# Public School Choice
## *Non-Regulatory Guidance*

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# Public School Choice

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## PURPOSE OF GUIDANCE AND SUMMARY OF MAJOR CHANGES

This guidance updates and expands on the Public School Choice Non-Regulatory Guidance that the U.S. Department of Education (Department) released on February 6, 2004. It includes a number of new and modified questions that address issues related to the Title I regulations released on October 29, 2008 (73 FR 54436) as well as other major policy decisions the Department has made regarding the public school choice provisions since February 2004. Responses to other questions are revised to make them clearer or more responsive to issues that have arisen in the implementation of the public school choice provisions.

The following are new questions that were not included in the February 2004 version of the guidance: B-4, B-6, D-3, D-4, D-6, D-7, D-8, D-9, D-10, D-11, D-12, E-7, J-4, J-6, J-7, J-8, J-9, J-12, J-13, J-14, J-17, J-18, J-19, J-21, J-23, J-24, Section K (all questions), L-2, L-3, L-4, and L-6.

In addition, the responses to the following questions include significant new information that was not included in the February 2004 version: A-4, B-1, B-2, B-3, B-5, C-3, C-6, D-1, D-2, D-13, F-2, G-3, J-5, J-7, J-10, J-11, J-20, J-22, L-1, and L-5.

The following questions from the February 2004 guidance are not included in the new version (numbering reflects the format of the February 2004 guidance): A-5, D-3, F-2, and J-9.

This guidance represents the Department's current thinking on the public school choice provisions. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required to comply with applicable law and regulations. If you are interested in commenting on this guidance, please e-mail us your comment at OIIGuidanceDocument@ed.gov or write to us at the following address:

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This guidance supersedes the following documents: the February 2004 guidance, and the August 18, 2004 policy letter on calculating costs for choice-related transportation. The guidance also supersedes all previous guidance on the public school choice provisions that the Department has issued informally, to the extent the issues addressed in such informal guidance are addressed herein.

# Public School Choice

## INTRODUCTION

When schools do not meet State targets for improving the achievement of all students, parents need to have options, including the option to send their child to another school. Title I, Part A of the *Elementary and Secondary Education Act of 1965* (ESEA), as amended by the *No Child Left Behind Act of 2001* (NCLB), responds to that need by giving parents of students enrolled in Title I schools that have been identified for school improvement, corrective action, restructuring (because they have not met State achievement targets) the opportunity to transfer their children to a public school that has not been so identified. The provisions of the ESEA that set forth the requirements for public school choice, along with provisions that focus new attention and resources on turning around low-performing schools, are critical mechanisms for achieving the vision embodied in NCLB: a high-quality education for all students. It is important that State and local officials engage energetically both in efforts to improve low-performing schools and in implementing the public school choice provisions so that this vision can be achieved.

This guidance focuses on the provisions of the ESEA that require local educational agencies (LEAs) to provide the opportunity to transfer to another public school in the LEA to students enrolled in Title I schools that have been identified for school improvement, corrective action, or restructuring. The ESEA requires LEAs to provide, or pay for the provision of, transportation for transferring students, subject to certain limitations. The provisions of the ESEA that set forth these requirements include provisions in Sections 1116(b)(1)(E), 1116(b)(1)(F), 1116(b)(5)(A), 1116(b)(6)(F), 1116(b)(7)(C)(i), 1116(b)(8)(A)(i), and 1116(b)(9) through 1116(b)(13).

Parents of students from low-income families enrolled in Title I schools in the second year of school improvement, in corrective action, or in restructuring also have the opportunity to obtain supplemental educational services (SES) for their children. SES are free tutoring and other academic enrichment services that are in addition to instruction provided during the school day and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible students. When the public school choice and SES options are both available, parents of eligible students have the choice of which option they would prefer for their child. For more information on SES, go to: http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc.

Another educational option exists for parents when their child attends a school that has been identified as persistently dangerous, or when a student has been the victim of a violent crime on school property *[Section 9532]*. Such students have the option of transferring to a different, safer public school. State educational agencies (SEAs) must identify schools that are persistently dangerous in time for LEAs to notify parents and

students at least 14 calendar days prior to the start of the school year that their school has been so identified *[68 Fed. Reg. 35671 (June 16, 2003)]*. For more information on the unsafe school choice option in the ESEA, go to: http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.doc.

# A. GENERAL INFORMATION

## A-1. What is the purpose of the public school choice provisions of NCLB?

Public school choice is a critical component of NCLB because it offers a student enrolled in a Title I school that is identified for school improvement, corrective action, or restructuring an opportunity to attend a public school that has not been so identified. The process of turning around a low-performing school is difficult and typically takes time, and during that time the school's students are at risk of falling further behind if they do not have additional options. Together with the school improvement activities undertaken under Title I, public school choice can provide all students in low-performing Title I schools – including students with disabilities and limited English proficient students – the opportunity to obtain a high-quality education. In addition, expanded parental choice gives schools a greater incentive to undertake reforms and make the changes that are needed to improve student learning and reach academic achievement goals.

## A-2. For which students must an LEA offer public school choice?

An LEA must offer all students enrolled in Title I schools (that is, schools that operate programs funded under Title I, Part A of the ESEA) that have been identified for school improvement, corrective action, or restructuring the opportunity to transfer to another public school in the LEA that is not so identified *[Sections 1116(b)(1)(E), 1116(b)(5)(A), 1116(b)(7)(C)(i), and 1116(b)(8)(A)(i); 34 C.F.R. §200.44(a)(1)]*.

A school is identified for school improvement when it fails to make AYP for two consecutive years. A school remains in improvement, and continues into corrective action and then restructuring, until it makes AYP for two consecutive years. The Department's guidance on school and LEA improvement is available at: http://www.ed.gov/policy/elsec/guid/schoolimprovementguid.doc.

The LEA is responsible for providing, or paying for the provision of, transportation necessary for students to attend their new schools, subject to the limitations discussed in Section J.

## A-3. What are the key principles that form the foundation of a quality public school choice plan?

A quality public school choice plan should embody the following principles:

1. Choice is an important opportunity for parents and students.
2. Choice is an important component of an overall LEA educational improvement plan.
3. An overriding goal is to provide students with access to quality instruction.
4. Communication with parents is timely and thorough.

5. Information on choices is provided to parents and students in a format that is easy to understand.
6. Real choice means giving parents more than one option from which to choose and adequate time to consider their options.

**A-4. May an existing choice program, such as an open enrollment program, be modified to accommodate the public school choice provisions?**

Yes. The public school choice provisions can be accommodated within, and become a meaningful part of, an open enrollment program, provided that the requirements for public school choice are met, including the requirements for LEAs to: notify parents of their choice options sufficiently in advance of, but no later than 14 calendar days before, the start of the school year (see B-1); provide students who change schools with transportation to their new school (subject to the limitations discussed in Section J); and, when necessary, give priority for public school choice to the lowest-achieving low-income students (see C-4).

**A-5. May an LEA that is required to offer public school choice (but not SES) to students enrolled in a particular school offer those students the opportunity to receive SES?**

An LEA may give students enrolled in Title I schools in their first year of school improvement the opportunity to obtain SES, so long as they also offer those students the opportunity to change schools. However, because the law requires the provision of public school choice (but not SES) to these students, all students who wish to change schools must be able to do so, and their transportation needs must be met (subject to the 20 percent obligation discussed in J-5) before any of these students are provided SES. An LEA that offers parents whose children attend schools in the first year of improvement the option of having their child change schools or receive SES must make it clear to the parents that, depending on the demand for choice (and the cost of transporting students to their new schools), SES might not be provided.

In addition, if an LEA has both schools in the first year of school improvement and schools in the second year of school improvement, in corrective action, or in restructuring, it must give priority for SES to students enrolled in the schools in their second year of school improvement, in corrective action, or in restructuring (i.e., the students who, under the statute, are entitled to be given the opportunity to receive those services).

## B. TIMING AND DURATION OF CHOICES

**B-1. When must an LEA offer public school choice to eligible students?**

An LEA must offer public school choice when it notifies parents that a school has been identified for school improvement, corrective action, or restructuring *[34 C.F.R. §200.44(a)]*. An LEA must notify parents of eligible students of the availability of public school

choice sufficiently in advance of, but no later than 14 calendar days before, the first day of the school year following the school year in which the LEA administered the assessments that resulted in the school being identified for school improvement, corrective action, or restructuring *[34 C.F.R. §200.37(b)(4)(iv)]*. An LEA should offer public school choice as early as possible so that parents may consider their choice options well in advance of the start of the school year.

**B-2. How should year-round schools meet the requirement to offer public school choice sufficiently in advance of, but no later than 14 calendar days before, the start of the school year?**

In the case of year-round schools, public school choice must be offered sufficiently in advance of, but no later than 14 calendar days before, the beginning of the "school year" as that term is defined by the SEA or LEA.

