In providing public school choice, an LEA may not discriminate on the basis of race, color, national origin, sex, disability, or age, consistent with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, ADA Title II, and the Age Discrimination Act of 1975.

See section F concerning the implementation of the Title I choice requirements for students with disabilities.

**H. RESPONSIBILITIES OF CAMPUSES RECEIVING TRANSFER STUDENTS**

**H-1. What are the responsibilities of a campus that receives transfer students under this program?**

A campus that receives students under this provision must ensure that transferring students are enrolled in classes and other activities in the campus in the same manner as all other students in the campus [Section 1116(b)(1)(F)]. For instance, students entering a campus as a result of the Title I choice provisions must have the same opportunity to select courses, to take part in special programs (such as activities for gifted and talented students), and to participate in extracurricular activities as all other students enrolled in the campus.

**H-2. May districts prohibit students transferring from a campus identified for improvement the opportunity to participate in interscholastic sports in their new campus?**

If a district has a general policy that requires all students who transfer under any other choice option within the district to “sit out” from interscholastic sports for a specified period of time after the transfer, then the district may apply that policy to students who transfer under Title I. If it does not have such a general policy, it may not impose one on students who enter the campus under the Title I provisions. Policies promulgated by TEA or the University Interscholastic League (UIL) should be applied in the same way.

**I. GENERAL FUNDING ISSUES**

**I-1. Are there any requirements as to how general educational services for transfer students are to be funded by the LEA?**

No. The Title I statute and regulations do not require that any local, State, or Federal funds “follow the child” to his or her new campus. However, LEAs should take care to ensure that receiving campuses have available the staff, materials, equipment, and other resources needed to accommodate the students who enter the campus through the exercise of the Title I choice option.

- I-2. **If a child transfers out of her or his original campus, should an LEA include that child (1) in the count of children used to determine the Title I allocation to the campus of residence, or (2) in the count used to determine the Title I allocation to the campus of enrollment?**

Generally, Title I campus eligibility and Title I allocations are based on the count of poor children who reside in the campus attendance area of a given campus [Section 1113]. Consistent with this general rule, an LEA would include a transferring child as part of the count of the campus of residence. However, LEAs also have the option of using enrollment as the basis for determining Title I eligibility and allocations [Section 1113(b)(1)(B)]. In the case of an LEA that uses enrollment, the transferring student would be counted in the campus in which the student is enrolled (the receiving campus).

- I-3. **May Title I funds be used to benefit non-Title I campuses that receive students transferring from Title I campuses identified for improvement?**

Title I dollars and services do not follow a child who transfers from a Title I campus identified for improvement to a non-Title I campus. However, in subsequent school years, the receiving campus may become eligible for Title I funds if a sufficient number of low-income students transfer into it (if the LEA bases its eligibility determinations on enrollment). If the number of students transferring into a receiving campus causes that campus to be designated as a Title I campus, then it will receive Title I funds.

- I-4. **Does special education funding follow a child with disabilities to the campus of his or her choice?**

Federal special education funding is distributed to school districts, not individual campus. It is up to the school district to determine how that money is spent and how those funds are distributed among individual campuses within the district.

## J. TRANSPORTATION FUNDING AND OTHER TRANSPORTATION ISSUES

- J-1. **Is an LEA required to provide transportation to campuses of choice?**

Yes, an LEA must pay for or provide transportation to the new campus, subject to the limitations described in item J-3 [34 C.F.R. Section 200.44(i)].

- J-2. **What funds may be used by an LEA to pay for choice-related transportation?**

An LEA may use Title I funds, as well as other allowable Federal, State, local, and private resources, to pay for the transportation required to implement the Title I school choice requirements. (See item J-8.)

- J-3. **How much must an LEA pay to provide choice-related transportation?**

The law establishes a joint funding mechanism for choice-related transportation and supplemental educational services [Section 1116(b)(10)]. Unless a lesser amount is

needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on:

1. Choice-related transportation;
2. Supplemental educational services; or
3. A combination of (1) and (2).

Moreover, the 20 percent must be calculated before the LEA takes any reservations “off the top” of its Title I, Part A allocation for parental involvement, private school equitable participation, or other purposes.

This flexible funding approach means that the amount of funding that an LEA must devote to choice-related transportation depends in part on how much it spends on supplemental educational services. However, if the cost of satisfying all requests for supplemental educational services exceeds 5 percent of an LEA’s Title I, Part A allocation, the LEA may not spend less than an amount equal to 5 percent on those services. Similarly, if the demand from parents of eligible students for transportation needed for choice exceeds 5 percent of the allocation, the LEA must spend the equivalent of at least 5 percent on transportation. The LEA has flexibility in allocating the remaining 10 percent between choice-related transportation and supplemental educational services, and in doing so should take into consideration the level of parental demand and the costs of meeting that demand [*34 C.F.R. Section 200.48(a)*].

An LEA may, but is not required to, spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demands for choice-related transportation and supplemental educational services. A school district could also spend State or local funds, if it wishes, to assist in paying for transportation.

