



Public School Choice

Draft Non-Regulatory Guidance



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DRAFT GUIDANCE

Public School Choice

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Public School Choice

INTRODUCTION

When students are attending schools that have not made adequate yearly progress in increasing student academic achievement, parents need options to ensure that their children will have the opportunity to access a quality education. The *No Child Left Behind Act* of 2001 responds to the pressing need to improve educational opportunities for students in low-performing schools by providing for students to transfer to better schools starting in the fall of 2002. School improvement activities, coupled with public school choice, comprise key strategies capable of providing a high-quality education to all students. Therefore, it is important that State and local officials work proactively to improve low-performing schools while encouraging parents to take advantage of new options available to them.

Public school choice is a component of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the *No Child Left Behind Act* of 2001. This component of the law offers parents educational choices for their children. Students who are attending Title I schools are eligible to transfer to another school if their school has been identified as being in (1) school improvement, (2) corrective action, or (3) restructuring. (For the definitions of these terms, please see Appendix A.)

Providing parents with a variety of options will help to ensure access to quality educational opportunities for students. The opportunity to obtain supplemental educational services is another parental choice component of *No Child Left Behind* and is available to eligible students who are enrolled in schools in the second year of school improvement. When both options are available, parents may have the choice of which option they would prefer for their child. (For more information on supplemental services go to <http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc>.)

This guidance highlights some important aspects of the public school choice component of Title I, and provides guidance on some provisions that may be useful in administering and implementing these requirements. States may rely on this guidance in administering these requirements. U.S. Department of Education officials, including the Inspector General, will consider State recipients that follow approaches contained in this guidance to be in compliance with the applicable Federal requirements that govern this program.

A. GENERAL INFORMATION

A-1. What is the purpose of the public school choice requirement in *No Child Left Behind*?

Public school choice is a critical component of *No Child Left Behind* (NCLB) that offers students in low-performing Title I schools an opportunity to attend higher-quality schools, even as the low-performing schools are being improved. Together, school improvement activities and public school choice can provide all students in low-performing Title I schools the opportunity to access a high-quality education. When all students -- including students with disabilities and English language learners -- are provided high-quality educational options, and when all parents receive enough information to make intelligent choices among these options, public school choice can increase both equity and excellence in education.

A-2. Which schools and local educational agencies (LEAs) are required to offer public school choice?

LEAs receiving funds under Title I are required to make choice available to all students in qualifying schools. Students who are attending Title I schools are eligible to transfer to another school if their school has been identified as in: (1) school improvement; (2) corrective action; or (3) restructuring. (For the definitions of these terms, please see Appendix A.) The LEA is responsible for paying all or a portion of the transportation necessary for the implementation of public school choice, subject to the limitations discussed in item K-3 in this document.

A-3. What are the key components of a quality public school choice plan?

A quality public school choice plan should contain the following elements:

1. Choice is viewed as an important opportunity for parents.
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 is provided in a format that is easy to understand.

A-4. May an existing choice program, such as an open enrollment program, be modified to include the Title I public school choice requirement?

Yes, the Title I public school choice program can become a meaningful part of an open enrollment program, provided that the requirements in Title I are met,

including giving priority to low-income, low-achieving children. (See items C-3 and C-4). The public school choice requirement in Title I addresses the quality of education, and provides parents with the opportunity to transfer his or her child from a school in need of improvement to a school that is not in need of improvement.

A-5. What other educational choice options are available to students and parents under the Act?

There are several choice options in *No Child Left Behind*. Two address educational issues and one addresses the issue of student safety.

Students attending schools that have not made adequate yearly progress (AYP) in improving student academic achievement will be given the options of (1) attending another public school, or (2) receiving supplemental educational services, depending on the eligibility of the student and the status of the school. The choice to attend another public school is available to all students enrolled in schools that are in the first year of school improvement status and for the subsequent years that the school remains identified for improvement. The provision of supplemental educational services is available to eligible students who are enrolled in schools in the second year of school improvement and for subsequent years. (See the chart on page 5.) When both options are available, parents have the choice of which option they would prefer for their child. For more information on supplemental educational services, go to <http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.doc>.