**B-3. If an LEA does not receive school AYP determinations from its SEA in time to offer public school choice at least 14 calendar days before the start of the school year, when must it offer public school choice?**

The law requires SEAs to ensure that the results of State academic assessments (upon which school AYP determinations are made) are available to LEAs before the beginning of the school year (that is, before the start of the school year that follows the school year in which the assessments were administered) *[Section 1116(a)(2)]*. The Title I regulations require LEAs to offer public school choice to eligible students sufficiently in advance of, but no later than 14 calendar days before, the start of the school year *[34 C.F.R. §200.44(a), §200.37(b)(4)(iv)]*. While the regulatory provisions may require some SEAs to make minor adjustments to their assessment and reporting schedules, most SEAs should already be able to make available to LEAs the information needed so that LEAs can offer eligible students the opportunity to change schools sufficiently in advance of, but no later than 14 calendar days before, the start of the school year. (See L-1.)

If an LEA does not receive school AYP determinations in time, it must offer public school choice as quickly as possible, so that parents can exercise their choice option before the school year is well underway. To that end, an LEA can take several steps. First, the LEA should offer public school choice well before the start of the school year (for instance, in spring or early summer) to students in previously identified schools that did not make AYP in the prior year (i.e., schools that will not have made AYP for two consecutive years and, thus, cannot exit school improvement, corrective action, or restructuring in the current year). An LEA must offer students at these schools public school choice irrespective of the school's next AYP determination, and there is nothing to prevent the LEA from offering these students public school choice well before the start of the year. (See B-4.)

Second, the LEA can offer public school choice to students in certain schools based on preliminary AYP results. LEAs in this circumstance should plan for the possibility of offering public school choice to students in schools on a "watch list" (i.e., schools that

did not make AYP for the first time in the prior year) and should act immediately to offer public school choice to students in such schools that do not make AYP for the second consecutive year based on preliminary AYP results. Such LEAs might also offer public school choice to students in previously identified schools that made AYP in the prior year but do not make AYP for the current year based on the preliminary results.

An LEA should also take steps to prepare for public school choice so that it can act quickly after receiving the information it needs from the SEA. For instance, LEAs should prepare parent notifications and other outreach materials in advance and plan events to discuss public school choice options as soon as parents are notified.

Under no circumstances may an LEA wait until the next school year (i.e., the second school year following the one in which the assessments that led to the failure to make AYP were administered) before offering public school choice to eligible students *[34 C.F.R. §200.32(f)]*.

**B-4. May an LEA offer public school choice to students in advance of receiving school AYP determinations from its SEA?**

An LEA may offer public school choice in advance of receiving school AYP determinations from its SEA to students in previously identified schools that did not make AYP in the prior year. These schools cannot exit school improvement, corrective action, or restructuring, and an LEA must offer students at these schools public school choice irrespective of the school's next AYP determination. An LEA should offer public school choice to students in such schools as early as possible, preferably in the spring or early summer, or in conjunction with other school choice programs (such as open enrollment and charter and magnet schools programs) that the LEA typically makes available to parents before the start of the school year. (See D-6 and D-7.)

**B-5. How much time should parents have to consider their public school choice options and make a choice of school?**

Parents of eligible students must receive information on their public school 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 public school 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 public school 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 public school 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 public school 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-6. By when should an LEA implement 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-7. For how long must an LEA continue to offer eligible students the option to attend another public school?**

An LEA must offer public school choice to all students in Title I schools identified for school improvement, corrective action or restructuring until the school is no longer identified (i.e., until the school makes AYP for two consecutive years).

**B-8. For how long must students who change schools be allowed to attend their school of choice?**

If an eligible student exercises the option to transfer to another public school, an LEA must permit the student to remain in that school until he or she has completed the highest grade in the school, although the student is not required to remain in the school of choice through the highest grade *[Section 1116 (b)(13); 34 C.F.R. §200.44(g)]*. However, an LEA is no longer obligated to provide transportation for a student if the student's school of origin is no longer identified for school improvement, corrective action, or restructuring *[Section 1116 (b)(13); 34 C.F.R. §200.44(g)]*. If a transfer student's school of origin exits school improvement, corrective action, or restructuring only shortly before, or after, the start of the school year (because school AYP determinations were not available until that time), the LEA should give parents time to come up with other transportation options rather than immediately terminate the provision of transportation. For example, an LEA might want to continue to provide transportation until the semester break.

**B-9. If a student changes schools but, in a subsequent year, moves out of the school attendance area of his or her school of origin and no longer lives in the attendance area of a school identified for school improvement, corrective action, or restructuring (but continues to live in the same LEA), must the LEA continue to**

**allow that student to attend the school of choice and continue to provide transportation?**

As with students whose school of origin is no longer identified for school improvement, students who exercise the option to transfer to another public school schools and then move out of the attendance zone served by a school identified for school improvement, corrective action, or restructuring must be permitted to continue attending their school of choice until they have completed the highest grade in that school. However, once a student moves, the LEA is no longer obligated to provide transportation *[34 C.F.R. §200.44(g), (i)]*.

## C. ELIGIBLE STUDENTS

**C-1. Which students are eligible to change schools under the public school choice provisions?**

All students enrolled in Title I schools identified for school improvement, corrective action, or restructuring are eligible to transfer to another public school in the LEA that is not so identified. 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]*.

In the case of a school that operates a targeted assistance program, all students in the school, not just those receiving Title I services, must have the opportunity to change schools *[Section 1116(b)(1)(E); 34 C.F.R. §200.44(a)(1)]*.

**C-2. Are students who plan to attend but are not yet enrolled in a school identified for school improvement, corrective action, or restructuring eligible to take advantage of the public school choice provisions?**

The statute requires that public school choice be made available to all students enrolled in schools identified for school improvement, corrective action, or restructuring, but does not define "enrollment." 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 believes, however, 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-3. What opportunities for public school choice must an LEA provide to a student who has changed schools under the public school choice provisions and whose school of choice is subsequently identified for school improvement?**

Like other students enrolled in schools identified for school improvement, a student who has changed schools under the public school choice provisions and whose school of choice is subsequently identified for school improvement must be offered the choice of attending a school that has not been so identified and, subject to the limitations described in Section J, offered the opportunity to receive transportation to such a school. The transfer options available to such students should be the same as those available to other students in the school.

**C-4. What does the law mean when it says that an LEA shall "give priority to the lowest achieving children from low-income families"?**

An LEA must provide *all* students in a school identified for school improvement, corrective action or restructuring the opportunity to transfer to another public school. In implementing the option to transfer, however, certain circumstances may require an LEA to give priority to the lowest-achieving students from low-income families. For example, if not all students can attend their first choice of schools, an LEA would give first priority in assigning spaces to the lowest-achieving low-income students. Similarly, if an LEA does not have sufficient funds to provide transportation to all students who wish to transfer, it would apply this priority in determining which students receive transportation. *[Section 1116(b)(1)(E)(ii); 34 C.F.R. §200.44(e).]*

**C-5. In applying the priority for the lowest-achieving students from low-income families, how does an LEA determine which students are from low-income families?**

The statute requires that LEAs determine which students are from low-income families using the same data that they use in allocating Title I funds to schools *[Section 1116(b)(1)(E)(ii); 34 C.F.R. §200.44(e)(2)]*.

**C-6. May LEAs use information from the National School Lunch Program to determine which students are from low-income families and, thus, may receive priority for public school choice?**

Because the law requires LEAs, in determining which students receive priority for public school choice, to use the same data they use in making Title I allocations, and because most LEAs use school lunch data to make those allocations, most LEAs will, in fact, use school lunch data to identify students as eligible for the priority. An LEA must do so, however, in a manner that protects the confidentiality of school lunch data, as provided for in the Richard B. Russell National School Lunch Act (NSLA) *[42 U.S.C. 1758]*.

Section 9 of the NSLA establishes requirements and limitations regarding the release of information about children certified for free and reduced price meals provided under the National School Lunch Program. The NSLA allows school officials responsible for determining free and reduced price meal eligibility to disclose aggregate information about children certified for the program. Additionally, the statute permits determining officials to disclose the names of individual children certified for free and reduced price school meals and the child's eligibility status (whether certified for free meals or reduced

price meals) to persons directly connected with the administration or enforcement of a Federal or State education program.

Because Title I is a Federal education program, determining officials may disclose a child's eligibility status to persons directly connected with, and who have a need to know, a child's free and reduced price meal eligibility status in order to administer the public school choice requirements. The statute, however, does not allow the disclosure of any other information obtained from the free and reduced price school meal application or obtained through direct certification. School officials should keep in mind that the intent of the confidentiality provisions in the NSLA is to limit the disclosure of a child's eligibility status to those who have a "need to know" for proper administration and enforcement of a Federal education program. As such, schools should establish procedures that limit access to a child's eligibility status to as few individuals as possible.

School officials, prior to disclosing information on the National School Lunch Program eligibility of individual students, should enter into a memorandum of understanding or other agreement to which all involved parties (including both school lunch administrators and education officials) will adhere. This agreement should specify the individuals who will have access to the information, how the information will be used in implementing Title I requirements, and how the information will be protected from unauthorized uses and third-party disclosures, and include a statement of the penalties for misuse or improper disclosure of the information.

Additional information on this issue is provided in a December 17, 2002 letter from the Departments of Education and Agriculture (available at: http://www.ed.gov/programs/titleiparta/letter121702.html).

