

# NOTICE LETTER



# ARKANSAS DEPARTMENT OF EDUCATION

June 18, 2013

**Dr. Tom W. Kimbrell**  
*Commissioner*

**State Board  
of Education**

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Mireya Reith  
*Fayetteville*

Vicki Saviers  
*Little Rock*

Mr. Brad J. Beavers  
Attorney at Law  
407 Cleveland Street  
Forrest City, AR 72335-3302

Ms. Joye Hughes, Superintendent  
Forrest City School District  
845 N. Rosser  
Forrest City, AR 72335

Mr. Jon Estes, Superintendent  
Palestine-Wheatley School District  
P.O. Box 790  
Palestine, AR 72372

Ms. Stephanie White  
2091 SFC 245  
Colt, AR 72326

**Re: Appeal under the Public School Choice Act of 2013  
*White v. Palestine-Wheatley School District*  
VIA CERTIFIED AND REGULAR MAIL**

Everyone:

On June 18, 2013, Ms. Stephanie White filed a petition appealing the decision of the Palestine-Wheatley School District to deny the following application(s) made pursuant to the Public School Choice Act of 2013:

- Jaxon White

This letter is to notify you that the Arkansas State Board of Education is tentatively scheduled to hear the above-referenced appeal(s) on **Monday, July 8, 2013**. The meeting will begin at **9:00 a.m. in the Auditorium of the Arch Ford Education Building, Four Capitol Mall, Little Rock, Arkansas.**

Enclosed with this letter you will find a copy of Act 1227 of 2013 and the Arkansas Department of Education Emergency Rules Governing the Public School Choice Act of 2013. Any additional materials any party chooses to submit should be provided to my office **no later than 12:00 noon on July 3, 2013.**

The above-referenced appeal(s) will be conducted pursuant to the legal authority and jurisdiction vested in the State Board by Act 1227 of 2013 and the Arkansas Department of Education Emergency Rules Governing the Public School Choice Act of 2013.

Thank you in advance for your cooperation in this matter. Please do not hesitate to contact me at (501) 682-4227 should you require additional information.

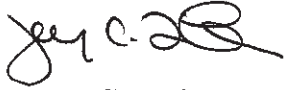
Four Capitol Mall  
Little Rock, AR  
72201-1019  
(501) 682-4475  
ArkansasEd.org

*School Choice Appeal Hearing Notice*

*June 18, 2013*

*Page 2 of 2*

Respectfully,

A handwritten signature in black ink, appearing to read "Jeremy C. Lasiter". The signature is stylized with a large, looped initial "J" and a long, sweeping underline.

Jeremy C. Lasiter  
General Counsel

Enclosures

cc: Tom W. Kimbrell, Ed.D., Commissioner of Education  
Mr. John Hoy, Asst. Commissioner, Div. of Public School Accountability  
State Board of Education Office

# APPEAL

June 14, 2013

Subject: School Choice

To whom this may concern:

Please accept this letter as an appeal to my Son's denial to attend Palestine Elementary Kindergarten program. I have a daughter Chloe Ferguson, who is in the 6<sup>th</sup> grade. My Concern is why my child Jaxon White is not allowed to attend Palestine School District. We got Chloe into school legally and we are stressed because Jaxon was denied. I have talked to Mr. Estes numerous of times as well as Mr. Oliver from Department of Education. If you could please help find a solution I would greatly appreciate it.

Thank You,  
Stephanie White

Contact Information: Stephanie White  
2091 SFC 245  
Colt, Arkansas 72326  
870-270-3739

**RECEIVED  
ATTORNEY'S OFFICE**

JUN 18 2013

**DEPARTMENT OF EDUCATION  
GENERAL DIVISION**

# **RESPONSE**

# STATUTE

1 State of Arkansas *As Engrossed: S1/31/13 S2/14/13 S2/26/13 S3/5/13 S3/12/13*  
2 *H4/6/13*

3 89th General Assembly  
4 Regular Session, 2013

# A Bill

SENATE BILL 65

5  
6 By: Senators J. Key, Holland, Bledsoe, A. Clark, J. Hendren, Irvin, Rapert  
7 *By: Representatives Biviano, McLean, Alexander, D. Altes, Barnett, Carnine, Cozart, Dale, Deffenbaugh,*  
8 *D. Douglas, Harris, Hutchison, Lowery, Neal, Ratliff, Scott, Slinkard, Wren*

## For An Act To Be Entitled

11 AN ACT TO *ESTABLISH THE PUBLIC SCHOOL CHOICE ACT OF*  
12 *2013; TO REPEAL THE PUBLIC SCHOOL CHOICE ACT OF 1989;*  
13 *TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

## Subtitle

17 *TO ESTABLISH THE PUBLIC SCHOOL CHOICE ACT*  
18 *OF 2013; AND TO DECLARE AN EMERGENCY.*

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22 *SECTION 1. Arkansas Code § 6-18-206 is repealed.*

23 ~~*6-18-206. Public school choice.*~~

24 ~~*(a)(1) This section may be referred to and cited as the "Arkansas*~~  
25 ~~*Public School Choice Act of 1989".*~~

26 ~~*(2) The General Assembly finds that the students in Arkansas's*~~  
27 ~~*public schools and their parents will become more informed about and involved*~~  
28 ~~*in the public educational system if students and their parents or guardians*~~  
29 ~~*are provided greater freedom to determine the most effective school for*~~  
30 ~~*meeting their individual educational needs. There is no right school for*~~  
31 ~~*every student, and permitting students to choose from among different schools*~~  
32 ~~*with differing assets will increase the likelihood that some marginal*~~  
33 ~~*students will stay in school and that other, more motivated students will*~~  
34 ~~*find their full academic potential.*~~

