



Date: June 25, 2009  
To: Dr. J. Brian Sarvis, Superintendent  
From: Robin Sawaske, Associate Superintendent  
Subject: Report on District Options to Provide Alternative Placements for Students Transferring from Program Improvement Schools

### Conference Agenda

---

As the districts move further into Program Improvement through No Child Left Behind (NCLB) federal legislation, more schools will have students requesting transfers out due to Program Improvement status. As more schools are identified as Program Improvement, there will be fewer available spaces for students in Non- Program Improvement schools. NCLB mandates that districts provide school choice, including transportation, for students from Program Improvement schools.

Board members requested a discussion on district options to provide alternative placements for students transferring from Program Improvement schools. Attached is the section on "Schools of Choice" from the January 2009 US Department of Education Publication of Public School Choice. Several options are presented in section E-9.

In speaking with neighboring districts, all of whom are now or seem to be Basic Aid districts, they are not interested in creating inter-district choice programs (Section E-9, #10), except in rare one-on-one exchanges. Another option creating satellite divisions in schools (Section E-9, #4) has been discussed with staff and is not being recommended as a viable option.

Adams Elementary School  
Cesar Chavez Charter School  
Cleveland Elementary School  
Franklin Elementary School

Harding Elementary School  
McKinley Elementary School  
Monroe Elementary School  
Open Alternative School

Peabody Charter School  
Roosevelt Elementary School  
Santa Barbara Charter School  
Santa Barbara Community Academy  
Washington Elementary School

Goleta Valley Junior High School  
La Colina Junior High School  
La Cumbre Junior High School  
Santa Barbara Junior High School

Dos Pueblos High School  
La Cuesta Continuation High School  
San Marcos High School  
Santa Barbara High School

## **E. SCHOOLS OF CHOICE**

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

Except in the situations described in E-10 and E-12, students must be given the option to transfer to other public schools, which may be charter schools, within the LEA. The choices available to students may not include Title I schools identified for school improvement, corrective action, or restructuring, or identified by the SEA 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, 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 [34 C.F.R. §200.44(a)(3)].

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

If more than one school that meets the requirements outlined in 34 C.F.R. §200.44(a)(3) (see E-1) 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)].

### **E-3. When an LEA offers multiple choices of schools to which students may transfer, who makes the final decision on which school a student attends, and how is that decision made?**

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. LEAs should 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 public school 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-4. May a "virtual school" (i.e., a school that offers instruction through distance learning technology) be among the schools to which eligible students are offered the opportunity to transfer?**

Yes. A virtual school may be among the schools to which an eligible student may transfer, so long as that school is a public elementary or secondary school (as defined by the SEA) and has not been identified for school improvement, corrective action, or restructuring. 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-5. 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 school for gifted students to meet the normal eligibility requirements for those schools, even if there are no other choices available to eligible students in the LEA.

**E-6. May a charter school that admits students using a lottery (consistent with the requirements for eligibility to receive funds under the Department’s Charter Schools Program) give priority to eligible students who wish to transfer to the school under the public school choice provisions?**

In order to be eligible for funding under the Department’s Charter Schools Program (CSP), a charter school must admit students on the basis of a lottery if more students apply for admission than can be accommodated [Section 5210(1)(H)]. The Department’s program guidance for charter schools (available at: <http://www.ed.gov/policy/elsec/guid/cspguidance03.doc>) allows only limited exceptions to the general rule that lotteries must give all students an equal chance to gain admission to a charter school. (See Section C of that guidance.) However, for the limited purpose of providing greater choice to students seeking to transfer under the public school choice provisions, a charter school may weight its lottery in favor of those students and still remain in compliance with CSP requirements. For example, a school could provide each student seeking a transfer under the public school choice provisions with two or more chances to win the lottery, while all other students would have one chance to win. However, SEAs or LEAs may not require a charter school to alter its admissions process for this purpose.