**C-7. How may LEAs that operate school lunch programs under Provisions 2 and 3 of the NSLA determine which students are from low-income families and, thus, may receive priority for public school choice?**

"Provision 2" and "Provision 3" of the NSLA allow schools that offer students lunches at no charge, regardless of the students' economic status, to certify students as eligible for free or reduced price lunches once every four years and longer, under certain conditions. National School Lunch Program regulations prohibit schools operating school lunch programs under Provisions 2 and 3 from collecting eligibility data and certifying students on an annual basis for other purposes.

For the purpose of determining which students may receive priority for public school choice, school officials may deem all students enrolled in Provision 2 and Provision 3 schools as "low-income." Additional information on this issue is provided in a February 20, 2003 letter from the Departments of Education and Agriculture (available at: http://www.ed.gov/programs/titleiparta/22003.html).

**C-8. How does an LEA determine which students are lowest-achieving?**

LEAs have flexibility in determining which students from low-income families are lowest-achieving and, thus, may receive priority for public school choice. An LEA, for example, might rank order students from low-income families based on objective educational measures, such as results from State assessments administered under Section 1111 of the ESEA. Note, however, that students may not be rank ordered by family income level because this would not give priority to the lowest-achieving eligible students.

Alternatively, an LEA might give priority for public school choice to all students from low-income families who receive less than a certain score on the annual State assessment (for instance, all those who score "below basic" in reading or mathematics). This method could be used to focus the priority on the lowest-achieving students in the subject areas in which the school or LEA did not meet its State's AYP goals. Another option might be to base the determination on student grades or on the scores students receive on other tests.

**C-9. What if a student attends a school that has been identified for school improvement, corrective action, or restructuring, but has been assigned to that school by a court order or for disciplinary reasons?**

This question is difficult to answer in general terms because the answer depends upon the particular circumstances surrounding a student's placement (and can and should be resolved on a case-by-case basis). However, some general guidelines may be helpful.

If a student is assigned to a particular school by a family court for child custody reasons and that school has been identified for school improvement, corrective action, or restructuring, the student could be eligible to transfer under the public school choice provisions. However, the student's parent may not be able to exercise that option without first obtaining permission from the court to move his or her child.

Similarly, a student might be assigned to a particular school – for example, an alternative school – by a juvenile court due to the student's violent or criminal behavior or for disciplinary reasons sufficiently serious to justify placement in a particular learning environment. In this circumstance, the LEA would likely need to limit or deny the option to transfer.

For issues related to court-ordered desegregation plans, please see Section G.

## D. NOTIFICATION OF PARENTS

**D-1. When must an LEA notify parents that their child is eligible for public school choice?**

Parents must be notified by the LEA that their child is eligible for public school choice sufficiently in advance of, but no later than 14 calendar days before, the start of the

school year for which public school choice is being offered *[34 C.F.R. §200.37(b)(4)(iv)]*. (See B-1.)

**D-2. What information must an LEA include in the notice to parents about their public school choice options?**

An LEA must provide an explanation of the public school choice option to all parents of students enrolled in Title I schools that have been identified for school improvement, corrective action, or restructuring. 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:

1. Inform parents that their child is eligible to attend another public school and may receive transportation to the school;
2. Identify each public school, which may include charter schools, that parents may select; and
3. 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 on how it will set priorities in order to determine which eligible students receive transportation. (See C-4 and J-11.)

**D-3. By what means must an LEA notify parents of their public school choice options?**

Throughout the school improvement process, an LEA must provide information to parents (1) directly, through such means as regular mail or e-mail; and (2) 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)]* (See D-8.)

**D-4. How may an LEA meet the requirement to notify parents directly of their public school choice options?**

To meet the requirement to provide information directly to parents, an SEA may require that LEAs notify parents of their public school choice options through regular mail. However, SEAs are not required to do so. In the absence of such a requirement from an SEA, an LEA may meet its responsibility to directly inform parents through regular mail or through other means such as through e-mail or by sending a notice home to parents in their child's backpack.

In setting policy in this area, an SEA and its LEAs should consider which method of direct communication is most likely to reach parents of eligible students and, in doing so, may wish to consider such factors as family mobility, student grade level, and access to the Internet. An SEA and LEA may together determine that the particular circumstances of the LEA, or of a subgroup of eligible students within the LEA, necessitate using one type of direct communication over another. An LEA is encouraged to utilize multiple direct means of communication to further ensure that parents receive notification of their options.

Additionally, SEAs and LEAs should bear in mind that an LEA must be able to demonstrate that it has met the parent notification requirement. For example, if an LEA chooses to send notices home in a student's backpack, the SEA and LEA should consider what evidence would be sufficient to verify that the LEA has met its responsibility to notify parents directly. An LEA could, for instance, ask for signed responses from parents acknowledging that they received the notice. Alternatively, an LEA could show that it has met the requirement to notify parents by demonstrating that it has met demand for public school choice, using as evidence, for example, the number of transfer requests or the number of students who transferred in the LEA.

**D-5. If there are no schools to which students can transfer, must parents still be notified?**

Yes. Parents must still be notified that their child's school is identified for school improvement, corrective action, or restructuring. In addition, the notice must include an explanation as to why the LEA is unable to offer public school choice. Providing such an explanation may be useful to parents who considered but ultimately declined exercising public 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 SES. (See E-10.)

**D-6. If an LEA offers public school choice "early" to students in schools that cannot exit school improvement, corrective action, or restructuring, what are its notification responsibilities with respect to those students after receiving school AYP determinations from its SEA?**

If an LEA offers choice "early" (i.e., before it receives school AYP determinations from its SEA) to students in schools that cannot exit school improvement, corrective action, or restructuring, it does not need to re-notify the parents of those students about their public school choice options, or hold another enrollment period for those students after receiving school AYP determinations from the SEA. However, once it receives the determinations, the LEA must notify the parents of these students that their child's school is still identified for school improvement, corrective action, or restructuring and provide those parents information regarding the school's status, including an explanation of what the identification means and how the school compares to other schools in the LEA and State in terms of academic achievement, the reasons for the school's being identified, an explanation of how parents can become involved in addressing the academic issues that led to the identification, and SES options if applicable *[Section 1116(b)(6); 34 C.F.R. §200.37(b)(4)]*. The notice to parents of these students should also reference the fact that parents were given the public school choice option earlier in the year.

**D-7. If an LEA offers public school choice early to students in schools that cannot exit school improvement, corrective action, or restructuring and receives enough transfer requests to use all available funds for choice-related transportation, must it offer public school choice to other eligible students through its "regular" notification process?**

Yes. An LEA must offer public school choice to all students in a school identified for school improvement, corrective action, or restructuring *[Section 1116(b)(1)(E)(i); 34 C.F.R. §200.44(a)]*. Further, an LEA may not commit all of the funds it has available for choice-related transportation before it offers public school choice to all eligible students because doing so would violate the requirement that priority be given to "the lowest achieving children from low-income families" *[Section 1116(b)(1)(E)(ii)]*. (See C-4.) Therefore, the LEA needs to devise an equitable process for making choice-related transportation available to students requesting public school choice during both the "early" and "regular" notification periods. One way to do so would be to offer choice early, as planned, but reserve a number of slots for transportation for students who will be notified of their eligibility for public school choice as part of the regular notification process. (The students offered public school choice during the regular notification period would include students in schools that are newly identified for school improvement, as well as students in identified schools that made AYP in the prior school but did not make AYP in the current school year and thus remain identified for school improvement, corrective action, or restructuring.) An LEA might also notify students in the early enrollment period of their option to transfer, arranging transportation immediately for those enrolling students who are in the high-priority group(s) while reserving an appropriate number of transportation slots for the regular enrollment period and including for consideration for the remaining slots the students who requested choice in the early enrollment period but were in lower-priority group(s).

The number of slots reserved for the regular enrollment period should be based on the number of schools the LEA reasonably expects to be included in the regular notification (based on the number of schools that could potentially be identified for school

improvement and the number of schools that could remain identified for school improvement, corrective action, or restructuring despite having made AYP in the prior school year), the number of students in those schools that the LEA reasonably expects to take advantage of the option to transfer (based on history, statistics in other LEAs, and any other relevant information), and the income and achievement levels of the students in those schools.

**D-8. What information regarding public school choice must an LEA display on its Web site?**

An LEA is required to prominently display on its Web site the following information regarding public school choice:

1. Beginning with data from the 2007-2008 school year, and for each subsequent school year, the number of students who were eligible for and who participated in the public school choice option *[34 C.F.R. §§200.39(c)(1)(i); 200.42(b)(5); 200.43(b)(5); 200.43(c)(1)(iii)]*; and
2. For the current school year, a list of available schools to which students eligible to participate in public school choice may transfer *[34 C.F.R. §§200.39(c)(1)(iv); 200.42(b)(5); 200.43(b)(5); 200.43(c)(1)(iii)]*.

An LEA should also consider including other information on its Web site that will help parents make informed choices. For instance, an LEA might wish to include the list of schools with students eligible for public school choice. An LEA might also include information on the academic achievement of the schools from which parents may choose, as well as other information on these schools, such as any special programs or facilities, the availability of before- or after-school programs, the professional qualifications of teachers, and parent involvement opportunities. LEAs should also include other information, such as the procedures and timelines that parents must follow in selecting a school for their child, how transportation will be paid for or provided, and the amount equal to 20 percent of the LEA's Title I, Part A allocation, which is the amount the LEA must spend for choice-related transportation and SES (referred to as the 20 percent obligation). An LEA might also include LEA and school contact information for parents to use if they have additional questions or seek more information. Finally, an LEA might also include a link to a downloadable form for parents to use to request to transfer their child to another school.