Another educational choice exists for parents when their children are in schools that have been identified as persistently dangerous, or when a child has been the victim of a violent crime on school property. Such students have the option of transferring to a different, safer public school. States are currently in the process of identifying schools that are persistently dangerous, and they must complete this process by July 1, 2003. For more information on the unsafe school choice option in *No Child Left Behind*, go to: <http://www.ed.gov/offices/OESE/SDFS/unsafeschoolchoice.doc>.

A-6. Does the State have any reporting requirements regarding public school choice?

Yes. The number of students and schools that participate in public school choice must be included in the State's annual Title I state report to the U.S. Secretary of Education [*Title I, section 1111(h)(4)(F)*].

The law also requires that the information in this report be made widely available within the State [*Title I, section 1111(h)(4)*].

B. TIMING AND DURATION OF CHOICES

B-1. In which schools is an LEA required to offer public school choice?

An LEA must offer all students in identified Title I schools the opportunity to transfer to another public school when those schools fall within one of the stages of improvement detailed in the legislation. Those stages are based upon the number of years in which a school has failed to make adequate yearly progress (AYP). (See Appendix A for definitions). Beginning with the 2002-2003 school year, schools in the following categories must offer public school choice to their students.

1. Schools that are in their first year of school improvement.
2. Schools that are in the second year of school improvement.
3. Schools that are in corrective action.
4. Schools that are in restructuring.

See also the chart following item B-5.

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

An LEA must provide public school choice, by the beginning of the 2002-2003 school year, to students in schools that were identified for improvement or corrective action as of January 8, 2002 or for schools identified for school improvement for 2002-2003 based on 2001-2002 assessment results (see B-8). In subsequent years, 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 school being identified as in need of school improvement, corrective action or restructuring.

Parents should be notified well before the beginning of the school year in which choice will be offered.

See the following chart:

No Child Left Behind Act
Timeline for School Choice and Supplemental Services, Fall 2002

| School year | IMPROVEMENT STATUS | | | |
|-------------|---|---|--|--|
| 1999-2000 | Identified for school improvement | Did not make AYP for first year | Did not make AYP for second year | Did not make AYP for three years |
| 2000-2001 | Did make AYP | Did not make AYP (2 nd year) | Did not make AYP (3 rd year) | Did not make AYP (4 th year) |
| 2001-2002 | School makes AYP for second year. | First year of “school improvement” prior to 1/8/02 | Second year of “school improvement” prior to 1/8/02 | “Corrective action” prior to 1/8/02 |
| 2002-2003 | School is no longer identified for improvement. | First year of school improvement: Must provide school choice | Second year of school improvement: Must provide school choice & supplemental services | Corrective action: Must provide school choice & supplemental services |

¹This scenario would apply to schools identified for improvement or corrective action.

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 at the beginning of the school year as that term is defined by the SEA or LEA. Parents should be informed of their opportunity to choose another school as early as possible, no later than the period preceding the start of the new school year.

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

An SEA must provide student assessment results to each LEA in a timely manner so that the LEA can, before the beginning of the new school year, identify those schools whose students may transfer and inform parents that they may choose a different school for their child.

B-5. How long must an LEA continue to offer students in eligible Title I schools the option to attend another public school?

An LEA must offer choice to all students in an eligible Title I school until the school is no longer identified for improvement, i.e., the school makes AYP for two consecutive years (except as provided for in item B-6).

B-6. How long must students be allowed to attend the school of their choice?

If an eligible student exercises the option to transfer to another public school, an LEA must permit the student to remain in that school until he or she has completed the highest grade in the school. 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 school of origin is no longer identified for school improvement, corrective action, or restructuring.

B-7. What can an LEA do to plan for public school choice even before assessment results 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 schools that must offer choice, since a school in improvement status must make AYP for two consecutive years before it no longer has to offer choice. In these schools, 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 school is identified for improvement.

C. ELIGIBLE STUDENTS

C-1. Who is eligible to participate in public school choice under NCLB?

All students enrolled in Title I schools identified for school improvement, corrective action, or restructuring are eligible to transfer to another public school, including a public charter school, that is not in school improvement.

C-2. Which Title I schools must provide their students with public school choice?