35 ~~*(3) The General Assembly further finds that giving more options*~~  
36





1 ~~to parents and students with respect to where the students attend public~~  
2 ~~school will increase the responsiveness and effectiveness of the state's~~  
3 ~~schools since teachers, administrators, and school board members will have~~  
4 ~~added incentive to satisfy the educational needs of the students who reside~~  
5 ~~in the district.~~

6 ~~(4) The General Assembly therefore finds that these benefits of~~  
7 ~~enhanced quality and effectiveness in our public schools justify permitting a~~  
8 ~~student to apply for admission to a school in any district beyond the one in~~  
9 ~~which the student resides, provided that the transfer by this student would~~  
10 ~~not adversely affect the desegregation of either district.~~

11 ~~(5) A public school choice program is hereby established to~~  
12 ~~enable any student to attend a school in a district in which the student does~~  
13 ~~not reside, subject to the restrictions contained in this section.~~

14 ~~(b)(1)(A) Before a student may attend a school in a nonresident~~  
15 ~~district, the student's parent or guardian must submit an application on a~~  
16 ~~form approved by the Department of Education to the nonresident district by~~  
17 ~~submitting the application to the superintendent of the school district.~~  
18 ~~This application must be postmarked not later than July 1 of the year in~~  
19 ~~which the student would begin the fall semester at the nonresident district.~~

20 ~~(B)(i) Within thirty (30) days of the receipt of an~~  
21 ~~application from a nonresident student seeking admission under the terms of~~  
22 ~~this section, the superintendent of the nonresident district shall notify the~~  
23 ~~parent or guardian and the resident district in writing as to whether the~~  
24 ~~student's application has been accepted or rejected.~~

25 ~~(ii) If the application is rejected, the~~  
26 ~~superintendent of the nonresident district must state in the notification~~  
27 ~~letter the reason for rejection.~~

28 ~~(iii) If the application is accepted, the~~  
29 ~~superintendent of the nonresident district shall state in the notification~~  
30 ~~letter:~~

31 ~~(a) An absolute deadline for the student to~~  
32 ~~enroll in the district, or the acceptance notification is null; and~~

33 ~~(b) Any instructions for the renewal~~  
34 ~~procedures established by the district.~~

35 ~~(iv)(a) Any student who accepts a school choice~~  
36 ~~transfer may return to his or her resident district during the course of the~~

1 ~~school year.~~

2 ~~(b) If a transferred student returns to his or~~  
3 ~~her resident district during the school year, the student's transfer is~~  
4 ~~voided, and the student shall reapply for any future transfer.~~

5 ~~(2)(A) The school board of directors of every public school~~  
6 ~~district must adopt by resolution specific standards for acceptance and~~  
7 ~~rejection of applications. Standards may include the capacity of a program,~~  
8 ~~class, grade level, or school building. Nothing in this section requires a~~  
9 ~~school district to add teachers, staff, or classrooms or in any way to exceed~~  
10 ~~the requirements and standards established by existing law. Standards shall~~  
11 ~~include a statement that priority will be given to applications from siblings~~  
12 ~~or stepsiblings residing in the same residence or household of students~~  
13 ~~already attending the district by choice. Standards may not include an~~  
14 ~~applicant's previous academic achievement, athletic or other extracurricular~~  
15 ~~ability, handicapping conditions, English proficiency level, or previous~~  
16 ~~disciplinary proceedings except that an expulsion from another district may~~  
17 ~~be included pursuant to § 6-18-510.~~

18 ~~(B)(i) Any student who applies for a transfer under this~~  
19 ~~section and is denied a transfer by the nonresident district may request a~~  
20 ~~hearing before the State Board of Education to reconsider the transfer.~~

21 ~~(ii) A request for a hearing before the state board~~  
22 ~~shall be in writing and shall be postmarked no later than ten (10) days after~~  
23 ~~notice of rejection of the application under subdivision (b)(1)(B) of this~~  
24 ~~section is received by the student.~~

25 ~~(3) Each school district shall participate in public school~~  
26 ~~choice consistent with this section.~~

27 ~~(c) The responsibility for transportation of a student from the~~  
28 ~~student's resident school district to a nonresident school district shall be~~  
29 ~~borne by the student or the student's parents. The nonresident school~~  
30 ~~district may enter into a written agreement with the student, the student's~~  
31 ~~parents, or the resident school district to provide transportation to or from~~  
32 ~~any place in the resident district to the nonresident district, or both.~~

33 ~~(d)(1) A nonresident district shall accept credits toward graduation~~  
34 ~~that were awarded by another district.~~

35 ~~(2) The nonresident district shall award a diploma to a~~  
36 ~~nonresident student if the student meets the nonresident district's~~

1 ~~graduation requirements.~~

2 ~~(e) For purposes of determining a school district's state equalization~~  
3 ~~aid, the nonresident student shall be counted as a part of the average daily~~  
4 ~~membership of the district to which the student has transferred.~~

5 ~~(f) The provisions of this section and all student choice options~~  
6 ~~created in this section are subject to the following limitations:~~

7 ~~(1) No student may transfer to a nonresident district where the~~  
8 ~~percentage of enrollment for the student's race exceeds that percentage in~~  
9 ~~the student's resident district except in the circumstances set forth in~~  
10 ~~subdivisions (f)(2) and (3) of this section;~~

11 ~~(2)(A) A transfer to a district is exempt from the restriction~~  
12 ~~set forth in subdivision (f)(1) of this section if the transfer is between~~  
13 ~~two (2) districts within a county and if the minority percentage in the~~  
14 ~~student's race and majority percentages of school enrollment in both the~~  
15 ~~resident and nonresident district remain within an acceptable range of the~~  
16 ~~county's overall minority percentage in the student's race and majority~~  
17 ~~percentages of school population as set forth by the department.~~