An LEA must also display on its Web site certain information on SES. For more information, see the Supplemental Educational Services Non-Regulatory Guidance, G-10, at: http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc.

**D-9. When must an LEA post the information described in D-8 on its Web site?**

An LEA must display this information in a timely manner to ensure that parents have current information on their public school choice options *[34 C.F.R. §200.39(c)(1)]*. Regarding the list of schools to which eligible students may transfer, an LEA must

display this information sufficiently in advance of, but no later than 14 calendar days before, the start of the school year (i.e., contemporaneous with its required notification to parents). Regarding the number of students who were eligible for and who participated in public school choice in prior years, an LEA should display this information as soon as it becomes available.

Beginning with the 2008-2009 school year, an LEA must post data on the number of students who were eligible for and participated in public school choice during the 2007-2008 school year. For the 2009-2010 school year, the LEA must post data on the number of students who were eligible for and participated in public school choice during the 2007-2008 and 2008-2009 school years, and must post the list of transfer options for the 2009-2010 school year. An LEA must continue posting historical data on public school choice participation and eligibility, and its current list of transfer options, in subsequent school years accordingly.

**D-10. Do all LEAs have to display information about public school choice on their Web sites?**

An LEA must prominently display information on student eligibility and participation in public school choice, and the list of available transfer options, unless the LEA (1) does not have any Title I schools identified for school improvement, corrective action, or restructuring; (2) is not able to offer public school choice because it has no available schools to which students may transfer (see E-10); or (3) does not maintain a Web site, in which case the SEA must display the required information for the LEA (see L-3) *[34 C.F.R. §200.39(c)(2)]*. An LEA that does not have its own Web site and is required to display information about public school choice should notify its SEA before the start of the school year that it does not have its own Web site so that the SEA is aware of its obligation to post the required information on the LEA's behalf. In notifying the SEA, the LEA should provide the required information described in D-8.

An LEA that no longer has any Title I schools identified for school improvement, corrective action, or restructuring, or is no longer able to offer public school choice because it has no available schools to which students may transfer, is encouraged to continue to display on its Web site historical data on student eligibility for and participation in public school choice from prior school years, although it is not required to do so.

**D-11. How can an LEA make its outreach to parents regarding public school choice more successful?**

Whenever possible, an LEA should personalize the public school choice process for parents. For example, an LEA should consider having staff or volunteers on hand to answer questions about choosing a school and help parents understand and complete an application for public school choice. Parent outreach centers and community- and faith-based organizations may be particularly well-suited to help parents with the process. An LEA should also have a designated contact person with a phone line and email address

whom parents can contact with questions. An LEA could also allow parents to request public school choice via the Internet. Note that these options are in addition to the required actions an LEA must take to implement public school choice (e.g., notifying parents about public school choice sufficiently in advance of, but no later than 14 calendar days before, the start of the school year; prominently displaying public school choice information on its Web site). (See B-1 and D-8.) In addition, LEAs spending less than their 20 percent obligation for choice-related transportation and SES may be required to partner with outside groups, if practicable, to help inform eligible students and their families of the opportunity to transfer. (See Section K.)

If few parents of eligible students request to transfer their child, an LEA should evaluate its outreach efforts and consider the extent to which its efforts meet the following six communication goals for designing and implementing an effective outreach strategy to parents: (1) get parents' attention; (2) inform them about their public school choice options; (3) help them understand how to request a transfer; (4) motivate parents to take action to exercise their options; (5) encourage parents to follow and communicate about their children's progress in school; and (6) encourage parents to provide feedback about the impact and quality of the school choices they have made. (These communication goals are adapted from goals for communicating with parents about their SES options discussed in *Innovations in Education: Creating Strong Supplemental Educational Services Programs*, available at: http://www.ed.gov/admins/comm/suppsvcs/sesprograms/index.html.)

**D-12. What resources are available to help an LEA inform parents and implement public school choice well?**

The Department has produced a guidebook to assist LEAs with meeting their obligation to notify parents about public school choice and SES and implement the requirements of the two provisions. The guidebook, *Giving Parents Options: Strategies for Informing Parents and Implementing Public School Choice and SES Under* No Child Left Behind, is available at: http://www.ed.gov/admins/comm/choice/options/index.html.

**D-13. What procedures should an LEA use to allow parents to communicate their choice of school?**

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 for public school choice that are easy to use, and ensure that such forms are distributed directly to parents of eligible students and widely available in the community through broad means of dissemination such as the Internet, the media, and public agencies. LEAs should also allow parents to communicate their choices in a variety of ways, including by standard mail, email, fax, or the Internet. Parents should not have to appear in person to state their choices.

In addition, an LEA should confirm to parents that it has received their communication regarding a choice of 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 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

bases its eligibility determinations on enrollment). If the number of students transferring into a receiving school causes that school to be designated as a Title I school, then it would be eligible to receive Title I funds.

**I-4. Does special education funding follow a student with disabilities to the school of his or her choice?**

Federal special education funding is distributed to LEAs, not to individual schools. It is up to an LEA to determine how that money is spent and how those funds are distributed among individual schools within the LEA.

## J. TRANSPORTATION FUNDING AND OTHER TRANSPORTATION ISSUES

**J-1. Is an LEA required to provide transportation to schools of choice?**

Yes. An LEA must provide, or pay for the provision of, transportation to and from the school of choice, subject to the limitations described in J-5 *[Section 1116(b)(9); 34 C.F.R. §200.44(i)]*.

**J-2. If an LEA does not customarily provide transportation to and from school, must it provide transportation for students choosing to transfer under the public school 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 public school 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)]*. (For further discussion on reimbursing parents for transportation costs, see J-23.) The LEA would not be required to provide transportation to students who live only a short distance from their new school, as discussed in J-3.

**J-3. 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 public school 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 public school choice provisions, to transfer to schools within one mile of their homes.

**J-4. Must an LEA provide transportation for a student who has changed schools under the public school choice provisions and whose school of choice is subsequently identified for school improvement?**

If a school of choice is subsequently identified for school improvement and the family chooses not to enroll their child in another school, preferring instead that the student continue attending the school of choice, an LEA may continue to provide, or pay for the provision of, transportation for the student to attend the school of choice that is now identified. However, providing, or paying for the provision of, transportation is no longer required as the school that the student is attending no longer meets the statutory and regulatory requirements for a school of choice.

If the LEA continues to provide, or pay for the provision of, transportation for the student to attend the school of choice that is now identified for school improvement, corrective action, or restructuring, it may use Title I, Part A funds for this purpose, provided that such use of Title I funds does not prevent the LEA from meeting demand from eligible students for public school choice or SES. An LEA may not, however, count the costs of providing such transportation toward meeting its obligation to spend an amount equal to 20 percent of its Title I, Part A allocation on choice-related transportation and SES. (See J-5.)

**J-5. How much must an LEA spend on choice-related transportation?**

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.

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 *[Section 1116(b)(10)(A; 34 C.F.R. §200.48(a)(2)]*. (See J-12.)

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 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. (See K-1.) 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 (subject to the limitation described in K-16) 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).]*

**J-6. Does funding made available for Title I, Part A through the transferability provisions authorized under Section 6123 of the ESEA change the base that must be used to calculate the 20 percent obligation for choice-related transportation and SES?**

Yes. An LEA must include any funds transferred to Title I under Section 6123(b) of the ESEA in the base used in calculating its 20 percent obligation.

Alternatively, an LEA may transfer funds to Title V, Part A or Section 1003 (School Improvement) of the ESEA, if the LEA receives Section 1003 funds, to increase the amount of flexible funds available for public school choice or other school improvement activities. (See J-21.) Funds transferred to Title V, Part A or Section 1003 would not be included in the base used to calculate an LEA's 20 percent obligation. (Note that Congress did not appropriate any funds under Title V, Part A of the ESEA for fiscal year 2008. As a result, unless Congress appropriates funds under Title V, Part A in subsequent years, an LEA may transfer funds to Title V, Part A only through September 30, 2009.)

**J-7. If an LEA is not required or is unable to provide SES to eligible students, how much is it required to spend on choice-related transportation?**

Some LEAs, in a given year, will not be required to provide SES because they have no schools that are in their second year of school improvement, in corrective action, or in restructuring, or because they have received a one-year exemption from the SEA from the requirement to provide services because there are no approved providers that serve the LEA *[Section 1116(e)(10)]*. An LEA in this situation must spend the full amount needed to meet its 20 percent obligation on choice-related transportation, except that the LEA may spend up to 1 percent of its 20 percent obligation on parent outreach and assistance. (See

J-12.) If such an LEA spends less than the amount needed to meet its 20 percent obligation on choice-related transportation, it must meet the criteria described in 34 C.F.R. §200.48(d)(2)(i) or spend the unexpended amount in the subsequent year *[34 C.F.R. §200.48(d)]*. (See K-1.)