Schools that meet the conditions outlined in section B-1 of this document and that are either schoolwide programs or targeted assistance programs must offer public school choice to their students. In the case of a targeted assistance program, all

students in the school, not just those receiving Title I services, are eligible to transfer.

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?”

All students in a school identified for improvement must have the opportunity to transfer to another public school of choice. In providing this option to transfer, the LEA must give priority to the lowest achieving children from low-income families [Title I, section 1116(b)(E)(ii)]. An LEA should determine those situations in which prioritization must be applied. For example, this could mean that the lowest-achieving low-income students get their first choice of schools, and are provided transportation first if such funds are limited.

C-4. How does an LEA determine “priority?”

Giving priority to the lowest-achieving, disadvantaged students is required by the law. An LEA can address this provision in several ways. For example, the LEA may address preferences expressed by parents for specific schools starting with the lowest-achieving children who are from low-income families.

In other words, all students from low-income families (such as those students eligible for free or reduced priced lunches) may be rank-ordered within that group by achievement levels as evaluated by objective educational measures of student achievement (such as the State assessment under section 1111), at the school level or LEA level. Students may not be rank-ordered by parent income.

The LEA should also give priority to the lowest-achieving children from low-income families in providing transportation.

C-5. What if a particular student attends a school that has been identified for improvement, but has been assigned to that school 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. However, some general guidelines may be helpful. Title I affords parents of students in low-performing schools an option to choose a school that has not been identified for improvement for their child.

However, as an example, if a student is assigned to a particular school by a family court for child custody reasons and that school has been identified for improvement, the student could be eligible to transfer under the provisions in Title I. However, the student’s parent may not be able to exercise that option without first obtaining permission from the court to move his/her child.

Similarly, a student may be assigned to a particular school - e.g., an alternative school - by a juvenile court due to the student's violent or criminal behavior, or for disciplinary reasons sufficiently serious to justify placement in a particular learning environment. In this circumstance, the LEA should limit or deny the choice option.

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 well before the beginning of the school year or school term in which choice will be offered. (See item B-2 of this document.)

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 schools 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. (See item I-3 in this document.) At a minimum, this notification must:

1. Inform parents that their child is eligible to attend another public school due to the less than adequate performance of their current school;
2. Identify each public school, including public charter schools, that the parent can select
3. Explain why the choices made available to them may have been limited; and
4. Describe the performance and quality of those schools of choice.

An LEA may provide additional information on the schools 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. 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 be advised to look for when they are given the option of school choice?

Parents should focus on the academic achievement results produced by the schools they are considering. When they are notified about the opportunity to choose a different school for their child, parents must also receive information regarding student academic achievement at the schools from which they can choose. (See item D-2 in this document.) In addition, parents may request more detailed information and may ask to see a school's academic report card.

Parents should be urged to consult a variety of sources for information about the schools that are available to accept transfer students. These sources of information may include other parents, the local media, school visits, and information available on school performance report cards, which the law requires to be distributed. Parents should match the strengths of a particular school with the needs of their child so that the child will be able to access appropriate instruction geared toward improving his or her academic achievement.

Questions parents may wish to ask the schools 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 school 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?

The LEA shall set a reasonable deadline by which parents must respond to the opportunity to have their children attend another public school. In establishing this timeframe, the LEA must ensure that the parents have sufficient time and information to make an informed decision about selecting a school. The LEA should work together with parents to ensure that parents have ample information, time, and opportunity to take advantage of the opportunity to choose a different public school for their children.

D-5. How can parents communicate their choice of school?

An LEA should ensure that its policies for receiving choice-related communication from parents do not adversely affect parents. 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 standard mail, email, or fax. The LEA should confirm with parents that it has received the parents' communication regarding choice.

D-6. If there are no schools to which students can transfer because (1) all schools at a grade level are in school improvement; (2) there is only one school in the district; or (3) the rural or isolated nature of the LEA prevents choice, must parents still be notified?

Yes, parents must be notified that their child's school is identified for school improvement and that the child is eligible for choice, but that no choices are currently available. Such notification might also inform parents of the option of supplemental services for those children who are eligible. (See also item E-11 in this document.)