18 ~~(B)(i) By the filing deadline each year, the department~~  
19 ~~shall compute the minority percentage in the student's race and majority~~  
20 ~~percentages of each county's public school population from the October Annual~~  
21 ~~School Report and shall then compute the acceptable range of variance from~~  
22 ~~those percentages for school districts within each county.~~

23 ~~(ii)(a) In establishing the acceptable range of~~  
24 ~~variance, the department is directed to use the remedial guideline~~  
25 ~~established in Little Rock School District v. Pulaski County Special School~~  
26 ~~District of allowing an overrepresentation or underrepresentation of black or~~  
27 ~~white students of one fourth ( $\frac{1}{4}$ ) or twenty five percent (25%) of the county's~~  
28 ~~racial balance.~~

29 ~~(b) In establishing the acceptable range of~~  
30 ~~variance for school choice, the department is directed to use the remedial~~  
31 ~~guideline of allowing an overrepresentation or underrepresentation of~~  
32 ~~minority or majority students of one fourth ( $\frac{1}{4}$ ) or twenty five percent (25%)~~  
33 ~~of the county's racial balance;~~

34 ~~(3) A transfer is exempt from the restriction set forth in~~  
35 ~~subdivision (f)(1) of this section if each school district affected by the~~  
36 ~~transfer does not have a critical mass of minority percentage in the~~

1 ~~student's race of more than ten percent (10%) of any single race;~~

2 ~~(4) In any instance in which the provisions of this subsection~~  
3 ~~would result in a conflict with a desegregation court order or a district's~~  
4 ~~court approved desegregation plan, the terms of the order or plan shall~~  
5 ~~govern;~~

6 ~~(5) The department shall adopt appropriate rules and regulations~~  
7 ~~to implement the provisions of this section; and~~

8 ~~(6) The department shall monitor school districts for compliance~~  
9 ~~with this section.~~

10 ~~(g) The state board shall be authorized to resolve disputes arising~~  
11 ~~under subsections (b)-(f) of this section.~~

12 ~~(h) The superintendent of the district shall cause public~~  
13 ~~announcements to be made over the broadcast media and in the print media at~~  
14 ~~such times and in such a manner as to inform parents or guardians of students~~  
15 ~~in adjoining districts of the availability of the program, the application~~  
16 ~~deadline, and the requirements and procedure for nonresident students to~~  
17 ~~participate in the program.~~

18 ~~(i)(1) All superintendents of school districts shall report to the~~  
19 ~~Equity Assistance Center on an annual basis the race, gender, and other~~  
20 ~~pertinent information needed to properly monitor compliance with the~~  
21 ~~provisions of this section.~~

22 ~~(2) The reports may be on those forms that are prescribed by the~~  
23 ~~department, or the data may be submitted electronically by the district using~~  
24 ~~a format authorized by the department.~~

25 ~~(3) The department may withhold state aid from any school~~  
26 ~~district that fails to file its report each year or fails to file any other~~  
27 ~~information with a published deadline requested from school districts by the~~  
28 ~~Equity Assistance Center so long as thirty (30) calendar days are given~~  
29 ~~between the request for the information and the published deadline except~~  
30 ~~when the request comes from a member or committee of the General Assembly.~~

31 ~~(4) A copy of the report shall be provided to the Joint Interim~~  
32 ~~Oversight Committee on Educational Reform.~~

33 ~~(j)(1) The department shall develop a proposed set of rules as it~~  
34 ~~determines is necessary or desirable to amend the provisions of this section.~~

35 ~~(2) The department shall present the proposed rules in written~~  
36 ~~form to the House Interim Committee on Education and the Senate Interim~~

1 ~~Committee on Education by October 1, 2006, for review and consideration by~~  
2 ~~the committees for possible amendments to this section and to the Arkansas~~  
3 ~~Public School Choice Program by the Eighty-sixth General Assembly.~~

4  
5 SECTION 2. Arkansas Code § 6-15-430(b)(1), concerning student  
6 transfers from a school district that is identified as being in academic  
7 distress, is amended to read as follows:

8 (b)(1) Any student attending a public school district classified as  
9 being in academic distress shall automatically be eligible and entitled  
10 pursuant to the ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public  
11 School Choice Act of 2013, § 6-18-1901 et seq., to transfer to another  
12 ~~geographically contiguous~~ school district not in academic distress during the  
13 time period that a school district is classified as being in academic  
14 distress and, therefore, not be required to file a petition by ~~July 1~~ June 1  
15 but shall meet all other requirements and conditions of the ~~Arkansas Public~~  
16 ~~School Choice Act of 1989, § 6-18-206~~ Public School Choice Act of 2013, § 6-  
17 18-1901 et seq.

18  
19 SECTION 3. Arkansas Code § 6-18-202(g), concerning the age and  
20 attendance requirements for attending public schools, is amended to read as  
21 follows:

22 (g) This section shall not be construed to restrict a student's  
23 ability to participate in a tuition agreement with a nonresident school  
24 district or to officially transfer to another school district pursuant to the  
25 ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public School Choice  
26 Act of 2013, § 6-18-1901 et seq.

27  
28 SECTION 4. Arkansas Code § 6-18-227(b)(2)(A)(i), concerning the  
29 Arkansas Opportunity Public School Choice Act of 2004, is amended to read as  
30 follows:

31 (2)(A)(i) For the purposes of continuity of educational choice,  
32 the transfer shall operate as an irrevocable election for each subsequent  
33 entire school year and shall remain in force until the student completes high  
34 school or the parent, guardian, or the student, if the student is over  
35 eighteen (18) years of age, makes application no later than July 30 for  
36 attendance or transfer as provided for by §§ 6-18-202, ~~6-18-206,~~ and § 6-18-

1 316, or by June 1 under the Public School Choice Act of 2013, § 6-18-1901 et  
2 seq.