**J-4. If an LEA is not required or is unable to provide supplemental educational services to eligible students, how much money is it required to spend on choice-related transportation?**

Some LEAs, in a given year, will not be required to provide supplemental educational services because they have no campuses that are in stage 2 of improvement or undergoing corrective action or restructuring or will have received a one-year exemption from TEA from the requirement to provide services [*Section 1116(e)(10)*]. LEAs in this situation must spend the equivalent of 20 percent of their Title I allocations on choice-related transportation, or a lesser amount that satisfies all the demand from the parents of eligible students for transportation.

**J-5. If the cost of continuing to provide choice-related transportation to students who exercised the option to change campuses in previous years exceeds 15 percent of an LEA’s Title I, Part A allocation, must the LEA use an amount equal to at least 5 percent of its allocation to provide supplemental educational services?**

Yes. The statute requires LEAs to permit a student who changes campuses, pursuant to the Title I choice provisions, to remain in the new campus until he or she has completed the highest grade in that campus, and it terminates the obligation of the LEA to provide transportation prior to completion of that grade only if the child's original campus is no longer identified for improvement or subject to corrective action or restructuring [*Section 1116(b)(13)*]. However, this provision does not exempt an LEA subject to the requirement to provide supplemental educational services from having to spend an amount equal to at least 5 percent of its Title I, Part A allocation on those services. LEAs whose costs of providing transportation to students who continue to enroll in their new campuses would exceed 15 percent of their allocations may choose to spend more than 20 percent on the combination of choice-related transportation and supplemental educational services or could reduce their spending on transportation in order to free up 5 percent for supplemental educational services.

**J-6. What must an LEA do if funds are not sufficient to provide transportation to all students wishing to transfer?**

If the funds available are insufficient to provide transportation to each student who requests a transfer, the LEA must give priority to the lowest-achieving students from low-income families. However, LEAs must still offer the opportunity to transfer to all students. (See also item C-3.)

**J-7. Must an LEA reserve a portion of its Title I allocation to pay for choice-related transportation?**

No. The statutory phrase "an amount equal to" means that the funds required to pay the costs of choice-related transportation and supplemental educational services need not come from Title I allocations, but may be provided from Title I allocations or from other allowable Federal, State, local, or private sources. (See also item J-8.)

For example, if a district already operates transportation services, the LEA may be able to provide the transportation required by the Title I school choice provision through its existing transportation program. In such a case, the LEA may count, toward the 20 percent requirement, the portion of its transportation costs that is attributable to providing choice to students exercising the Title I choice option.

**J-8. What other Federal program dollars may be used to pay for choice-related transportation?**

LEAs may use their Title V, Part A—Local Innovative Education Program funds to pay for choice-related transportation. LEAs also may use funds transferred to Title I or Title V from other Federal education programs under the ESEA Section 6123 "transferability" authority to pay such costs.

An LEA must include any funds transferred into Title I, Part A (under Section 6123-Funding Transferability) in the base used in calculating the "amount equal to 20 percent" of its Title I

allocation, to determine required expenditures for choice-related transportation and supplemental educational services.

- J-9. Is an LEA required to pay for transportation for students who have left a campus in improvement prior to the enactment of *No Child Left Behind*?**

No, this is not required.

- J-10. If an LEA does not already directly provide for transportation to and from campuses, must the district provide transportation for students choosing to transfer under these provisions?**

Yes. However, the statute permits an LEA to make alternative arrangements for providing transportation, such as reimbursing parents for the cost of providing transportation or using city transportation. In addition, the LEA would not be required to provide transportation to students who live only a short distance from their new campus, as discussed in J-11.

- J-11. If an LEA does provide transportation but has a general policy of not providing it to students who live within a certain distance of their campuses, would it have to provide transportation to students who elect, under the Title I school choice provisions, to transfer to campuses that are within that distance of their homes?**

No. For instance, an LEA might have a policy of providing transportation only to students who live more than two (2) miles from the campuses they attend. In that situation, the LEA would not be required to provide for transportation to students who elect, under the Title I provisions, to transfer to campuses within two miles of their homes.

- J-12. May an LEA establish transportation zones within an LEA based on the geographic location of campuses?**

Yes, an LEA has latitude in deciding which options to provide for eligible students. For example, it might establish transportation zones based upon geographic location and fully fund transportation to different campuses within a zone. This option would allow the district to offer more than one choice of campuses while ensuring that transportation can be reasonably provided or arranged.

Outside the transportation zone, the district could decide to pay for only part of the transportation to the campus. Parents might select a campus outside of their designated attendance zone, but they would be informed prior to making this decision that they may be responsible for providing or arranging transportation for their children.

If transportation zones are developed, they should be drawn to provide genuine choice and address only issues of geographic distance. LEAs should ensure that there is sufficient capacity to accommodate the demand for choice within each zone. If this cannot be done, students must be given the opportunity to attend a campus outside their zone of residence and provided with transportation.

**J-13. Does the Title I “supplement, not supplant” requirement apply to transportation funds?**

Yes. Title I funds may be used only to supplement the level of funds that, in the absence of the Title I funds, would be made available from non-Federal sources for the transportation of children. For example, if an LEA is required by State or local law to provide transportation to students who choose to transfer to another campus under an existing choice plan, it may not use Title I funds to supplant the State or local funds that it otherwise would use to provide transportation, even though transportation costs generally are an allowable use of Title I funds.