**E-7. May non-Title I schools that have missed AYP for two or more years be offered to students as transfer options?**

The statute and regulations prohibit an LEA from offering as a transfer option any Title I school that has not made AYP for two or more years and, therefore, has been identified for school improvement, corrective action, or restructuring (or any school identified by the SEA as persistently dangerous). However, the statute does not address whether non-Title I schools that miss AYP for two or more years may be offered as transfer options. Accordingly, an SEA may adopt a policy governing the use of non-Title I schools that have missed AYP for two or more years as choice options. In doing so, the SEA should bear in mind that the public school choice provisions are designed to offer high-quality

options for parents. If an SEA adopts a policy permitting the use of non-Title I schools that have not made AYP for two or more years as transfer options, LEAs offering such schools as transfer options should provide parents with detailed information on the academic achievement of those schools, including information on why they did not make AYP, so that parents can make informed choices.

**E-8. Must an LEA that believes it does not have the physical capacity within its schools to accept transferring students implement the public school choice provisions?**

Yes. An LEA may not use lack of capacity to deny students the option to transfer. However, an LEA may take capacity into consideration in deciding which schools to make available to eligible students [34 C.F.R. §200.44(d)].

Every student enrolled in a Title I school identified for school improvement, corrective action, or restructuring who wishes to transfer to another school must have that opportunity. Moreover, giving priority to the lowest-achieving students from low-income families (as described in C-4) does not diminish the requirement for an LEA to provide choice to *all* students in its Title I schools that are in school improvement, corrective action, or restructuring. Thus, if an LEA does not have sufficient capacity in its schools that are not identified for school improvement, corrective action, or restructuring (or as persistently dangerous) to accommodate the demand for transfers by all eligible students, the LEA must create additional capacity.

**E-9. 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, LEA officials 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-10. What if providing the option to transfer to another school within the LEA is not possible?**

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 school improvement, corrective action, or restructuring, 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)].

Note that an LEA may not use lack of physical capacity within its schools to deny students the option to transfer. (See E-8.) In addition, 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. (See J-25.)

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

Yes. In fact, the law states that if all public schools within an LEA to which a student 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 [Section 1116(b)(11)]. 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 LEA or both. Further, an SEA that has an inter-district open enrollment policy should use that policy to make choices available to students in LEAs that do not have any schools to which students can transfer under the public school choice provisions.

**E-12. What if State laws have the effect of limiting public school choice?**

The only type of State law that can limit or exempt an LEA from implementing the 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. §200.44(b)]. Other laws, such as those that mandate

specific student-teacher ratios, may make providing transfer options more difficult, but may not be used to prohibit public school choice.

For issues regarding desegregation orders, see Section G.

**E-13. What if existing local transfer policies prohibit public school choice?**

The public school choice 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 schools identified for school improvement, corrective action, or restructuring.

**E-14. What if implementing public school choice might create health or safety problems?**

LEAs have broad latitude in determining which schools to offer as transfer options and may consider health and safety factors in doing so. However, as indicated in E-8, lack of capacity and health and safety concerns – including concerns about overcrowding – do not excuse an LEA from meeting the public school choice requirements. An LEA should be able to provide choice while meeting its obligation to provide a healthy and safe learning environment. Some of the options described in E-9 may be useful to LEAs in addressing potential health and safety issues.

**F. SPECIAL EDUCATION ISSUES**

**F-1. What are the responsibilities of a school 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 schools of choice. A school 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 ADA Title II) developed by the prior school, or to convene an IEP team meeting and develop a new IEP in consultation with the student's parents that meets the student's needs (or, for the Section 504/ADA Title II-only eligible student, determine the regular and special education and related aids and services necessary to meet the student's needs).