3  
4 SECTION 5. Arkansas Code § 6-21-812(a), concerning student transfers  
5 from a school district that is identified as being in fiscal distress, is  
6 amended to read as follows:

7 (a)(1) Any student attending a public school district classified as  
8 being in facilities distress shall automatically be eligible and entitled  
9 under the ~~Arkansas Public School Choice Act of 1989, § 6-18-206~~ Public School  
10 Choice Act of 2013, § 6-18-1901 et seq., to transfer to another  
11 ~~geographically contiguous~~ school district not in facilities distress during  
12 the time period that a district is classified as being in facilities  
13 distress.

14 (2) The student is not required to file a petition by ~~July 1~~  
15 June 1 but shall meet all other requirements and conditions of the ~~Arkansas~~  
16 ~~Public School Choice Act of 1989, § 6-18-206~~ Public School Choice Act of  
17 2013, § 6-18-1901 et seq.

18  
19 SECTION 6. Arkansas Code Title 6, Chapter 18, is amended to add an  
20 additional subchapter to read as follows:

21 Subchapter 19 – Public School Choice Act of 2013  
22 6-18-1901. Title – Legislative findings.

23 (a) This subchapter shall be known and may be cited as the "Public  
24 School Choice Act of 2013".

25 (b) The General Assembly finds that:

26 (1) The students in Arkansas's public schools and their parents  
27 will become more informed about and involved in the public educational system  
28 if students and their parents are provided greater freedom to determine the  
29 most effective school for meeting their individual educational needs. There  
30 is no right school for every student, and permitting students to choose from  
31 among different schools with differing assets will increase the likelihood  
32 that some at-risk students will stay in school and that other, more motivated  
33 students will find their full academic potential;

34 (2) Giving more options to parents and students with respect to  
35 where the students attend public school will increase the responsiveness and  
36 effectiveness of the state's schools because teachers, administrators, and

1 school board members will have added incentive to satisfy the educational  
2 needs of the students who reside in the district; and

3 (3) These benefits of enhanced quality and effectiveness in our  
4 public schools justify permitting a student to apply for admission to a  
5 school in any school district beyond the school district in which the student  
6 resides, provided that the transfer by the student does not conflict with an  
7 enforceable judicial decree or court order remedying the effects of past  
8 racial segregation in the school district.

9  
10 6-18-1902. Definitions.

11 As used in this subchapter:

12 (1) "Nonresident district" means a school district other than a  
13 student's resident district;

14 (2) "Parent" means a student's parent, guardian, or other person  
15 having custody or care of the student;

16 (3) "Resident district" means the school district in which the  
17 student resides as determined under § 6-18-202; and

18 (4) "Transfer student" means a public school student who  
19 transfers to a nonresident district through a public school choice option  
20 under this subchapter.

21  
22 6-18-1903. Public school choice program established.

23 (a) A public school choice program is established to enable a student  
24 to attend a school in a nonresident district, subject to the limitations  
25 under § 6-18-1906.

26 (b) Each school district shall participate in a public school choice  
27 program consistent with this subchapter.

28 (c) This subchapter does not require a school district to add  
29 teachers, staff, or classrooms, or in any way to exceed the requirements and  
30 standards established by existing law.

31 (d)(1) The board of directors of a public school district shall adopt  
32 by resolution specific standards for acceptance and rejection of applications  
33 under this subchapter.

34 (2) The standards:

35 (A) May include without limitation the capacity of a  
36 program, class, grade level, or school building;

1 (B) Shall include a statement that priority will be given  
2 to an applicant who has a sibling or stepsibling who:

3 (i) Resides in the same household; and

4 (ii) Is already enrolled in the nonresident district  
5 by choice; and

6 (C) Shall not include an applicant's:

7 (i) Academic achievement;

8 (ii) Athletic or other extracurricular ability;

9 (iii) English proficiency level; or

10 (iv) Previous disciplinary proceedings, except that  
11 an expulsion from another district may be included under § 6-18-510.

12 (3) A school district receiving transfers under this act shall  
13 not discriminate on the basis of gender, national origin, race, ethnicity,  
14 religion, or disability.

15 (e) A nonresident district shall:

16 (1) Accept credits toward graduation that were awarded by  
17 another district; and

18 (2) Award a diploma to a nonresident student if the student  
19 meets the nonresident district's graduation requirements.

20 (f) The superintendent of a school district shall cause public  
21 announcements to be made over the broadcast media and either in the print  
22 media or on the Internet to inform parents of students in adjoining districts  
23 of the:

24 (1) Availability of the program;

25 (2) Application deadline; and

26 (3) Requirements and procedure for nonresident students to  
27 participate in the program.

28  
29 6-18-1904. General provisions.

30 (a) The transfer of a student under the Arkansas Public School Choice  
31 Act of 1989, § 6-18-206 [repealed], is not voided by this subchapter and  
32 shall be treated as a transfer under this subchapter.

33 (b)(1) A student may accept only one (1) school choice transfer per  
34 school year.

35 (2)(A) A student who accepts a public school choice transfer may  
36 return to his or her resident district during the school year.



1 (B) If a transferred student returns to his or her  
2 resident district, the student's transfer is voided, and the student shall  
3 reapply if the student seeks a future school choice transfer.

4 (c)(1) A transfer student attending a nonresident school under this  
5 subchapter may complete all remaining school years at the nonresident  
6 district.