**J-8. May an LEA limit to less than 20 percent of its Title I, Part A allocation the amount that it will make available for choice-related transportation and SES?**

In general, an LEA may not limit to less than 20 percent of its Title I, Part A allocation the amount it will make available for choice-related transportation and SES. Rather, an LEA must follow the procedures set forth in J-5; that is, it must spend at least the equivalent of between 5 and 15 percent of its Title I, Part A allocation on choice-related transportation and on SES (or as much as 20 percent on choice-related transportation, if it is not required or is unable to provide SES), with the precise amount dependent on the relative demand for choice-related transportation and for SES, and on whether the LEA chooses to spend up to one percent of its 20 percent obligation on parent outreach and assistance. An LEA that does not spend its full 20 percent obligation must meet the criteria described in 34 C.F.R. §200.48(d)(2)(i) or spend the unexpended amount in the subsequent year *[34 C.F.R. §200.48(d)]*. (See K-1.)

Note, however, that an LEA may limit the amount that it will make available for choice-related transportation and SES to less its 20 percent obligation if it is able to provide choice-related transportation or SES to all eligible students using less than that amount. In that case, the LEA may immediately use for other allowable activities the difference between its 20 percent obligation and the amount needed to serve all eligible students. (See K-14.)

In determining whether an LEA can provide all eligible students with choice-related transportation or SES without spending its full 20 percent obligation, the LEA must consider the population of students eligible for the respective provisions to be (1) all students enrolled in a Title I school identified for school improvement, corrective action, or restructuring (in the case of public school choice), and (2) all students from low-income families enrolled in a Title I school in the second year of school improvement, corrective action, or restructuring (in the case of SES). An LEA may not define the eligible student population as a smaller group of eligible students.

**J-9. If only one school in an LEA has been identified for school improvement, corrective action, or restructuring, must the LEA make available its full 20 percent obligation for choice-related transportation and SES?**

In general, an LEA must make available for choice-related transportation and SES its full 20 percent obligation even if the LEA has only one school in improvement. An LEA that does not spend its full 20 percent obligation must meet the criteria described in 34 C.F.R. §200.48(d)(2)(i) or spend the unexpended amount in the subsequent year *[34 C.F.R. §200.48(d)]*. (See K-1.)

However, depending on the enrollment in the identified school, the LEA may be able to provide choice-related transportation or SES to all eligible students without spending its full 20 percent obligation. In that case, the LEA may limit the amount that it will make available for choice-related transportation and SES to the amount needed to serve all eligible students and may immediately use for other allowable activities the difference between its 20 percent obligation and the needed amount. (See J-8 and K-14.)

**J-10. If the cost of providing transportation to students exercising the option to change schools exceeds an amount equal to 15 percent of an LEA's Title I, Part A allocation, must the LEA still spend an amount equal to at least 5 percent of its allocation to provide SES?**

Yes. The statute requires an LEA, if it has Title I schools in the second year of improvement, corrective action, or restructuring, to spend an amount equal to at least 5 percent of its Title I, Part A allocation to provide SES (assuming sufficient demand) *[Section 1116(b)(10)(A)(ii)]*. This requirement is not negated by the fact that costs of providing transportation to students exercising the option to change schools exceed an amount equal to 15 percent of the LEA's Title I, Part A allocation.

If an LEA's costs for providing transportation to students exceed an amount equal to15 percent of its Title I, Part A allocation, the LEA may spend more than its 20 percent obligation on the combination of choice-related transportation and SES, or it may reduce spending on transportation in order to free up an amount equal to 5 percent for SES. If an LEA reduces spending on transportation, decisions about which students will receive transportation must be made consistent with the requirements of Section 1116(b)(1)(E)(ii). (See C-4 and J-11.)

**J-11. What must an LEA do if funds are not sufficient to provide transportation to all students exercising the option to change schools?**

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 *[Section 1116(b)(1)(E)(ii); 34 C.F.R. §200.44(e)]*. 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)]*. (See C-4.)

**J-12. May an LEA count costs incurred in providing outreach and assistance to parents on public school choice toward meeting its 20 percent obligation?**

Yes. An LEA may, but is not required to, count costs for parent outreach and assistance regarding public school choice and SES toward meeting its 20 percent obligation, subject

to a cap of 1 percent thereof (0.2 percent of the LEA's Title I, Part A allocation) *[34 C.F.R. §200.48(a)(2)(iii)(C)]*. An LEA may spend more than 1 percent on parent outreach and assistance activities, but may not count more than that amount toward meeting its 20 percent obligation.

**J-13. What costs for parent outreach and assistance may an LEA count toward meeting its 20 percent obligation?**

An LEA is in the best position to determine the most effective means of providing outreach and assistance to parents of eligible students, and should use this flexibility to make it easier to finance the provision of outreach and assistance to parents to help them take advantage of public school choice and SES. An LEA might count toward meeting its 20 percent obligation, for example, the costs of: parent notification letters; communication to parents through the media, Internet, and community partners; displaying information on the LEA's Web site; and parent fairs held by the LEA.

**J-14. May an LEA count toward meeting its 20 percent obligation administrative costs, other than costs for parent outreach and assistance, incurred in providing public school choice to eligible students?**

No. For example, an LEA may not count toward meeting its 20 percent obligation the costs for processing the transfer requests it receives after notifying parents of their options or for arranging transportation for transferring students. Such costs may be allowable Title I administrative costs but may not be counted toward meeting an LEA's 20 percent obligation.

**J-15. What funds may an LEA use to pay for choice-related transportation?**

An LEA may use Title I, Part A funds, as well as other allowable Federal, State, local, and private resources, to pay for the transportation required to implement the public school choice requirements. (See J-21 and J-22.)

**J-16. Must an LEA reserve a portion of its Title I, Part A allocation to pay for choice-related transportation?**

No. The statutory phrase "an amount equal to" means that the funds required to pay the costs of choice-related transportation and SES need not come from an LEA's Title I, Part A allocation, but may be provided from other allowable Federal, State, local, or private sources.

For example, if an LEA or State already operates transportation services, the LEA may be able to provide the transportation required by the public school choice provisions through its existing transportation program. In such a case, the LEA may count, toward meeting its 20 percent obligation, the portion of its transportation costs that is attributable to providing transportation to students exercising the public school choice option. (See J-24.)

**J-17. How may an LEA reserve Title I, Part A funds to help pay the costs of choice-related transportation, SES, or parent outreach and assistance?**

An LEA that elects to use Title I, Part A funds to pay for choice-related transportation, SES, or parent outreach and assistance may (1) reserve any Title I, Part A funds needed for this purpose "off the top" prior to making allocations to schools, or (2) adjust allocations to schools to make available the required funds. If an LEA chooses the second method – adjusting allocations to schools – it may reserve funds from all Title I schools or only from schools identified for school improvement, corrective action, or restructuring (subject to the limitation described in J-18).

**J-18. When reserving Title I, Part A funds for choice-related transportation, SES, or parent outreach and assistance, an LEA is not permitted under Section 1116(b)(10)(D) of the ESEA to reduce Title I allocations to schools identified for corrective action or restructuring by more than 15 percent. How should an LEA calculate this 15-percent limit?**

An LEA may satisfy this requirement using one of two methods. Under the first method, an LEA may simply set a floor of 85 percent of its prior-year allocation for any school identified for corrective action or restructuring. An LEA reserving Title I funds for choice-related transportation, SES, or parent outreach and assistance would not be permitted to reduce its allocation to an affected school below this 85-percent floor.

Under the second method, an LEA would calculate two allocations. For the first allocation, the LEA would determine a "pre-reservation" allocation to schools before setting aside funds for choice-related transportation, SES, or parent outreach and assistance (but after any other reservations, such as those made for administrative costs and district-wide activities such as professional development and parental involvement). Then, for schools identified for corrective action or restructuring, the LEA would calculate what 85 percent of those schools' "pre-reservation" allocation would be. The LEA would calculate a second allocation for all schools after reserving funds for choice-related transportation, SES, or parent outreach and assistance. For schools in corrective action and restructuring, the LEA would then compare this allocation with 85 percent of their "pre-reservation" allocation and allocate the higher of the two to those schools.

**J-19. How do the carryover rules described in Section 1127 of the ESEA affect Title I, Part A funds reserved for choice-related transportation, SES, or parent outreach and assistance?**

Section 1127 of the ESEA allows LEAs to carry over no more than 15 percent of unused Title I, Part A funds from one fiscal year to the next. This 15-percent carryover limit applies to the LEA's entire Title I, Part A allocation and, therefore, covers any Title I, Part A funds reserved for but not spent on choice-related transportation, SES, or parent outreach and assistance. If the combination of unused Title I, Part A funds reserved for choice-related transportation, SES, or parent outreach and assistance and other unspent

Title I, Part A funds exceeds 15 percent of an LEA's total allocation, the excess funds must be returned to the SEA for reallocation to other LEAs. An SEA may grant an LEA a one-year exemption from the carryover limit once every three years.

In order to avoid lapsing any prior-year funds due to the end of the period of availability, LEAs might use "first in-first out" accounting rules under which funds from the prior year are used before funds for the current year.

