

PUBLIC SCHOOL CHOICE

When a school is identified as needs improvement for the first time (after the second consecutive year of failing to make adequate yearly progress (AYP) in the same subject), corrective action, or state directed status, it must offer to all students the option to transfer to another public school within the local educational agency (LEA). The LEA must provide or pay for the transportation for all students who opt to transfer. The LEA must, no later than the first day of school following the year in which the LEA administered the assessments that resulted in its status, promptly notify parents of eligible students of their option to transfer. LEAs must notify parents of eligible students about public school choice options (notify parents of eligible children of the option to transfer their child to another public school not identified for improvement and provide details about the available options as far in advance as possible) sufficiently in advance of, but no later than 14 calendar days before, the start of the school. This requirement will apply at the beginning of the 2009-10 school year.

Students may transfer to another public school or a public charter school; however, schools to which students may transfer may not include those that are identified as needs improvement, corrective action, or state directed status and those that are persistently dangerous as determined by the State. The LEA must provide to parents of students eligible to transfer a choice of more than one school if more than one school is not identified as needs improvement. The LEA must take into account parents' preferences among the public school choices offered. Lack of capacity may not be used to deny students the option to transfer to an eligible school.

If all schools within the LEA are identified for school improvement, corrective action, or state directed status, the LEA, to the extent practicable, must establish a cooperative agreement for transfers with one or more other LEAs in close proximity. Additionally, the LEA may offer supplemental educational services (SES) to students in schools that are in their first year of school improvement.

If the LEA is subject to a desegregation plan, non-regulatory guidance from the U.S. Department of Education (US ED) specifies that the LEA is not exempt from the public school choice requirement. If the desegregation plan prohibits the public school choice option, the LEA must secure appropriate changes to the plan to permit compliance with the choice requirements.

LEAs must give priority to low achieving students from low-income families. Students who transfer must be enrolled in classes and other activities as all other students in the school.

If a student opts to transfer to another public school, the LEA must allow the student to remain in that school until the student has completed the highest grade; however, the LEA is only required to pay for transportation as long as the student's original school is identified for school improvement, corrective action, or state directed status.

For students with disabilities under Section 504 of the Rehabilitation Act of 1973 and Individuals with Disabilities Education Act (IDEA), the public school choice option must meet the criteria of a free appropriate public education.

LEAs are required by Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) to pay for public school choice related transportation. LEAs may use funds allocated under Title I, Part A or other appropriate federal funds, and state, local, or private funds. LEAs must spend 20 percent unless a lesser amount is needed of its allocation, of its Title I, Part A allocation to provide or pay for transportation for students opting for public school choice and to satisfy all requests for SES. An LEA may count the amount that is required to spend for choice-related transportation and SES its costs for parent outreach and assistance; which is the 20 percent obligation or an amount equal to 20 percent of the Title I, Part A allocation. An LEA may also count up to an amount equal to 0.2 percent of the LEA's Title I, Part A allocation which equals to one percent of the 20-percent obligation. Specifically, LEAs must spend a minimum of an amount equal to five percent of its Title I, Part A allocation on transportation, and an amount equal to five percent for SES, and an additional 10 percent on either, unless a lesser amount is needed. LEAs may not pay for administration or transportation when providing SES nor administrative costs related to public school choice options with the 20 percent of its allocation.

If the 20 percent designation is insufficient to pay all public school choice related transportation costs or to meet the demand for SES, the LEA may use additional federal, state or local funds. However, LEAs must give priority to low achieving students from low-income families.

An LEA may not reduce by more than 15 percent the total amount it makes available to a school it has identified for corrective action or state directed status. Additionally, for each student receiving SES, the LEA must make available the lesser of:

- The amount of its allocation under Title I, Part A divided by the number of students from families below the poverty level.
- The actual costs of the SES received by the student.

An LEA must prominently display the number of students who were eligible for and the number of students who participated in public school choice and SES, beginning with data from 2007-08 school year and each subsequent school year on the Web site in a timely manner.

An LEA must also display, for the current school year, a list of available schools to which students eligible to participate in public school choice may transfer. Any LEA that does not have its own Web site, must inform the SEA, so the SEA can include the information for the LEA on the SEA's Web site.

LEAs opting to utilize a parent reimbursement method for Public School Choice must take care to ensure that the LEA is following the most recent guidance provided by the U.S. Department of Education. As a result of that correspondence from US ED, GaDOE has taken steps to ensure proper implementation of the public school choice provisions and GaDOE has revised its sample Public School Choice Parent Notification Letter to reflect compliance with federal requirements and discussed in the Public School Choice Non-Regulatory Guidance issued by US ED on January 14, 2009. A copy of the revised non-regulatory guidance and revised sample letter is in Appendix E. It is imperative that districts opting to utilize parent reimbursement use this sample letter for the required public school choice parent notification for FY11. Districts opting to use a reimbursement policy must supplement that policy with additional transportation options.