7 (2) A present or future sibling of a student who continues  
8 enrollment in the nonresident district under this subsection may enroll in or  
9 continue enrollment in the nonresident district until the sibling of the  
10 transfer student completes his or her secondary education, if the district  
11 has the capacity to accept the sibling without adding teachers, staff, or  
12 classrooms or exceeding the regulations and standards established by law.

13 (d)(1) The transfer student or the transfer student's parent is  
14 responsible for the transportation of the transfer student to and from the  
15 school in the nonresident district where the transfer student is enrolled.

16 (2) The nonresident district may enter into a written agreement  
17 with the student, the student's parent, or the resident district to provide  
18 the transportation.

19 (3) The State Board of Education may resolve disputes concerning  
20 transportation arising under this subsection.

21 (e) For purposes of determining a school district's state aid, a  
22 transfer student is counted as a part of the average daily membership of the  
23 nonresident district where the transfer student is enrolled.

24  
25 6-18-1905. Application for a transfer.

26 (a) If a student seeks to attend a school in a nonresident district,  
27 the student's parent shall submit an application:

28 (1) To the nonresident district with a copy to the resident  
29 district;

30 (2) On a form approved by the Department of Education; and

31 (3) Postmarked no later than June 1 of the year in which the  
32 student seeks to begin the fall semester at the nonresident district.

33 (b)(1) By August 1 of the school year in which the student seeks to  
34 enroll in a nonresident district under this subchapter, the superintendent of  
35 the nonresident district shall notify the parent and the resident district in  
36 writing as to whether the student's application has been accepted or

1 rejected.

2 (2) If the application is rejected, the superintendent of the  
3 nonresident district shall state in the notification letter the reason for  
4 rejection.

5 (3) If the application is accepted, the superintendent of the  
6 nonresident district shall state in the notification letter:

7 (A) A reasonable deadline by which the student shall  
8 enroll in the nonresident district and after which the acceptance  
9 notification is null; and

10 (B) Instructions for the renewal procedures established by  
11 the nonresident district.

12  
13 6-18-1906. Limitations.

14 (a) If the provisions of this subchapter conflict with a provision of  
15 an enforceable desegregation court order or a district's court-approved  
16 desegregation plan regarding the effects of past racial segregation in  
17 student assignment, the provisions of the order or plan shall govern.

18 (b)(1) A school district annually may declare an exemption under this  
19 section if the school district is subject to the desegregation order or  
20 mandate of a federal court or agency remedying the effects of past racial  
21 segregation.

22 (2)(A) An exemption declared by a board of directors under this  
23 subsection is irrevocable for one (1) year from the date the school district  
24 notifies the Department of Education of the declaration of exemption.

25 (B) After each year of exemption, the board of directors  
26 may elect to participate in public school choice under this section if the  
27 school district's participation does not conflict with the school district's  
28 federal court-ordered desegregation program.

29 (3) A school district shall notify the department by April 1 if  
30 in the next school year the school district intends to:

31 (A) Declare an exemption under this section; or

32 (B) Resume participation after a period of exemption.

33 (c)(1)(A) There is established a numerical net maximum limit on school  
34 choice transfers each school year from a school district, less any school  
35 choice transfers into the school district, under this section of not more  
36 than three percent (3%) of the school district's three-quarter average daily

1 membership for the immediately preceding school year.

2 (B) For the purpose of determining the percentage of  
3 school choice transfers under this subsection, siblings who are counted in  
4 the numerator as transfer students shall count as one (1) student, and  
5 siblings who are counted in the denominator as part of the average daily  
6 membership shall count as one (1) student.

7 (2) Annually by June 1, the Department of Education shall report  
8 to each school district the net maximum number of school choice transfers for  
9 the current school year.

10 (3) If a student is unable to transfer due to the limits under  
11 this subsection, the resident district shall give the student priority for a  
12 transfer in the following year in the order that the resident district  
13 receives notices of applications under § 6-18-1905, as evidenced by a  
14 notation made by the district on the applications indicating date and time of  
15 receipt.

16  
17 6-18-1907. Rules – Appeal – Data collection and reporting.

18 (a) The State Board of Education may promulgate rules to implement  
19 this subchapter.

20 (b)(1) A student whose application for a transfer under § 6-18-1905 is  
21 rejected by the nonresident district may request a hearing before the state  
22 board to reconsider the transfer.

23 (2)(A) A request for a hearing before the state board shall be  
24 in writing and shall be postmarked no later than ten (10) days after the  
25 student or the student's parent receives a notice of rejection of the  
26 application under § 6-18-1905.

27 (B) As part of the review process, the parent may submit  
28 supporting documentation that the transfer would be in the best educational,  
29 social, or psychological interest of the student.

30 (3) If the state board overturns the determination of the  
31 nonresident district on appeal, the state board shall notify the parent, the  
32 nonresident district, and the resident district of the basis for the state  
33 board's decision.

34 (c)(1) The department shall collect data from school districts on the  
35 number of applications for student transfers under this section and study the  
36 effects of school choice transfers under this subchapter, including without

1 limitation the net maximum number of transfers and exemptions, on both  
2 resident and nonresident districts for up to two (2) years to determine if a  
3 racially segregative impact has occurred to any school district.

4 (2) Annually by October 1, the department shall report its  
5 findings from the study of the data under this subsection to the Senate  
6 Committee on Education and the House Committee on Education its finding.

7  
8 6-18-1909. Effective date.