Provided that an LEA has met all demand from parents for choice-related transportation and SES and has met the criteria in 34 C.F.R. §200.48(d)(2)(i) (see K-1), the LEA may reallocate any unused Title I, Part A funds reserved for this purpose to other allowable activities either during the year in which the reservation was made or in the following year, subject to the 15-percent carryover limit. Funds carried over to the following fiscal year are also subject to the equitable services requirements in Section 1120 of the ESEA and 34 C.F.R. §200.64. Funds carried over from one fiscal year to the next do not affect the base used for calculating an LEA's 20 percent obligation in the following year.

An LEA that does not meet its 20 percent obligation and does not meet the criteria in 34 C.F.R. §200.48(d)(2)(i) in a given school year must spend the unexpended amount 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). LEAs in this situation should not run afoul of the carryover limit, however, because, in addition to the one-year exemption from the carryover limit and first in-first out accounting rules available to LEAs as noted above, the requirement to spend unexpended funds in a subsequent school year focuses on the amount that must be spent on choice-related transportation and SES, not on the specific funds or source of funds that an LEA uses to satisfy that amount. In other words, what must be carried over is a funding commitment, not actual funds. (See K-15.)

**J-20. Does the Title I "supplement, not supplant" requirement apply to choice-related transportation funds?**

Yes. Title I, Part A funds may be used only to supplement funds that, in the absence of the Title I, Part A funds, would be made available from non-Federal sources for the transportation of students exercising public school choice. For example, if an LEA is required by State or local law to provide transportation to students who choose to transfer to another school under an existing choice plan, it may not use Title I, Part A funds to supplant the State or local funds that it otherwise would use to provide transportation, even though choice-related transportation costs generally are an allowable use of Title I, Part A funds. The LEA may, however, count those costs toward meeting its 20 percent obligation. (See J-24.) Also, consistent with the supplement not supplant requirement, if an LEA uses local funds to transport students to their school of residence, the LEA may only use Title I, Part A funds to pay the incremental costs of transporting students to their school of choice.

**J-21. May an LEA use school improvement funds made available under Section 1003 (School Improvement) to pay for choice-related transportation?**

Yes. Section 1003(a) of the ESEA requires SEAs to reserve four percent of their Title I, Part A allocation to support school improvement activities under Sections 1116 and 1117. SEAs must generally distribute at least 95 percent of these funds to LEAs. Choice-related transportation is an authorized school improvement activity under Section 1116 and, therefore, an LEA may use Section 1003(a) funds to provide such transportation. An LEA may also use funds under Section 1003(g), which authorizes additional funding for school improvement activities, to support choice-related transportation.

**J-22. What other Federal program dollars may be used to pay for choice-related transportation?**

An LEA may use its Title V, Part A (Local Innovative Education Program) funds to pay for choice-related transportation, but only through September 30, 2009, unless Congress appropriates additional funds for this part. LEAs also may use funds transferred to Title I or Title V from other Federal education programs under Section 6123(b) of the ESEA to pay such costs. Programs under which such transfers may be made include Title II, Part A (Improving Teacher Quality State Grants); Title II, Part D (Educational Technology State Grants); and Title IV, Part A (Safe and Drug-Free Schools and Communities State Grants). Funding from Title V, Part A (State Grants for Innovative Programs) can also be transferred to Title I through September 30, 2009, unless Congress appropriates additional funds for this part. An LEA receiving a discretionary grant from its State under Title V, Section 5121(3) and using that grant in accordance with Section 5131(a)(12) may also be able to use grant funds to pay for choice-related transportation, depending on the terms of the grant award.

An LEA must include any funds transferred into Title I, Part A under Section 6123(b) in the base used in calculating the 20 percent obligation for choice-related transportation and SES. (See J-6.)

SEAs also may use their administrative funds reserved under Title I, Part A and State-level funds under Title V, Part A to assist LEAs in paying the costs of choice-related transportation *[Section 1116(e)(7); 34 C.F.R. §200.48(a)(4)]*, and may transfer additional non-administrative State-level funding from other Federal education programs under Section 6123(b) to either Title I, Part A or Title V, Part A and use them for this purpose. Note that an SEA may use Title V, Part A funds, or transfer funds into Title V, Part A only through September 30, 2009, unless Congress appropriates additional funds for this part.

**J-23. 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 public school 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 public school 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-24. How may an LEA with an existing open enrollment or other choice program that provides transportation calculate costs for transporting students who change schools under the public school choice provisions?**

Some LEAs implement an open enrollment or other choice program for which they provide transportation independent of the public school choice provisions. If such an LEA is able to provide transportation to all students exercising public school choice under its existing transportation program without having to create new bus routes or incur other new transportation-related expenses, then the LEA may not use Title I, Part A funds to pay for the transportation of students changing schools under the public school choice provisions because doing so would violate the "supplement, not supplant" provision of the statute. (See J-20.) However, such an LEA may count, toward meeting its 20 percent obligation, the portion of its transportation budget that is attributable to providing transportation to students exercising the public school choice option.

In determining the portion of its transportation budget that is attributable to students exercising public school choice, an LEA may include costs that it incurs in transporting a student who:

1. Has a "home" or "neighborhood" school that receives Title I funds and has been identified for school improvement, corrective action, or restructuring;
2. Has elected to enroll, after the home or neighborhood school has been identified for improvement, corrective action, or restructuring, in a school that has not been so identified and is attending that school; and
3. Is using LEA transportation services to attend such a school.

The amount of an LEA's transportation budget that the LEA can attribute to the transportation of students exercising public school choice would be calculated by determining the portion of students transported who meet the above criteria (or through a similar calculation that reflects those criteria). For instance, if 10 percent of an LEA's students who receive transportation meet the criteria, the LEA could count, toward meeting its 20 percent obligation, 10 percent of its transportation budget. LEAs should maintain clear records on how they make this calculation.

**J-25. May an LEA employ zones within the LEA based on the geographic location of schools for the purpose of providing transportation to students?**

Yes. An LEA may employ zones based upon the geographic location of schools and fully pay for or provide transportation to different schools within a zone. Outside a transportation zone, the LEA could decide to pay for only part of the transportation to the school. Parents might select a school outside of their designated transportation zone, but they would be informed prior to making this decision that they may be responsible for providing or arranging transportation for their child.

Using transportation zones may allow an LEA to offer more than one choice of school while ensuring that transportation can be reasonably provided. LEAs should ensure that there is sufficient capacity to accommodate the demand for public school choice within each zone. If this cannot be done, students must be given the opportunity to attend schools outside their zone of residence and be provided with transportation.

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

*A flowchart, located in Appendix A, 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)]*. An LEA is not required to obtain approval from the SEA to spend less than its 20 percent obligation.

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.

**K-2. May an SEA establish additional requirements or procedures for ensuring compliance with the criteria in 34 C.F.R. 200.48(d)(2)(i)?**

Yes. As part of its responsibility to implement Title I in accordance with the law and regulations, an SEA may establish additional requirements or procedures for ensuring compliance with the criteria in 34 C.F.R. 200.48(d)(2)(i) (see K-1) by LEAs that do not meet their 20 percent obligation. For example, although Federal regulations do not require that an LEA obtain approval from an SEA to spend less than its 20 percent obligation, an SEA could choose to require such approval for its LEAs.

**K-3. May an SEA require an LEA to meet criteria in addition to those in 34 C.F.R. §200.48(d)(2)(i) in order for the LEA to spend less than its 20 percent obligation?**

Yes. An SEA may require an LEA to meet additional criteria in order for the LEA to spend less than its 20 percent obligation. For example, an SEA could require that an LEA also must have a public school choice or SES participation rate that is equal to or higher than the statewide average, or that an LEA obtain written confirmation from a specified percentage of eligible families that they were notified about their public school choice and SES options. Note, however, that any such criteria used by an SEA must be in addition to the criteria in 34 C.F.R. §200.48(d)(2)(i), and may not serve as a substitute for these criteria.

**K-4. With which outside groups might an LEA partner to help inform eligible students and their families of the opportunity for public school choice or SES?**

To meet the criterion in 34 C.F.R. §200.48(d)(2)(i)(A) that an LEA partner, to the extent practicable, with outside groups (see K-1), an LEA should consider a range of business and community groups in its area with which it might partner. An LEA should consider forming partnerships with groups that can assist it in reaching and informing parents about their public school choice and SES options in a timely and clear manner. For most LEAs, there are groups willing to form a partnership to help inform parents, but it is possible that small and rural LEAs will have few or no options.

**K-5. Must an LEA form a formal partnership in order to meet the criterion that it partner with outside groups?**

No. The criterion that an LEA partner with outside groups should not be significantly burdensome or costly for an LEA, and no formal agreement is needed. Indeed, partnering with an outside group should be a cost-effective way for an LEA to promote public school choice, as partner groups, such as faith-based organizations, community-based organizations, and business groups, already have a presence in the community and thus, give an LEA a way to tap into existing resources with little additional effort. An LEA could ask a partner to pass out literature on public school choice, make announcements about the LEA's upcoming public school choice events and timelines, or help the LEA craft parent-friendly letters. A partner group could assist an LEA with parent outreach with respect to either SES or public school choice, or could assist with communicating to parents on both options.

An LEA should make a good faith effort to partner with an outside group, which should include attempts to reach several groups in the community that have connections to families of eligible students. If an LEA cannot form a partnership, it should maintain evidence as to why it was unable to form such partnerships.

