

# Title I, Part A, Public School Choice Frequently Asked Questions (FAQs)

## Eligibility:

### 1. Who is eligible to participate in the Public School Choice (Choice) Program under the federal Elementary and Secondary Education Act (ESEA)?

All students enrolled in Title I schools identified for program improvement (PI) (that include school improvement: Years 1 and 2, corrective action: Year 3, or restructuring: Years 4 and 5) are eligible to transfer to another public school in the LEA that is not so identified or identified by the SEA as persistently dangerous. [34 C.F.R. §200.44(a)(3)] This requirement applies whether the school in which a student is enrolled administers Title I as a schoolwide program [Section 1114] or as a targeted assistance program [Section 1115].

### 2. Are students who plan to attend but are not yet enrolled in a PI school eligible to take advantage of the Choice program?

The statute requires that public school choice be made available to all students enrolled in schools identified for PI. Therefore, the answer to this question depends on how SEAs and LEAs define "enrollment" and how they determine when a student is officially enrolled in a school. The Department of Education (ED) believes that students planning to enter a school for the first time, such as entering kindergartners, or students moving from elementary to middle school, or those who have just moved into the attendance area served by a Title I school, should have the same opportunity to exercise choice as students already enrolled in the school. (C-2. Public School Choice *Non-Regulatory Guidance*, 2009)

### 3. Are students enrolled in Transitional Kindergarten programs eligible for the Choice program under the federal Elementary and Secondary Education Act (ESEA)?

If traditional kindergarten students are eligible for Choice, then, transitional kindergarten students should be eligible.

Senate Bill 1381

([http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200920100SB1381&search\\_keyword=s](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1381&search_keyword=s)) changed the required birthday for admission to kindergarten and first grade and established transitional kindergarten. Transitional kindergarten is the first year of a two-year kindergarten program that uses a modified kindergarten curriculum. In addition, pursuant to EC 48000, a transitional kindergarten shall not be construed as a new program or higher level of service. Under current law, Education Codes and regulations that apply to traditional kindergarten in terms of class size, facilities, transportation, immunization requirements, instructional minutes, etc., also apply to transitional kindergarten.

### 4. Are students with disabilities eligible for Choice and must students with disabilities be offered the same transfer options as non-disabled students?

An LEA must offer Individuals with Disabilities Education Act (IDEA) students with disabilities and those covered under Section 504 the opportunity to be educated in a school that has not been identified for PI 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 IDEA students with disabilities the same choices of schools as it offers to nondisabled students. In determining the choices available to students with disabilities, the LEA should match the abilities and needs of a student with disabilities with those schools that have the ability to provide the student with free and appropriate public education (FAPE). It is not sufficient, however, for an LEA to conclude that no choices are available to students with disabilities because, for example, FAPE is currently provided in only two schools and both schools are identified for PI. Rather, to meet the requirements, an LEA must take appropriate actions to provide FAPE in a school not identified for PI and not persistently dangerous.

Such actions may include, but are not limited to:

- Moving a program of special education to the school
- Creating a new program of special education at the school

- Providing additional accommodations, services, or other resources at the school. (F-2. Public School Choice *Non-Regulatory Guidance, 2009*)

#### **Parent Notification:**

#### **5. When must an LEA notify parents that their child is eligible for Choice?**

Parents of students enrolled in Title I PI schools must be notified by the LEA that their child is eligible for Choice sufficiently in advance of, but no later than, 14 calendar days before the start of the school year for which Choice is being offered (34 CFR §200.37[b][4][iv]).

#### **6. What information must an LEA include in the notice to parents about their Choice options?**

An LEA must provide an explanation of the Choice options to all parents of students enrolled in Title I PI schools. This notification must be in an understandable and uniform format and, to the extent practicable, in a language that parents can understand [*Section 1116(b)(6); 34 C.F.R. §200.36(b)*]. The notification should use simple, plain language and avoid legal or professional educational terms that may be confusing or intimidating to parents. At a minimum, the notification must:

- Inform parents that their child is eligible to attend another public school and may receive transportation to the school;
- Identify each public school, which may include public charter schools, that parents may select; and
- Include information on the academic achievement of the schools that parents may select [*34 C.F.R. §200.37(b)(4)*].

An LEA may provide additional information on the schools to which an eligible student may transfer, such as a description of any special academic programs or facilities, the availability of before- or after-school programs, the professional qualifications of teachers, and parent involvement opportunities [*34 C.F.R. §200.37(b)(4)(iii)*]. 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 school.