9 The provisions of this subchapter shall remain in effect until July 1,  
10 2015.

11 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the  
12 General Assembly of the State of Arkansas that certain provisions of the  
13 Arkansas Public School Choice Act of 1989, § 6-18-206, have been found to be  
14 unconstitutional by a federal court; that thousands of public school students  
15 are currently attending public schools in nonresident school districts under  
16 that law; that there is now uncertainty about the viability of those  
17 transfers and future transfers; that this act repeals the disputed provisions  
18 of that law while preserving the opportunity for public school choice; and  
19 that this act is immediately necessary to resolve the uncertainty in the law  
20 before the 2013-2014 school year and preserve existing student transfers.  
21 Therefore, an emergency is declared to exist, and this act being immediately  
22 necessary for the preservation of the public peace, health, and safety shall  
23 become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,  
26 the expiration of the period of time during which the Governor may veto the  
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is  
29 overridden, the date the last house overrides the veto.

30  
31 /s/J. Key  
32

33  
34 **APPROVED: 04/16/2013**  
35  
36

# **RULES**

**ARKANSAS DEPARTMENT OF EDUCATION EMERGENCY RULES GOVERNING  
THE PUBLIC SCHOOL CHOICE ACT OF 2013**  
**May 13, 2013**

**1.00 PURPOSE**

1.01 These rules shall be known as the Arkansas Department of Education Rules Governing the Public School Choice Act of 2013

1.02 The purpose of these rules is to set forth the process and procedures necessary to administer the Public School Choice Act of 2013.

**2.00 AUTHORITY**

2.01 The Arkansas State Board of Education promulgated these rules pursuant to the authority granted to it by Act 1227 of 2013 and Ark. Code Ann. §§ 6-11-105 and 25-15-201 et seq.

**3.00 DEFINITIONS**

As used in these rules:

3.01 “Nonresident District” means a school district other than a student’s resident district;

3.02 “Parent” means a student’s parent, guardian, or other person having custody or care of the student;

3.03 “Resident district” means the school district in which the student resides as determined under Ark. Code Ann. § 6-18-202;

3.04 “Sibling” means each of two (2) or more children having a parent in common by blood, adoption, marriage, or foster care; and

3.05 “Transfer student” means a public school student who transfers to a nonresident district through a public school choice option under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.

**4.00 ESTABLISHMENT OF PUBLIC SCHOOL CHOICE PROGRAM**

4.01 A public school choice program is established to enable a student to attend a school in a nonresident district, subject to the limitations under Ark. Code Ann. § 6-18-1906 and Section 7.00 of these rules.

4.02 Each school district shall participate in a public school choice program consistent with Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.

- 4.03 These rules do not require a school district to add teachers, staff, or classrooms, or in any way to exceed the requirements and standards established by existing law.
- 4.04 The board of directors of a public school district shall adopt by resolution specific standards for acceptance and rejection of applications under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules. The standards:
- 4.04.1 May include without limitation the capacity of a program, class, grade level, or school building;
- 4.04.2 Shall include a statement that priority will be given to an applicant who has a sibling or stepsibling who:
- 4.04.2.1 Resides in the same household; and
- 4.04.2.2 Is already enrolled in the nonresident district by choice.
- 4.04.3 Shall not include an applicant's:
- 4.04.3.1 Academic achievement;
- 4.04.3.2 Athletic or other extracurricular ability;
- 4.04.3.3 English proficiency level; or
- 4.04.3.4 Previous disciplinary proceedings, except that an expulsion from another district may be included under Ark. Code Ann. § 6-18-510.
- 4.04.4 A school district receiving transfers under the Public School Choice Act of 2013 and these rules shall not discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability.
- 4.05 A nonresident district shall:
- 4.05.1 Accept credits toward graduation that were awarded by another district; and
- 4.05.2 Award a diploma to a nonresident student if the student meets the nonresident district's graduation requirements.
- 4.06 The superintendent of a school district shall cause public announcements to be made over the broadcast media and either in the print media or on the Internet to inform parents of students in adjoining districts of the:

4.06.1 Availability of the program;

4.06.2 Application deadline; and

4.06.3 Requirements and procedure for nonresident students to participate in the program.

## **5.00 GENERAL PROVISIONS**

5.01 The transfer of a student under the Arkansas Public School Choice Act of 1989 (Ark. Code Ann. § 6-18-206 [repealed]), is not voided by Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules and shall be treated as a transfer under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules.

5.02 A student may accept only one (1) school choice transfer per school year.

5.02.1 A student who accepts a public school choice transfer may return to his or her resident district during the school year.

5.02.2 If a transferred student returns to his or her resident district, the student's transfer is voided, and the student shall reapply if the student seeks a future school choice transfer.

5.03 A transfer student attending a nonresident school under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules may complete all remaining school years at the nonresident district.

5.03.1 A present or future sibling of a student who continues enrollment in the nonresident district under Section 5.03 of these rules may enroll in or continue enrollment in the nonresident district until the sibling of the transfer student completes his or her secondary education, if the district has the capacity to accept the sibling without adding teachers, staff, or classrooms or exceeding the regulations and standards established by law.

5.04 The transfer student or the transfer student's parent is responsible for the transportation of the transfer student to and from the school in the nonresident district where the transfer student is enrolled.

5.04.1 The nonresident district may enter into a written agreement with the student, the student's parent, or the resident district to provide the transportation.

5.04.2 The State Board of Education may resolve disputes concerning transportation arising under Section 5.04 of these rules.



5.05 For purposes of determining a school district's state aid, a transfer student is counted as part of the average daily membership of the nonresident district where the transfer student is enrolled.

## **6.00 APPLICATION FOR TRANSFER**

6.01 If a student seeks to attend a school in a nonresident district, the student's parent shall submit an application:

6.01.1 To the nonresident district with a copy to the resident district;

6.01.2 On the form that is attached to these rules as Attachment 1; and

6.01.3 Postmarked no later than June 1 of the year in which the student seeks to begin the fall semester at the nonresident district.