In this situation, an LEA must, to the extent practicable, work with other districts in the area to establish a cooperative agreement that would allow inter-district choice.

E. SCHOOLS OF CHOICE

E-1. Which schools must be offered to students as transfer options?

Students must be given the option to transfer to another public school, which may include a public charter school, within the LEA. Such schools may not be identified for improvement or be identified by the State as persistently dangerous. 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 receive Title I funds.

E-2. Are any public schools not available for parents and students who wish to transfer?

Yes. Students may not transfer to any schools: (1) that have been identified for improvement, corrective action, or restructuring; or (2) that have been identified by the State as persistently dangerous. (Note: States are currently in the process of identifying schools that are persistently dangerous. All States will have completed this process by July 1, 2003. For more information on this issue, go to: <http://www.ed.gov/offices/OESE/SDFS/unsafeschoolchoice.doc>.)

E-3. How many choices of schools is an LEA required to offer to students?

If more than one school that meets the requirements outlined in item E-1 is available, the LEA must offer more than one choice to eligible students.

E-4. 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 academic entrance requirements when identifying transfer options for students. For example, students wishing to transfer to a fine arts magnet school or to a school for gifted students would still need to meet the requirements to attend those schools.

E-5. Is an LEA permitted to limit the choices available to students?

An LEA must offer more than one choice to eligible students, if more than one school is eligible to receive students. LEAs must strive to provide the fullest possible menu of school choices to parents, and must take into account the parents' preferences among the choices offered.

However, an LEA has flexibility under the statute to determine which schools, among those not identified for improvement, will comprise the range of alternatives for students eligible to transfer. The LEA may use reasonable discretion in providing the choices available to parents provided the choices afford students in low-performing schools with real alternatives for obtaining a better education. (For more information, see item K-9 in this document.)

E-6. How is the final decision made in selecting the school to which students will transfer?

The LEA must take into account the parents' preferences among the choices offered, or the LEA may allow parents to make the final decision.

LEAs may allow parents to rank-order their preferences of choices from among all possible schools that are eligible to receive transfer students. LEAs should respect those preferences, to the extent practicable, when assigning students to their school or when making decisions about providing transportation.

Parents always have the option of declining their assigned school. LEAs are encouraged to provide supplemental educational services to the children of parents who would rather access such services in lieu of exercising the choice option. While the LEA must take into account parental preferences, parents do not necessarily have to be guaranteed their first choice of schools.

E-7. What if an LEA finds that it does not have the physical capacity within its schools to accept transferring students?

An LEA may not use lack of capacity to deny students the option to transfer.

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 2001 Appropriations Act provided that if an LEA demonstrated to the satisfaction of the SEA that it lacked the capacity to provide all students with the option to transfer to another public school, a school choice option could be denied. This language does not appear in the new law.

The bottom line, then, is that every student enrolled in a Title I school in improvement who wishes to transfer to a school that is not in need of improvement must have that opportunity. Thus, if an LEA does not have sufficient capacity in the schools it has offered under its choice plan to accommodate the demand for transfers, the LEA must create additional capacity or provide choices of other schools.

If capacity becomes an issue after serving “priority” students, then the policies articulated in this document still apply.

E-8. What if State laws have the effect of limiting choice?

The only type of State law that can limit choice or prevent the choice option is a law that prohibits public school choice through restrictions on public school assignments or the transfer of students from one public school to another public school. 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. (See also item I-1 of this document.)

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

E-9. What if existing local transfer policies prohibit school choice?

To the extent that local laws and local school board policies limit school choice and are inconsistent with the Title I law, the Title I law supersedes such laws and policies. The statute does not condition the requirement to offer school choice by requiring it to be “consistent” with local law or school board policy.

E-10. What if choice might create health or safety problems?

As indicated in the answers to questions E-6 and E-7, LEAs have broad latitude in determining which transfer options to offer for parental consideration regarding schools to which students can transfer. They may, for example, consider health and safety factors in determining the transfer options. However, as indicated in

the answer to question E-7, 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. That exception is not provided for in the Title I law. The expectation is that an LEA will need to find ways to provide choice, consistent with their obligations to provide a healthy and safe learning environment.