In addition, LEAs opting to use a reimbursement policy must ensure that they are making every effort to meet their obligations regarding the 20 percent set-aside for choice related transportation. Please be reminded that Section K of the Public School Choice Non-Regulatory Guidance issued by US ED January 14, 2009, outlines the requirements for districts that do not meet their 20 percent obligation. While an LEA is not required to obtain approval from the SEA to spend less than its 20 percent obligation, the LEA must meet the requirements specified in K-11. If the GaDOE determines that the LEA has failed to meet the requirements specified in K-1, then the LEA must:

1. Spend the unexpended amount in the subsequent school year, in addition to its 20 percent obligation for that year, on choice-related transportation, SES or (subject to the limitation described in K-16) parent outreach and assistance [34 C.F.R. §200.48(d)(4)(i)(A)]; or
2. Meet the criteria for spending less than the amount needed to meet its 20 percent obligation in the subsequent year, and obtain permission from the SEA before spending less in the subsequent school year than the total amount it is required to spend (the unexpended amount from the prior school year plus the 20 percent obligation for that year)[34 C.F.R. §200.48(d)(4)(i)(B)].

An SEA may not grant permission to an LEA to spend less than the total amount in the subsequent school year unless the SEA has confirmed the LEA's compliance with the criteria in 34 C.F.R. §200.48(d)(2)(i) [34 C.F.R. §200.48(d)(4)(ii)].

In addition, LEAs need to keep in mind that all districts (not just those opting to use a transportation reimbursement policy) need to ensure that they are reviewing their districts for compliance regarding the public school choice requirements through its regular monitoring process.

To assist LEAs in reviewing the specifics of Section K of the Public School Choice Non-Regulatory Guidance we have listed below specifically, what Section K-1 states:

K. REQUIREMENTS FOR LEAS THAT DO NOT MEET THEIR 20 PERCENT OBLIGATION*

*A flowchart, located in Appendix B, provides further information on the requirements for LEAs that do not meet their 20 percent obligation.

K-1. What are the responsibilities of an LEA if it spends less than its 20 percent obligation on choice-related transportation, SES, and parent outreach and assistance?

Unless it meets the criteria described below, an LEA that does not meet its 20 percent obligation in a given school year must spend the unexpended amount in the subsequent school year on choice-related transportation costs, SES, or (subject to the limitation described in K-16) parent outreach and assistance. The LEA must spend the unexpended amount in addition to the funds it is required to spend to meet its 20 percent obligation in the subsequent school year.

To spend less than its 20 percent obligation and to use the unexpended amount for other allowable activities in a given school year, an LEA must meet, at a minimum, the following criteria [34 C.F.R. §200.48(d)(2)(i)]:

1. Partner, to the extent practicable, with outside groups, such as faith-based organizations, other community-based organizations, and business groups, to help inform eligible students and their families of the opportunities to transfer or to receive SES (see K-4);
2. Ensure that eligible students and their parents have a genuine opportunity to sign up to transfer or to obtain SES, including by: (a) providing timely, accurate notice to parents, as required in 34 C.F.R. §§200.36 and 200.37 (see K-6); (b) ensuring that sign-up forms for SES are distributed directly to all eligible students and their parents and are made widely available and accessible through broad means of dissemination, such as the Internet, other media, and communications through public agencies serving eligible students and their families; and (c) providing a minimum of two enrollment windows, at separate points in the school year, that are of sufficient length to enable parents of eligible students to make informed decisions about requesting SES and selecting a provider; and
3. Ensure that eligible SES providers are given access to school facilities to provide services, using a fair, open, and objective process, on the same basis and terms as are available to other groups that seek access to school facilities.

In addition, an LEA that spends less than its 20 percent obligation and does not intend to spend the unexpended amount in the subsequent school year must maintain records that demonstrate it has met the criteria above [34 C.F.R. §200.48(d)(2)(ii)], and must notify the SEA that it has met the criteria and intends to spend the remainder of its 20 percent obligation on other allowable activities and include the amount of that remainder [34 C.F.R. §200.48(d)(2)(iii)].

For information on the criteria related to SES that LEAs spending less than the 20 percent obligation must meet, see the Supplemental Educational Services Non-Regulatory Guidance, Section L, at: <http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc>.