

Rules and Regulations Regarding Public School Choice

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34 CFR Part 200

These regulations are needed to implement recent changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: These regulations are effective January 2, 2003.

Sec. 200.44 Public School Choice.

(a) Requirements.

(1) In the case of a school identified for school improvement under Sec. 200.32, for corrective action under Sec. 200.33, or for restructuring under Sec. 200.34, the LEA must provide all students enrolled in the school with the option to transfer to another public school served by the LEA.

(2) The LEA must offer this option not later than the first day of the school year following the year in which the LEA administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring.

(3) The schools to which students may transfer under paragraph (a)(1) of this section-- (i) May not include schools that-- (A) The LEA has identified for improvement under Sec. 200.32, corrective action under Sec. 200.33, or restructuring under Sec. 200.34; or (B) Are persistently dangerous as determined by the State; and (ii) May include one or more public charter schools.

(4) If more than one school meets the requirements of paragraph (a)(3) of this section, the LEA must-- (i) Provide to parents of students eligible to transfer under paragraph (a)(1) of this section a choice of more than one such school; and (ii) Take into account the parents' preferences among the choices offered under paragraph (a)(4)(i) of this section.

(5) The LEA must offer the option to transfer described in this section unless it is prohibited by State law in accordance with paragraph (b) of this section.

(6) Except as described in Sec. Sec. 200.32(d) and 200.33(c), if a school was in school improvement or subject to corrective action before January 8, 2002, the State must ensure that the LEA provides a public school choice option in accordance with paragraph (a)(1) of this section not later than the first day of the 2002-2003 school year.

(b) Limitation on State law prohibition.

An LEA may invoke the State law prohibition on choice described in paragraph (a)(5) of this section only if the State law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school.

(c) Desegregation plans.

(1) 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 the requirement in paragraph (a)(1) of this section.

(2) In determining how to provide students with the option to transfer to another school, the LEA may take into account the requirements of the desegregation plan.

(3) If the desegregation plan forbids the LEA from offering the transfer option required under paragraph (a)(1) of this section, the LEA must secure appropriate changes to the plan to permit compliance with paragraph (a)(1) of this section.

(d) Capacity.

An LEA may not use lack of capacity to deny students the option to transfer under paragraph (a)(1) of this section.

(e) Priority.

(1) In providing students the option to transfer to another public school in accordance with paragraph (a)(1) of this section, the LEA must give priority to the lowest-achieving students from low-income families.

(2) The LEA must determine family income on the same basis that the LEA uses to make allocations to schools under subpart A of this part. (f) Status. Any public school to which a student transfers under paragraph (a)(1) of this section must ensure that the student is enrolled in classes and other activities in the school in the same manner as all other students in the school.

(g) Duration of transfer.

(1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must permit the student to remain in that school until the student has completed the highest grade in the school.

(2) The LEA's obligation to provide transportation for the student may be limited under the circumstances described in paragraph (i) of this section and in Sec. 200.48.

(h) No eligible schools within an LEA.

If all public schools to which a student may transfer within an LEA are identified for school improvement, corrective action, or restructuring, the LEA—

(1) Must, to the extent practicable, establish a cooperative agreement for a transfer with one or more other LEAs in the area; and

(2) May offer supplemental educational services to eligible students under Sec. 200.45 in schools in their first year of school improvement under Sec. 200.39.

(i) Transportation.

(1) If a student exercises the option under paragraph (a)(1) of this section to transfer to another public school, the LEA must, consistent with Sec. 200.48, provide or pay for the student's transportation to the school.

(2) The limitation on funding in Sec. 200.48 applies only to the provision of choice-related transportation, and does not affect in any way the basic obligation to provide an option to transfer as required by paragraph (a) of this section.

(3) The LEA's obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the LEA for school improvement, corrective action, or restructuring.

(j) Students with disabilities and students covered under Section 504 of the Rehabilitation Act of 1973 (Section 504). For students with disabilities under the IDEA and students covered under Section 504, the public school choice option must provide a free appropriate public education as that term is defined in section 602(8) of the IDEA or 34 CFR 104.33, respectively. (Authority: 20 U.S.C. 6316)