6.02 By August 1 of the school year in which the student seeks to enroll in a nonresident district under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules, the superintendent of the nonresident district shall notify the parent and the resident district in writing as to whether the student's application has been accepted or rejected. The notification shall be sent via First-Class Mail to the address on the application.

6.02.1 If the application is rejected, the superintendent of the nonresident district shall state in the notification letter the reason for the rejection.

6.02.2 If the application is accepted, the superintendent of the nonresident district shall state in the notification letter:

6.02.2.1 A reasonable deadline by which the student shall enroll in the nonresident district and after which the acceptance notification is null; and

6.02.2.2 Instructions for the renewal procedures established by the nonresident district.

## **7.00 LIMITATIONS**

7.01 If the provisions of Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules conflict with a provision of an enforceable desegregation court order or a district's court-approved desegregation plan regarding the effects of past racial segregation in student assignment, the provisions of the order or plan shall govern.

7.02 A school district annually may declare an exemption under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules if the school district is subject to the

desegregation order or mandate of a federal court or agency remedying the effects of past racial segregation.

7.02.1 An exemption declared by a board of directors under Section 7.02 of these rules is irrevocable for one (1) year from the date the school district notifies the Department of Education of the declaration of exemption.

7.02.2 After each year of exemption, the board of directors may elect to participate in public school choice under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules if the school district's participation does not conflict with the school district's federal court-ordered desegregation program.

7.02.3 A school district shall notify the Department of Education by April 1 if in the next school year the school district intends to:

7.02.3.1 Declare an exemption under Section 7.02 of these rules; or

7.02.3.2 Resume participation after a period of exemption.

7.02.3.3 A school district shall provide the notifications under Section 7.02.3.1 or 7.02.3.2 to:

Office of the Commissioner  
ATTN: Arkansas Public School Choice Act  
Four Capitol Mall  
Little Rock, AR 72201

7.03 There is established a numerical net maximum limit on school choice transfers each school year from a school district, less any school choice transfers into the school district under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules of not more than three percent (3%) of the school district's three-quarter average daily membership for the immediately preceding school year.

7.03.1 For the purpose of determining the percentage of school choice transfers under Section 7.03 of these rules, siblings who are counted in the numerator as transfer students shall count as one (1) student, and siblings who are counted in the denominator as part of the average daily membership shall count as one (1) student.

7.03.2 Annually by June 1, the Department of Education shall report to each school district the net maximum number of school choice transfers for the current school year.

7.03.3 If a student is unable to transfer due to the limits under Section 7.03 of these rules, the resident district shall give the student priority for a transfer

in the following year in the order that the resident district receives notices of applications under Ark. Code Ann. § 6-18-1905 and Section 6.00 of these rules, as evidenced by a notation made by the district on the applications indicating date and time of receipt.

## **8.00 APPEAL, DATA COLLECTION AND REPORTING**

8.01 A student whose application for a transfer under Ark. Code Ann. § 6-18-1905 and Section 6.00 of these rules is rejected by the nonresident district may request a hearing before the State Board of Education to reconsider the transfer.

8.01.1 A request for a hearing before the State Board of Education shall be in writing and shall be postmarked no later than ten (10) calendar days, excluding weekends and legal holidays, after the student or the student's parent receives a notice of rejection of the application under Ark. Code Ann. § 6-18-1905 and Section 6.00 of these rules and shall be mailed to:

Office of the Commissioner  
ATTN: Arkansas Public School Choice Act Appeals  
Four Capitol Mall  
Little Rock, AR 72201

8.01.2 Contemporaneously with the filing of the written appeal with the Office of the Commissioner, the student or student's parent must also mail a copy of the written appeal to the superintendent of the nonresident school district.

8.01.3 In its written appeal, the student or student's parent shall state his or her basis for appealing the decision of the nonresident district.

8.01.4 The student or student's parent shall submit, along with its written appeal, a copy of the notice of rejection from the nonresident school district.

8.01.5 As part of the review process, the student or student's parent may submit supporting documentation that the transfer would be in the best educational, social, or psychological interest of the student.

8.01.6 The nonresident district may submit, in writing, any additional information, evidence, or arguments supporting its rejection of the student's application by mailing such response to the State Board of Education. Such response shall be postmarked no later than ten (10) days after the nonresident district receives the student or parent's appeal. The response of the nonresident district shall be mailed to:

Office of the Commissioner  
ATTN: Arkansas Public School Choice Act Appeals  
Four Capitol Mall

Little Rock, AR 72201

8.01.7 Contemporaneously with the filing of its response with the Office of the Commissioner, the nonresident district must also mail a copy of the response to the student or student's parent.

8.01.8 If the State Board of Education overturns the determination of the nonresident district on appeal, the State Board of Education shall notify the parent, the nonresident district, and the resident district of the basis for the State Board of Education's decision.

8.02 The Department of Education shall collect data from school districts on the number of applications for student transfers under Section 8.00 of these rules and study the effects of school choice transfers under Arkansas Code, Title 6, Chapter 18, Subchapter 19 and these rules, including without limitation the net maximum number of transfers and exemptions, on both resident and nonresident districts for up to two (2) years to determine if a racially segregative impact has occurred to any school district.

8.03 Annually by October 1, the Department of Education shall report its findings from the study of the data under Section 8.02 of these rules to the Senate Committee on Education and the House Committee on Education.

**9.00 EFFECTIVE DATE**

The provisions of the Arkansas Public School Choice Act of 2013 and these rules shall remain in effect until July 1, 2015.