**K-6. How does an LEA provide timely, accurate notice to parents regarding public school choice?**

To meet the criterion in 34 C.F.R. §200.48(d)(2)(i)(B)(1) that an LEA provide timely, accurate notice to parents (see K-1), an LEA's notice to parents must:

1. Be in an understandable and uniform format and, to the extent practicable, in a language that parents can understand (see D-2) *[34 C.F.R. §200.36(b)]*;
2. Be provided directly, through such means as regular mail or email, and through broader means of dissemination such as the Internet, the media, and public agencies serving the student population and their families (see D-3) *[34 C.F.R. §200.36(c)]*;
3. Be provided sufficiently in advance of, but no later than 14 calendar days before, the start of the school year (see B-1) *[34 C.F.R. §200.37(b)(4)(iv)]*; and
4. Include the information described in D-2.

Note that all LEAs that must offer public school choice must meet the requirements in 34 C.F.R. §§200.36 and 200.37 regardless of the amount they spend on choice-related transportation, SES, and parent outreach and assistance. Note also that LEAs that must also offer SES to eligible students must also meet the requirement to provide timely, accurate notice to parents with respect to SES opportunities.

**K-7. When should an LEA notify the SEA of its intention to spend a portion of its 20 percent obligation on other allowable activities?**

An LEA has flexibility in the timing of its notification to the SEA that it intends to use a portion of its 20 percent obligation on other allowable activities. However, an LEA must be careful not to predetermine demand for choice-related transportation and SES before all parents of eligible students have had a genuine opportunity to sign up for public school choice or SES. For example, an LEA should not notify its SEA of its intent to spend a portion of its 20 percent obligation on other allowable activities before holding a second enrollment window for SES. Because a second enrollment window must be separate from the first enrollment window, preferably by a grading period or similar period of time (i.e., 2-3 months), the Department would not expect LEA notification to its SEA to occur prior to December or January. An LEA that has an open enrollment all year long should notify its SEA after several months of open enrollment. (For more information on the criterion related to SES enrollment windows, see the Supplemental Educational Services Non-Regulatory Guidance, Section L, at: http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc.)

**K-8. What are the responsibilities of an SEA for ensuring that an LEA spending less than its 20 percent obligation meets the criteria in 34 C.F.R. §200.48(d)(2)(i)?**

An SEA must ensure that an LEA spending less than its 20 percent obligation complies with the criteria in 34 C.F.R. §200.48(d)(2)(i) through its regular process for monitoring LEAs. However, the SEA must review for compliance with the criteria any LEA that:

1. The SEA determines has spent a significant portion of its 20 percent obligation for other activities *[34 C.F.R. §200.48(d)(3)(ii)(A)(1)]*; and
2. Has been the subject of multiple complaints, supported by credible evidence, regarding implementation of the public school choice or SES requirements *[34 C.F.R. §200.48(d)(3)(ii)(A)(2)]*.

The SEA must complete its review of such LEAs by the beginning of the following school year (i.e., the school year following the year in which the LEA spent a significant portion of its 20 percent obligation for other activities) *[34 C.F.R. §200.48(d)(3)(ii)(B)]*.

In addition, an SEA may choose to review any LEA that the SEA believes is not implementing public school choice or SES in accordance with the law or regulations.

**K-9. For purposes of an SEA's determining when it must review an LEA, what is a significant portion of the 20 percent obligation?**

An SEA has discretion in determining what constitutes a significant portion of the 20 percent obligation for purposes of determining when to review an LEA for compliance with the criteria in 34 C.F.R. §200.48(d)(2)(i)(A). For example, an SEA could calculate the average proportion of the 20 percent obligation that its LEAs spend on choice-related transportation and SES, and then decide that any LEA spending less than that amount is thereby using a significant portion of its 20 percent obligation on other allowable activities. An SEA also could vary its definition of "significant portion" according to such factors as the size and urbanicity of its LEAs as such factors may be related to the availability of public school choice and SES options.

**K-10. For purposes of determining when it must review an LEA, how does an SEA determine what is a complaint supported by credible evidence?**

An SEA must have procedures in place for reviewing complaints regarding LEA implementation of Title I programs and activities, and should follow those procedures in determining the credibility of one or more complaints related to an LEA's compliance with the statutory and regulatory requirements for public school choice and SES. An SEA has discretion to establish procedures for reviewing other complaints regarding public school choice and SES that are not directly about violations of the statutory and regulatory requirements.

**K-11. What actions must be taken by an LEA that the SEA determines has not met the criteria in 34 C.F.R. §200.48(d)(2)(i)?**

If an SEA determines that an LEA has failed to meet any of the criteria in 34 C.F.R. §200.48(d)(2)(i) for spending less than its 20 percent obligation, 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

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)]*.

**K-12. May an SEA waive one or more of the criteria in 34 C.F.R. §200.48(d)(2)(i) for an LEA that spends less than its 20 percent obligation?**

No. An SEA does not have authority to waive any of the criteria in 34 C.F.R. §200.48(d)(2)(i).

**K-13. Are there LEAs that spend less than their 20 percent obligation that are not subject to the criteria in 34 C.F.R. §200.48(d)(2)(i)?**

There may be circumstances in which an LEA does not spend its full 20 percent obligation yet is not subject to the criteria in 34 C.F.R. §200.48(d)(2)(i). Such circumstances may include, but are not limited to, the following:

1. The LEA is not able to provide public school choice because it has only one school at each grade level and cannot provide SES because it is not served by any approved providers; or
2. The LEA enrolls sufficient numbers of eligible students to meet 20 percent obligation, but has funds left over at the end of the year because one or more providers did not fulfill their contractual obligations or because enrolled students did not begin or complete services. However, if an LEA experiences significant student attrition in its SES program early in the school year, leading to lower than anticipated expenditures, it would be expected to hold a second enrollment period and sign up a sufficient number of students to use the full 20 percent obligation; or
3. The LEA is meeting demand by providing choice-related transportation or SES to all eligible students (see K-14).

**K-14. How do the criteria in 34 C.F.R. §200.48(d)(2)(i) apply in the case of an LEA that can provide choice-related transportation or SES to all eligible students without spending the full 20 percent?**

In the case of an LEA that is able to provide choice-related transportation or SES to all eligible students without spending its full 20 percent obligation, the criteria in 34 C.F.R. §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. For example, if an LEA could provide choice-related transportation or SES to all eligible students with an amount equal to 10 percent of its Title I, Part A allocation, it would be required to make available only that amount and would be able to

use the other half of its 20 percent obligation immediately for other allowable activities. To spend less than the amount equal to 10 percent of its Title I, Part A allocation, however, the LEA would need to meet the criteria or spend the unexpended amount in the subsequent school year.

**K-15. If an LEA must spend the unexpended amount of its 20 percent obligation in a subsequent school year, must it use funds from the initial source to meet this requirement?**

No. The requirement to spend the unexpended amount of its 20 percent obligation in a subsequent school year focuses on the amount that must be spent on choice-related transportation and SES, not the specific funds or source of funds that an LEA uses. In other words, what is actually "carried over" is a funding commitment, not actual funds. LEAs not meeting the criteria must add the amount of any unused portion of the 20 percent obligation to the amount that must be spent on choice-related transportation and SES in the subsequent year. For example, if an LEA has $100,000 in unused fiscal year 2009 Title I, Part A funds that were reserved as part of its 20 percent obligation in the 2009-2010 school year, it does not have to carry over those specific Title I funds to the next school year. Rather, the LEA could use that $100,000 in fiscal year 2009 Title I funds for other Title I activities in the 2009-2010 school year, so long as it adds the same $100,000 amount – from any allowable Federal, State, or local source – to its 20 percent obligation for the 2010-2011 school year.

**K-16. If an LEA must spend the unexpended amount of its 20 percent obligation in a subsequent school year, may it count costs for parent outreach and assistance in the subsequent school year toward meeting its unexpended obligation?**

An LEA may count costs for parent outreach and assistance toward meeting its unexpended obligation in the subsequent school year only if it did not reach the 1 percent cap in the first year (based on the LEA's Title I, Part A allocation in that year). However, we do not expect that many LEAs will find themselves in this situation. In general, if an LEA must spend funds in a subsequent school year because it failed to meet the criteria in 34 C.F.R. §200.48(d)(2)(i), the LEA has probably already spent up to the 1 percent cap on parent outreach and assistance. In this circumstance, the LEA may not count costs for parent outreach and assistance toward meeting its unexpended obligation in the subsequent school year (although it may count costs for parent outreach and assistance toward meeting its 20 percent obligation for the subsequent school year, subject to the 1 percent cap discussed in K-21); the LEA must use all of the unexpended funds in the subsequent school year for choice-related transportation and SES.

For example, if, during the 2009-2010 school year, an LEA spent an amount equal to 15 percent of its Title I, Part A allocation on choice-related transportation, SES, and parent outreach and assistance and did not meet all the criteria in 34 C.F.R. §200.48(d)(2)(i), it must spend the remaining 5 percent of its 20 percent obligation from the 2009-2010 school year on choice-related transportation or SES during the 2010-2011 school year, in

addition to its 20 percent obligation for the 2010-2011 school year; it may not spend its unexpended funds in the subsequent school year on parent outreach and assistance. However, it may use 1 percent of its 20 percent obligation for the 2010-2011 school year on parent outreach and assistance during the 2010-11 school year.