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

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

**F-2. Must students with disabilities be offered the same transfer options as non-disabled students?**

An LEA must offer IDEA-eligible students with disabilities and those covered under Section 504 the opportunity to be educated in a school that has not been identified for school improvement, corrective action, or restructuring (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 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 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 school improvement, corrective action, or restructuring. Rather, to meet the public school choice requirements, an LEA must take appropriate actions to provide FAPE in a school not identified for school improvement, corrective action, or restructuring. 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; and providing additional accommodations, services, or other resources at the school.

**F-3. Does the transfer 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, by itself, does not constitute a “change of placement” as defined under the IDEA. The IDEA and implementing regulations contain specific requirements on when a “change of placement” occurs; 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. An LEA that is subject to a desegregation plan, whether that plan is voluntary, court-ordered, or required by a Federal or State administrative agency, is not exempt from the requirement to offer students the option to transfer [34 C.F.R. §200.44(c)(1)].

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

An LEA that is subject to a desegregation plan must still implement the public school choice requirements. However, the LEA may take into account the requirements of the plan in determining how to implement the public school choice option [34 C.F.R. §200.44(c)(2)].

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

An LEA that is operating under a court-ordered desegregation plan should first determine whether it is able to offer public school 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 schools identified for school improvement, corrective action, or restructuring. An LEA that is unable to secure changes to the plan that permit a transfer option will be out of compliance with the public school choice requirements and should notify the SEA and the Department of its request to the court and of the court's decision [34 C.F.R. §200.44(c)(3)]. In these circumstances, the Department would consider granting the LEA a waiver of the public school choice requirements to the extent that those requirements are inconsistent with the LEA's desegregation plan.

If the desegregation plan has been agreed to by 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 the 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, ADA Title II, and the Age Discrimination Act of 1975.

See Section F concerning the implementation of the public school choice requirements for students with disabilities.

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

**H-1. What are the responsibilities of a school that receives transfer students under the public school choice provisions?**

A school that receives transfer students under the public school choice provisions must ensure that these students are enrolled in classes and other activities in the school in the same manner as all other students in the school [Section 1116(b)(1)(F); 34 C.F.R. §200.44(f)]. For instance, transfer students entering a school must have the same opportunities as all

other students enrolled in the school to select courses, take part in special programs (such as activities for gifted and talented students) and participate in extracurricular activities.

**H-2. May an LEA deny students transferring under the public school choice provisions the opportunity to participate in interscholastic sports in their school of choice?**

If an LEA has a general policy that requires all students who transfer under any choice option within the LEA to “sit out” from interscholastic sports for a specified period of time after the transfer, then the LEA may apply that policy to students who transfer under the public school choice provisions. If it does not have such a general policy, it may not impose one on students who enter the school under the public school choice provisions. Policies promulgated by an SEA or State athletic association should likewise be applied to students transferring under the public school choice provisions in the same way they are applied to other transfer students.

**I. GENERAL FUNDING ISSUES**

**I-1. Does the law require that funds for a student’s general educational services “follow” a student who takes advantage of public school choice to his or her new school?**

No. The statute and regulations do not require that local, State, or Federal funds “follow the child” to his or her new school. However, LEAs should take care to ensure that receiving schools have available the staff, materials, equipment, and other resources needed to accommodate students who enter the school under the public school choice provisions.

**I-2. In determining Title I allocations, should a student who transfers out of her or his school of residence be counted in the school of residence or in the school to which the student transferred and is now enrolled?**

Generally, Title I school eligibility and Title I allocations are based on the count of students from low-income families who reside in the school attendance zone of a given school [Section 1113]. Consistent with this general rule, an LEA would include a transfer student 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 [Section 1113(b)(1)(B)]. In the case of an LEA that uses enrollment, a transfer student would be counted in the school in which the student is now enrolled (the receiving school).

**I-3. May Title I funds be used to benefit non-Title I schools that receive students transferring from Title I schools?**

Title I dollars and services do not follow a student who transfers from a Title I school identified for school improvement, corrective action, or restructuring 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 LEA