E-11. May an LEA provide eligible students with an option to transfer to schools outside of the district?

Yes. The law states that if all public schools within an LEA to which a child may transfer are identified for school improvement, corrective action, or restructuring, the LEA shall, to the extent practicable, establish a cooperative agreement with other LEAs in the area for transfers. A state that already has an open enrollment policy should use this authority to make choices available to students in LEAs that do not have an eligible school to which students may transfer.

E-12. What if providing the option to transfer to another school is not possible?

A limited number of LEAs may find that there are no schools available to which students can transfer. For example, this may occur when all schools at a grade level are in school improvement. In this case, the LEA shall, to the extent practicable, establish a cooperative agreement with other LEAs in the area so that schools in other LEAs can accept the transfer students.

Other situations may also exist, such as where there is only one school in the district or when the rural or isolated nature of an LEA prevents choice. In these situations, the LEA may offer supplemental educational services.

F. SPECIAL EDUCATION AND CHOICE

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

LEAs must work with their schools to ensure that students with disabilities are provided a free appropriate public education 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 (Title II) in their schools of choice. The LEA can allow the school of choice to either implement the individualized education program (IEP) or Section 504 plan (for students eligible only under Section 504 and Title II) that the prior school developed for the new school year, or convene an IEP team meeting and develop a new IEP 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). In addition, LEAs must ensure that

schools comply with the other non-discrimination provisions of Section 504 and the ADA, including accessibility provisions.

For information on funding for special education, see item J-5 in this document.

F-2. Must students with disabilities be offered their choice of the same schools as nondisabled students?

School districts must offer students with disabilities and those eligible under Section 504 the opportunity to be educated in a school 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, students with disabilities do not have to be offered their choice of the same schools as are offered to nondisabled students. A school district must ensure that students with disabilities receive a free appropriate public education (FAPE) when they enroll in their school of choice. In offering choice to students with disabilities, school districts may match the abilities and needs of a student with disabilities to the possible schools that have the ability to provide the student FAPE.

F-3. 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 trigger the ‘change of placement’ procedures of the IDEA. The LEA can allow the school of choice to either implement the individualized education program (IEP) that the prior school developed for the new school year, or convene an IEP team meeting and develop a new IEP that meets the student’s needs. If the school district adopts the student’s existing IEP, none of the ‘change of placement’ procedures apply. However, the school district must comply with the ‘change of placement’ requirements of the IDEA if the new IEP will change the services on the IEP or the extent to which the student will participate with nondisabled students in academic and non-academic activities. Similar rules apply for students who are only covered by Section 504 or Title II of the Americans with Disabilities Act.

G. DESEGREGATION 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.

G-2. What if the desegregation plan permits the opportunity for students to transfer?

The LEA may take into account the requirements of the plan in determining how to implement the choice option.

G-3. What if the desegregation plan is a court-ordered plan?

An LEA should first determine whether it is able to offer choice within the parameters of its desegregation plan. If it is not able to do so, or if the desegregation plan forbids the LEA from offering the choice option, the LEA needs to seek court approval for amendments to the plan that permit a transfer option for students in schools 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 the SEA and this Department of its request to the court and the court's decision.

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. If an LEA has to go back to court to amend its desegregation plan, can it use Title I funds to pay the associated legal costs?

Yes, federal regulations state that this is a permissible use of Title I funds, provided that the costs are "reasonable and necessary."

H. RESPONSIBILITIES OF SCHOOLS RECEIVING TRANSFER STUDENTS

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

A school that receives students under this program must ensure that the students are enrolled in classes and other activities in the school in the same manner as all other students in the school.

H-2. May districts prohibit students transferring from a school identified for improvement the opportunity to play sports in their new school?

If a district has a general policy that requires all students who transfer under any other choice option within the district to not play sports for a specified period of

time after the transfer, then the district may apply that policy to students that transfer under NCLB. If it does not have such a policy, it may not require students that transfer under NCLB to not play sports for any length of time. Policies promulgated by a state-level athletic association should be applied in the same way.

I. STATE AND FEDERAL LAW AND SCHOOL CHOICE

I-1. The statute requires LEAs to provide public school choice in accordance with 1116 unless such choice is “prohibited by state law.” What does this mean?