**10.00 STATE BOARD HEARING PROCEDURES**

The following procedures shall apply to hearings conducted by the State Board of Education pursuant to Ark. Code Ann. § 6-18-1907 and Section 8.00 of these rules:

10.01 A staff member of the Arkansas Department of Education shall introduce the agenda item.

10.02 All persons wishing to testify before the State Board of Education shall first be placed under oath by the Chairperson of the State Board.

10.03 Each party shall have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the nonresident school district. The Chairperson of the State Board may, for good cause shown and upon request of either party, allow either party additional time to present their opening statements.

10.04 Each party shall be given twenty (20) minutes to present their cases, beginning with the nonresident school district. The Chairperson of the State Board may, for

good cause shown and upon request of either party, allow either party additional time to present their cases.

10.05 The State Board of Education, at its discretion, shall have the authority to require any person associated with the application to appear in person before the State Board as a witness during the hearing. The State Board of Education may accept testimony by affidavit, declaration or deposition.

10.06 Every witness may be subject to direct examination, cross examination and questioning by the State Board of Education.

10.07 For the purposes of the record, documents offered during the hearing by the nonresident district shall be clearly marked in sequential, numeric order (1,2,3).

10.08 For the purposes of the record, documents offered during the hearing by the appealing party shall be clearly marked in sequential, alphabetic letters (A,B,C).

10.09 The nonresident school district shall have the burden of proof in proving the basis for denial of the transfer.

10.10 The State Board of Education may sustain the rejection of the nonresident district or grant the appeal.

10.11 The State Board of Education may announce its decision immediately after hearing all arguments and evidence or may take the matter under advisement. The State Board shall provide a written decision to the Department of Education, the appealing party, the nonresident district and the resident district within fourteen (14) days of announcing its decision under this section.

## **11.00 EMERGENCY CLAUSE**

11.01 WHEREAS, Act 1227 of 2013 contained an emergency clause and became effective on April 16, 2013; and

11.02 WHEREAS, Act 1227 of 2013 authorizes the State Board of Education to promulgate rules to implement the Act; and

11.03 WHEREAS, these rules are immediately necessary to achieve the purposes of Act 1227 of 2013 to resolve uncertainty in the law before the 2013-2014 school year and preserve existing student transfers;

11.04 THEREFORE, the State Board of Education hereby determines pursuant to Ark. Code Ann. § 25-15-204 that imminent peril to the welfare of Arkansas public school students, parents and school districts will result without the immediate promulgation of these rules.

ATTACHMENT 1

***APPLICATION FOR TRANSFER TO A NONRESIDENT DISTRICT  
“ARKANSAS PUBLIC SCHOOL CHOICE ACT OF 2013”  
(Must Be Submitted to Non-Resident and Resident Districts)***

**APPLICANT INFORMATION**

Student Name:

Student Date of Birth:

Gender

Male

Female

Grade:

Does the applicant require special needs or programs? Yes

No

Is applicant currently under expulsion? Yes

No

**ETHNIC ORIGIN (CHECK ONE)**

(For data reporting purposes only)

2 or More Races

Asian

African-American

Hispanic

Native American/  
Native Alaskan

Native Hawaiian/  
Pacific Islander

White

**RESIDENT SCHOOL DISTRICT OF APPLICANT**

District Name:

County Name:

Address:

Phone:

**NONRESIDENT SCHOOL DISTRICT APPLICANT WISHES TO ATTEND**

District Name:

County Name:

Address:

Phone:

Does the applicant already have a sibling or step-sibling in attendance in this district?

**PARENT OR GUARDIAN INFORMATION**

|          |             |
|----------|-------------|
| Name:    | Home Phone: |
| Address: | Work Phone: |

|                           |       |
|---------------------------|-------|
| Parent/Guardian Signature | Date: |
|---------------------------|-------|

Pursuant to standards adopted by a nonresident school board a nonresident district may reserve the right to accept and reject applicants based on capacity of programs, class, grade level, or school building. Likewise, a nonresident district's standards may provide for the rejection of an applicant based upon the submission of false or misleading information to the above listed request for information when that information directly impacts the legal qualifications of an applicant to transfer pursuant to the School Choice Act. However, a nonresident district's standards shall not include an applicant's previous academic achievement, athletic or other extracurricular ability, handicapping conditions, English proficiency level, or previous disciplinary proceedings, except that an expulsion from another district may be included pursuant to Ark. Code Ann. § 6-18-510. Priority will be given to applicants with siblings or step-siblings attending the district. The nonresident district shall accept credits toward graduation that were awarded by another district and award a diploma to a nonresident applicant if the applicant meets the nonresident district's graduation requirements. This application must be filed in the nonresident district (with a copy to the resident district) or postmarked no later than June 1 of the year in which the applicant would begin the fall semester at the nonresident district. A student whose application for transfer is rejected by the nonresident district may request a hearing before the State Board of Education to reconsider the transfer by filing such a request in writing with the Commissioner of Education no later than ten (10) days after the student or student's parent receives a notice of rejection. (Consult Ark. Code Ann. § 6-18-1905 and the Arkansas Department of Education Rules Governing the Public School Choice Act of 2013 for specific procedures on how to file such an appeal).

**DISTRICT USE ONLY**

|  |   |
|--|---|
| Date and Time Received by Resident District: | Date and Time Received by Nonresident District: |
|--|---|

|                          |                            |
|--------------------------|----------------------------|
| Resident District LEA #: | Nonresident District LEA#: |
|--------------------------|----------------------------|

Student's State Identification #:

|             |          |  |          |  |
|-------------|----------|--|----------|--|
| Application | Accepted |  | Rejected |  |
|-------------|----------|--|----------|--|

Reason for Rejection (If Applicable):

Date Notification Sent to Parent/Guardian of Applicant:

Date Notification Sent to Resident District :