Additionally, an LEA should describe the procedures and timelines that parents must follow in selecting a school for their child. An LEA should also discuss how transportation to the new school will be provided or paid for. If an LEA anticipates that it will not have sufficient funds to provide transportation to all eligible students requesting a transfer, it should include in the notice information about how it will set priorities in order to determine which eligible students receive transportation. However, parent choice cannot be limited to lack of funding for transportation. In other words, LEAs may not deny a parent request to transfer their child to a non-PI school due to lack of available funds for transportation if the parent is willing to forego LEA-paid transportation in this situation. (D-2. Public School Choice *Non-Regulatory Guidance, 2009*)

#### **7. By what means must an LEA notify parents of their Choice options?**

An LEA must provide information to parents:

- Directly, through such means as regular mail or e-mail, and
- Through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families

LEAs must distribute information to parents regarding public school choice through both of these means. An LEA must also prominently display on its Web site, in a timely manner to ensure that parents have current information, a list of available schools for the current school year to which eligible students may transfer. [*34 C.F.R. §§200.36(c), 200.39(c)(1)(iv)*]

An LEA should ensure that its policies for receiving Choice-related communications from parents do not impede parents' ability to exercise their options. LEAs should develop application forms that are easy to use and allow

parents to communicate their choices in a variety of ways, including by standard mail, e-mail, fax, or the Internet. Parents should not have to appear in person to state their choices. (D-3. Public School Choice *Non-Regulatory Guidance, 2009*)

In addition, an LEA should confirm to parents that it has received their communication regarding a choice of school. (D-13. Public School Choice *Non-Regulatory Guidance, 2009*)

### **8. Must parents still be notified if there are no schools to which students can transfer?**

Yes. Parents must still be notified that their child's school is identified for PI. In addition, the notice must include an explanation as to why the LEA is unable to offer school choice. Providing such an explanation may be useful to parents who considered but ultimately declined exercising school choice in previous school years, as well as parents interested in the status of other schools in the LEA.

If applicable, such notification must also inform parents of eligible students of the option of receiving supplemental educational services (SES). (D-5. Public School Choice *Non-Regulatory Guidance, 2009*)

#### **Implementation:**

### **9. How much time should parents have to consider their Choice options and make a choice of school?**

Parents of eligible students must receive information on their Choice options with sufficient time to make a choice of school by the start of the school year. Because an LEA must notify parents of their Choice options at least 14 calendar days prior to the start of the school year, this means that LEAs should give parents a minimum of 14 calendar days to choose a school after receiving notice of their options. If an LEA offers Choice to parents of eligible students well before the start of the school year, it may set a deadline prior to the start of the school year by which parents must make a choice of school, provided the deadline is at least 14 calendar days after parents are notified. LEAs should give parents as much time as possible prior to the start of the school year to consider their options.

Although parents of eligible students must receive information on their Choice options with sufficient time to make a choice of school by the start of the school year, an LEA could also allow parents to make a choice of school after the school year has begun.

If an LEA does not receive school AYP determinations from its SEA in time to offer Choice at least 14 calendar days before the start of the school year, it should allow parents at least 14 calendar days after the date of notification to consider their options. (B-5. Public School Choice *Non-Regulatory Guidance, 2009*)

### **10. How many choices of schools is an LEA required to offer to students?**

If the LEA has more than one non-PI school is available, an LEA must offer more than one choice to eligible students [34 C.F.R. §200.44(a)(3)]. 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. §200.44(a)(4)(ii)].

### **11. May a charter school or a "virtual school" be among the schools of choice offered to parents of eligible students?**

Charter schools that fall within the boundaries of an LEA, but are not authorized by the LEA, may also be included as transfer options, with the agreement of the individual charter school. The public school options may be, but are not required to be, public schools that operate Title I programs. (E-1. Public School Choice *Non-Regulatory Guidance, 2009*)

A virtual school (i.e., a school that offers instruction through distance learning technology) may be among the schools to which an eligible student may transfer, so long as that school is a public elementary or secondary school and has not been identified for PI. If the "virtual school" is not operated by the LEA, the LEA could enter into a cooperative agreement with the school so that its students can enroll. (E-4. Public School Choice *Non-Regulatory Guidance, 2009*)

**12. When an LEA offers multiple choices of schools, who makes the final decision on which school a student attends?**

While the final decision on the school each student will attend is up to the LEA, and while not all parents will necessarily receive their first choice of school, LEAs must take parents' preferences into account in making these decisions [34 C.F.R. §200.44(a)(4)(ii)]. In making decisions on school assignments, LEAs must give priority to the lowest-achieving students from low-income families [Section 1116(b)(1)(E)(ii)]. LEAs could ask parents to rank order their preferences among the schools that are available to receive transfer students and respect those preferences, to the extent practicable, when assigning students to schools 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 school assigned by the LEA. If the student's current school is subject to both the Choice and SES requirements, some parents, once they understand the transfer options, might elect to have their child remain in his or her original school and receive SES. (E-3. Public School Choice *Non-Regulatory Guidance, 2009*)

**13. By when should an LEA implement parental requests to transfer to a school of choice?**

An LEA should implement transfer requests as soon as possible after parents of eligible students notify the LEA of the school they have chosen for their child. It is not appropriate, for instance, for an LEA to wait until the second quarter or semester to act on transfer requests received from parents prior to the start of the school year.