This means that a state has a law that prohibits public school choice through restrictions on public school assignments or the transfer of students from one public school to another public school. Other laws, such as those that mandate specific student-teacher ratios, may make providing choice options more difficult, but do not constitute a prohibition of school choice. (See also item E-8 in this document.)

I-2. What if a State has an open enrollment policy?

The Title I public school choice program can become a part of a State’s open enrollment programs, provided that the requirements in Title I are met. This includes the priority for low-achieving, low-income students.

I-3. 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, Title II of the Americans Disabilities Act of 1990 (ADA), and the Age Discrimination Act of 1975.

See section G of this document concerning the relationship of Title I choice requirements to school districts’ desegregation obligations.

J. GENERAL FUNDING ISSUES

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

No. Transferring students should be treated like any other students who move into a receiving school.

J-2. What Federal funds are available to pay for transportation?

See section K of this document.

J-3. If a child transfers out of her or his original school, should an LEA include that child (1) in the count of children used to determine the Title I allocation to the school of residence, or (2) in the count used to determine the Title I allocation to the school of enrollment?

Generally, Title I eligibility and Title I allocations are based on the count of poor children who reside in the school attendance zone of a given school. Therefore, an LEA would include a transferring child as part of the count of the school of residence. However, LEAs also have the option of using enrollment as the basis for determining Title I eligibility and allocations. In the case of an LEA that uses enrollment, the transferring student would be counted in the school in which the student is enrolled; i.e., the transfer school.

J-4. May Title I funds be used to benefit non-Title I schools that receive students transferring from Title I schools identified for improvement?

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

J-5. Does special education funding follow a child with disabilities to the school of his or her choice?

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

K. TRANSPORTATION FUNDING ISSUES

K-1. Is an LEA required to provide transportation to schools of choice?

Yes, an LEA must pay for or provide transportation to the new school, subject to the limitations described in item K-3 (below).

K-2. What funds can 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 choice-related transportation required to implement school choice. (See item K-6).

K-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. 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 up to 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).

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 an amount equal to 5 percent of an LEA's Title I, Part A allocation, the LEA may not spend less than five percent on those services.

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.

K-4. 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 eligible students from low-income families. However, LEAs must still offer the opportunity to transfer to all students. (See also item C-3 in this document.)

K-5. 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 other allowable Federal, State, local, or private sources. (See also item K-10.)

An LEA that is required to provide choice-related transportation or make available supplemental educational services may wish to identify as many non-Title I sources of funding as possible.

For example, if an LEA or State already operates transportation services, the LEA may be able to provide the transportation required by the Title I school choice provision through the existing program. In such a case, the LEA may count the new portion of the transportation costs related to providing choice for students in eligible Title I schools toward the 20-percent requirement.

In providing choice-related transportation and supplemental educational services to as many eligible students as possible, an LEA may find it necessary to reserve a portion of its Title I allocation. In such a case, the LEA should consider using any funding already reserved by the LEA for district-wide activities.

K-6. 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 Section 6123 to pay such costs. Programs eligible for such transfers include Title II, Part A Improving Teacher Quality State Grants; Title II, Part D Educational Technology State Grants; Title IV, Part A Safe and Drug-Free Schools and Communities State Grants. Title V, Part A State Grants for Innovative Programs, can also be transferred to Title I. An LEA receiving discretionary grants under Title V, section 5112 and using such grants in accordance with section 5131(a)(12) may also be able to use grant funds to pay for choice-related transportation, depending on the terms of the grant award.

An LEA must include such transferred funds (under section 6123) 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.

K-7. Is an LEA required to pay for transportation for students who have left a school in improvement prior to the enactment of *No Child Left Behind*?

No.

K-8. If an LEA does not already directly provide for transportation to and from schools, 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 transportation or using city transportation.

K-9. May LEAs establish transportation zones within an LEA based on geographic location of schools?

Yes, as indicated in the answers to questions E-5 and E-6, LEAs have latitude in deciding which options to provide for eligible students. For example, they may establish transportation zones based upon geographic location and fully fund transportation to different schools within such a zone. This option would allow the district to offer more than one choice of school while ensuring that transportation can be reasonably provided or arranged.