An LEA should develop transportation and other logistical policies and plans ahead of time so that it may grant transfer requests from parents of eligible students promptly upon receiving them. (B-6. Public School Choice *Non-Regulatory Guidance, 2009*)

**14. What if providing the option to transfer to another school within the LEA is not possible or an LEA believes it does not have the physical capacity to implement the Choice provisions?**

Some LEAs may have no schools available to which students can transfer. This situation might occur when all schools at a grade level are identified for PI or when an LEA has only a single school at that grade level. It may also occur in LEAs whose schools are so remote from one another that changing schools is impracticable. For example, if the only other elementary school is over 100 miles away, then changing schools is likely impracticable. In these cases, the LEA must, to the extent practicable, enter into cooperative agreements with other LEAs in the area (or with charter and virtual schools in the State) that can accept its students as transfers [Section 1116(b)(11)]. The LEA may also wish to offer SES to students attending schools in their first year of school improvement who cannot be given the opportunity to change schools [34 C.F.R. §200.44(h)(2)].

An LEA may not use lack of physical capacity within its schools to deny students the option to transfer. Every student enrolled in a Title I PI school who wishes to transfer to another school must have that opportunity. However, an LEA may take capacity into consideration in deciding which schools to make available to eligible students.

If an LEA employs zones within the LEA based on the geographic location of schools for the purpose of providing transportation to students, it may not use these zones to deny students the option to transfer. Moreover, giving priority to the lowest-achieving students from low-income families does not diminish the requirement for an LEA to provide choice to all students in its Title I PI schools. Thus, if an LEA does not have sufficient capacity in its non-PI schools and schools that are not persistently dangerous to accommodate the demand for transfers by all eligible students, the LEA must create additional capacity.

**15. If an LEA believes it does not have the physical capacity to offer transfers to all eligible students, how can it create additional capacity?**

When capacity is an issue, LEAs will need to employ creativity and ingenuity in creating capacity in schools to receive additional students. The range of possible options might include:

1. Reconfiguring, as new classrooms, space in receiving schools that is currently not being used for instruction;
2. Expanding space in receiving schools, such as by reallocating portable classrooms within the LEA;

3. Redrawing the LEA's attendance zones, if sufficient capacity is unavailable within the existing zones within which students would ordinarily select schools;
4. Creating satellite divisions of receiving schools; that is, classrooms that are under the supervision of the receiving school principal and whose teachers are part of the school faculty but that are in neighboring buildings;
5. Creating new, distinct schools with separate faculty within the physical sites of schools identified for school improvement, corrective action, or restructuring;
6. Encouraging the creation of new charter schools within the LEA;
7. Developing distance-learning programs or entering into cooperative agreements with virtual schools;
8. Reshaping long-range capital construction and renovation plans in order to ensure that schools that are likely to receive new students have additional space;
9. Modifying either the school calendar or the school day, such as through "shift" or "track" scheduling, in order to expand capacity; and
10. Easing capacity by initiating inter-district choice programs with neighboring LEAs or by establishing programs through which local private schools can absorb some of the LEA's students. (E-9. Public School Choice *Non-Regulatory Guidance, 2009*)

### **Transportation:**

#### **16. Is an LEA required to provide transportation and how much?**

Yes. An LEA must provide, or pay for transportation to and from the school of choice, subject to the limitations [Section 1116(b)(9); 34 C.F.R. §200.44(i)]. The law establishes joint funding for Choice-related transportation and SES [Section 1116(b)(10)]. Unless a lesser amount is needed to meet demand for Choice-related transportation and to satisfy all requests for SES, an LEA must spend an amount equal to 20 percent of its Title I, Part A allocation (the "20 percent obligation"), before any reservations, on:

1. Choice-related transportation;
2. SES; 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 SES. If the cost of satisfying all requests for SES 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 of its allocation on those services. Similarly, if the demand from parents of eligible students for choice-related transportation exceeds 5 percent of the allocation, the LEA must spend the equivalent of at least 5 percent of its allocation on choice-related transportation. [34 C.F.R. §200.48(a)(2)(iii)(A).]

The LEA has flexibility in allocating the remaining 10 percent between choice-related transportation and SES, and in doing so should take into consideration the level of parental demand and the costs of meeting that demand. (J-5. Public School Choice *Non-Regulatory Guidance, 2009*)

In addition, an LEA may, but is not required to, spend up to 1 percent of its 20 percent obligation (0.2 percent of its Title I, Part A allocation) on parent outreach and assistance. [34 C.F.R. §200.48(a)(2)].

The 20 percent obligation is a minimum requirement. An LEA may spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demand for Choice-related transportation and SES [34 C.F.R. §200.48(a)(3)].

If an LEA spends less than its 20 percent obligation, it must meet the reallocation criteria in 34 C.F.R. §200.48(d)(2)(i) before it may use unexpended funds from the 20 percent obligation for other allowable activities. These criteria specify the minimum conditions an LEA must meet in order to be considered as having met all demand for Choice-related transportation and SES. An LEA that does not meet the criteria must spend the unexpended amount of its 20 percent obligation in the subsequent school year on Choice-related transportation, SES, or parent outreach and

assistance, in addition to the funds it is required to spend to meet its 20 percent obligation in the subsequent school year. [34 C.F.R. §200.48(d).]

**17. What must an LEA do if funds are not sufficient to provide transportation to all students exercising the option to change schools? Can parents still be offered the transfer option?**

If available funds are not sufficient to provide transportation to all students exercising the option to change schools, an LEA must give priority to the lowest-achieving students from low-income families. It is up to an LEA (or an SEA, if it chooses to establish procedures) to determine how to apply this priority, including whether to apply the priority to students who previously transferred as well as to students exercising the option to transfer for the first time in the current school year. However, the LEA must still provide all students the opportunity to transfer even if transportation cannot be provided to all students due to insufficient funds. [Section 1116(b)(1)(E)(i); 34 C.F.R. §200.44(a)(1)]

**18. If an LEA does not customarily provide transportation to and from school, must it provide transportation for students choosing to transfer under the Choice provisions?**

Yes. For instance, an LEA might have a policy of not providing transportation because all students in the LEA attend their neighborhood school. In that situation, the LEA must provide transportation for students choosing to transfer to another school under the Choice provisions because the school of choice is outside the students' neighborhood. However, the statute permits an LEA to make alternative arrangements for providing transportation in the event the LEA does not directly provide transportation, such as reimbursing parents for the cost of providing transportation or using city transportation [Section 1116(b)(9)]. The LEA would not be required to provide transportation to students who live only a short distance from their new school. (J-2. Public School Choice *Non-Regulatory Guidance*, 2009)

**19. If an LEA customarily provides transportation but has a policy of not providing it to students who live within a certain distance of their schools, must it provide transportation to students who elect, under the Choice provisions, to transfer to schools 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 a mile from the school they attend. In that situation, the LEA would not be required to provide transportation for students who elect, under the Choice provisions, to transfer to schools within one mile of their homes. (J-3. Public School Choice *Non-Regulatory Guidance*, 2009)

**20. May an LEA meet its responsibility to pay for or provide transportation by reimbursing parents for transportation expenses?**

A policy of reimbursement, by itself, does not meet the statutory requirement to provide, or pay for the provision of, transportation. This is because some parents may wish to exercise Choice, but may not possess the means to transport their child to their chosen school. For these parents, it is an LEA's obligation to provide, or pay for the provision of, transportation (subject to the 20 percent obligation) that allows them to take advantage of the Choice option. If such parents are presented only with the option of being reimbursed for transportation that they themselves provide, the LEA is failing to fulfill its statutory responsibility to provide or pay for the provision of transportation, and has effectively denied those parents the opportunity to take advantage of Choice.

Further, a policy of "reimbursement only" is particularly problematic if an LEA has not fully satisfied its 20 percent obligation for Choice-related transportation and SES because, in this instance, the LEA is placing an undue burden on parents while not meeting its expenditure requirements. A policy of reimbursement only may also have the effect of reducing demand for Choice.

An LEA is not, in general, prohibited from employing a reimbursement policy, but must supplement such a policy with additional transportation options for parents as needed, such as busing, public transportation vouchers, or other transportation arrangements. An LEA may maintain a preference for reimbursing parents who are able to provide or pay for transportation up front on their own, but must give parents who are not able to transport their child the opportunity to have transportation provided or paid for directly by the LEA, and must ensure that all parents are aware that additional transportation options are available. (J-23. Public School Choice *Non-Regulatory Guidance*, 2009)

**21. When can an LEA reallocate funds reserved for Choice and/or SES for other allowable activities?**

In the case of an LEA that is able to provide Choice-related transportation and/or SES to all eligible students without spending its full 20 percent obligation, the reallocation criteria specified in 34 C.F.R. Section 200.48(d)(2)(i) would apply to the LEA only with respect to the amount of funds that is needed to serve all eligible students. The LEA would be permitted to use the difference between the 20 percent obligation and the needed amount immediately for other allowable activities. (K-14. Public School Choice *Non-Regulatory Guidance, 2009*)