Outside the transportation zone, the district could pay for only part of the transportation to the school. Parents may select a school outside of a designated attendance zone, but they should 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.

The Department expects each LEA with one or more Title I schools identified for improvement to provide students in low-performing schools with real alternatives for obtaining a better education.

K-10. Does the Title I “supplement, not supplant” requirement apply to transportation funds?

Yes. Like other Title I funds, transportation funds must 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 education of children participating in Title I programs. For example, if an LEA is required by State or local law to provide transportation to students who choose to transfer to another school 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.

APPENDIX A

Definitions

Adequate Yearly Progress: Adequate yearly progress (AYP) is the measure of necessary annual improvement made by a school as evaluated by the State academic assessment. Each State is responsible to define AYP so that the same high standards of academic achievement are applied to all public elementary and secondary schools in the State [Title I, section 1111(b)(2)(B)].

Corrective Action: A school identified for corrective action is a Title I school that has failed to meet its adequate yearly progress (AYP) goals after having been identified for school improvement for 2 school years. In general, such a school has failed to meet its AYP goals for four consecutive years after having been first identified for school improvement [Title I, section 1116(b)(7)(C)].

Eligible Student/Child: For the purposes of this choice provision, eligible students are all students who attend Title I schools that are in their first or second year of school improvement, in corrective action, or restructuring. Eligibility is thus determined by the improvement status of the school the student attends [Title I, section 1116(b)(1)(E)]. Note that this differs from eligibility for supplemental educational services. Students in eligible schools must also qualify as low-income students to be eligible for supplementary services.

Eligible School: An eligible school is a Title I school from which students are allowed to transfer. This includes (1) a Title I school that has been identified as a school in need of improvement [Title I, section 1116(b)(1)]; (2) a Title I school that does not make adequate yearly progress by the end of the first full school year after having been identified as a school in need of improvement [Title I, section 1116(b)(5)]; (3) a Title I school that is in corrective action [Title I, section 1116(b)(7)]; and (4) a Title I school that is in restructuring [Title I, section 1116(b)(8)].

Priority: For the purposes of the Title I public school choice requirement, the local educational agency shall give priority to the lowest achieving children from low-income families [Title I, section 1116(b)(E)(ii)]. When providing public school choice options, the preferences expressed by parents for specific schools must be considered by the LEA, starting with the lowest achieving children who are from low-income families.

Restructuring: A school identified for restructuring is a school that, after one year of corrective action, fails to make adequate yearly progress (AYP). In general, such a school has failed to make AYP for five consecutive years [Title I, section 1116(b)(8)]. The first year of restructuring may be used for planning; the plan for the reconstituted school must be implemented no later than by the second year.

School improvement: A school in school improvement is a school that fails, for two consecutive years, to make adequate yearly progress (AYP). A school can be in school improvement status for two consecutive years: in the year it was first identified (after having failed to make AYP for two consecutive years), and the following year (if AYP is not met for the third consecutive year). [Title I, section 1116(b)(1)(A)].

Schoolwide Program: A schoolwide program is a Title I program that upgrades the entire educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from such families [*Title I, section 1114(a)(1)*].

Targeted Assistance Program: A targeted assistance program is a Title I program that provides services only to the children who have been identified as being most at-risk of achieving challenging academic content and achievement standards [*Title I, section 1115(a) and (b)*].

Supplemental Educational Services: Supplemental educational services are additional academic instruction designed to increase the academic achievement of low-income students in low-performing schools. These services may include tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State's academic content standards. Supplemental educational services must be provided outside of the regular school day. Supplemental educational services must be high quality, research-based, and specifically designed to increase student academic achievement [*Title I, Section 1116(e)(12)(C)*].

APPENDIX B

Acronyms

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| ADA | Americans with Disabilities Act |
| AYP | Adequate yearly progress |
| ESEA | Elementary and Secondary Education Act of 1965 |
| IDEA | Individuals with Disabilities Education Act |
| LEA | Local educational agency |
| NCLB | No Child Left Behind Act of 2001 |
| SEA | State educational agency |