**K-17. Are unexpended funds that an LEA must spend in a subsequent school year subject to the equitable services provisions for private school students?**

No. Funds that an LEA must spend in the subsequent school year are not subject to the equitable services requirement for private school students set forth in Section 1120 of the ESEA. That is because equitable services for private school students generally apply to Title I funds spent for instruction for elementary and secondary school students, professional development, and parent involvement. They do not apply, however, to all uses of Title I funds, and they do not apply to Title I funds reserved for choice-related transportation and SES because private schools are not subject to school improvement and private school students do not receive SES. However, any unspent portion of an LEA's 20 percent obligation that is used for other allowable purposes may be subject to the equitable services provisions of the ESEA.

## L. SEA RESPONSIBILITIES

**L-1. What are the responsibilities of an SEA with respect to notifying parents of eligible students of their public school choice options?**

An SEA must provide school AYP determinations to each LEA in a timely manner so that an LEA can identify those schools whose students may transfer and inform parents that they may choose a different school for their child. The law requires SEAs to ensure that the results of State academic assessments are available to LEAs before the beginning of the school year (that is, before the start of the school year that follows the school year in which the assessments were administered) *[Section 1116(a)(2)]*. LEAs are required to offer public school choice to eligible students sufficiently in advance of, but no later than 14 calendar days before, the start of the school year *[34 C.F.R. §200.44(a)]*. While the regulatory provisions may require some SEAs to make minor adjustments to their assessment and reporting schedules, most SEAs should be able to make available to LEAs the information needed so that LEAs can offer eligible students the opportunity to change schools sufficiently in advance of, but no later than, 14 calendar days before, the start of the school year. (See B-3.)

**L-2. What information must an SEA display on its Web site regarding the amount of funds available for choice-related transportation in each LEA in the State?**

An SEA must post on its Web site each LEA's 20 percent obligation. (The SEA must also include the maximum per-pupil allocation for SES (the LEA's Title I, Part A allocation divided by the number of students in low-income families as determined by the Census Bureau).) *[34 C.F.R. §200.47(a)(1)(i)(B).]*

An SEA should easily be able to calculate each LEA's 20 percent obligation (and per-pupil allocation for SES) from data the SEA has available. The posting of this information will give stakeholders a better understanding of the resources available to support public school choice and SES. An example of how this information may be displayed is provided below.

**State Name**

| **LEA** | **Title I, Part A allocation** | **20 percent obligation** | **Per-pupil allocation for SES** |
|---|---|---|---|
| School District A | $1,000,000 | $200,000 | $1,000 |
| School District B | $500,000 | $100,000 | $950 |
| School District C | $750,000 | $150,000 | $1,200 |
| School District D | $250,000 | $50,000 | $1,100 |

The SEA should post this information in a timely manner as soon as it determines Title I, Part A allocations for LEAs.

**L-3. What responsibilities does an SEA have if an LEA cannot post the required public school choice data because it does not have a Web site?**

As discussed in D-8, an LEA is required to prominently display on its Web site certain information on public school choice. This includes data on student eligibility and participation in public school choice, as well as a list of available schools to which eligible students may transfer. However, if an LEA that is required to offer public school choice to eligible students does not have its own Web site, an SEA is obligated to post this information on behalf of the LEA *[34 C.F.R. §200.39(c)(2)]*. An SEA that is obligated to post this information on behalf of one or more LEAs must do so in a timely manner consistent with the requirements for an LEA's posting this information as described in D-9, so that parents can access this information when making decisions about choosing a school for their child.

**L-4. What are the responsibilities of an SEA for monitoring LEAs for compliance with the public school choice requirements?**

An SEA must monitor its LEAs for compliance with the public school choice requirements. In particular, an SEA must ensure that LEAs spending less than the 20 percent obligation on choice-related transportation, SES, and parent outreach and assistance in a given year spend the unexpended amount in the subsequent year or meet the criteria in 34 C.F.R. §200.48(d)(2)(i). An SEA must ensure such LEAs' compliance through its regular monitoring process, and it must target for review LEAs that the SEA determines have spent a significant portion of their 20 percent obligation on other allowable activities and have been the subject of multiple credible complaints regarding

implementation of the public school choice or SES requirements *[34 C.F.R. §200.47(d)(3)]*. (See Section K.)

**L-5. Are SEAs subject to any reporting requirements regarding public school choice?**

Yes. An SEA must include, in its annual Consolidated State Performance Report, information on public school choice, including the number of schools from which and to which students transferred, the number of students eligible for and participating in public school choice, and funds spent on choice-related transportation. An SEA must also provide this information through the Education Data Exchange Network (EDEN/ED*Facts*) for each individual LEA required to offer public school choice.

**L-6. How can an SEA help ensure that parents have genuine access to public school choice for their children?**

An SEA should consider ways that it can help parents understand and access public school choice for their children. It can do this directly, through its own actions and outreach, as well as indirectly, by providing technical assistance to its LEAs and by encouraging LEAs to provide outreach and assistance to help parents make informed decisions about public school choice.

An SEA might work directly to make sure parents understand public school choice and how they can select a new school for their children by:

1. Developing a public service announcement on public school choice, or developing brochures and other media that can be shared with parents.
2. Posting on the SEA Web site clear and useful information about public school choice, including questions a parent might consider in choosing a school, a list of schools with students eligible for public school choice, and contact information for LEA and SEA public school choice coordinators.
3. Working with local parent organizations in the State, such as the State's Parent Information and Resource Center (PIRC), to develop resources for parents. (See http://www.nationalpirc.org/directory/index.html for a list of the PIRCs funded by the Department.)

Additionally, an SEA could provide technical assistance to its LEAs in the area of parent outreach by:

1. Providing a model for how an LEA could display information on its Web site about public school choice participation and eligibility rates, and about available transfer options, so that LEAs post this information in a way that is easy for parents to access and understand.
2. Developing a model parent notification letter for its LEAs that meets the requirements of the statute and regulations, as well as a model registration form.

Finally, an SEA could encourage its LEAs to implement policies that likely will improve parents' understanding of and access to public school choice, such as holding "school choice fairs" to give parents a first-hand opportunity to learn more about the transfer options for their children and to choose a school. These fairs should be scheduled at times and locations that are convenient for parents.

# APPENDIX A
## Glossary

**20 Percent Obligation:** The 20 percent obligation is the amount equal to 20 percent of an LEA's Title I, Part A allocation that an LEA must spend, subject to demand, on choice-related transportation, SES, or a combination of the two. 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 on those services. Similarly, if the demand from parents of eligible students for transportation needed for public school choice exceeds 5 percent of the allocation, the LEA must spend the equivalent of at least 5 percent on choice-related transportation. The LEA has flexibility in allocating the remaining 10 percent. 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 related to public school choice and SES. *[Section 1116(b)(10); 34 C.F.R. §200.48(a)(2).]*

**Adequate Yearly Progress**: Adequate yearly progress (AYP) is the measure of the extent to which students in a school demonstrate proficiency in reading/language arts and mathematics. It also measures the progress of schools in meeting other academic indicators, such as the high school graduation rate or school attendance rate. The same measure also applies to LEAs. Each State has its own definition of AYP, and these definitions have been approved by the Department, included in State Accountability Workbooks, and are available on the Department's website at http://www.ed.gov/admins/lead/account/stateplans03/index.html. State definitions must reflect the objective of all students demonstrating proficiency by the end of school year 2013-2014. *[Section 1111(b)(2).]*

**Corrective Action**: A school identified for corrective action is a Title I school that has not made AYP for four years. In order to exit corrective action, the school must make AYP for two consecutive years. *[Section 1116(b)(7).]*

**Eligible Student**: For purposes of the public school choice provisions, eligible students are all students enrolled in Title I schools that are identified for school improvement, corrective action, or restructuring. Note that this differs from eligibility for SES, which is limited to students from low-income families who are enrolled in schools in the second year of school improvement, in corrective action or in restructuring. *[Section 1116(b)(1)(E).]*

**Public School Choice:** Students who attend a Title I school identified for school improvement, corrective action, or restructuring are eligible to transfer to another public school in the LEA that is identified for school improvement, corrective action, or restructuring. LEAs are required to make at least two transfer options available to students, if at least two options exist, and are responsible for paying for or providing transportation necessary for students to attend their new school. If available funds are insufficient to satisfy all requests for transportation, LEAs must give priority to the lowest-achieving low-income students who request transportation. *[Section 1116(b)(1)(E).]*

**Restructuring**: A school identified for restructuring is a school that has not made AYP for five or more years. The first year of restructuring may be used for planning; the plan for the

restructured school must be implemented no later than the second year. In order to exit restructuring, the must make AYP for two consecutive years. *[Section 1116(b)(8).]*

**School Improvement:** A school is identified for school improvement when it has not made AYP for two consecutive years. A school can be identified for a second year of school improvement if it does not make AYP for another year, after initially being identified for school improvement. In order to exit school improvement, the school must make AYP for two consecutive years. *[Section 1116(b)(1)(A).]*

**Schoolwide Program**: A schoolwide program is a Title I program operated in a school that serves an eligible school attendance area in which not less than 40 percent of the students are from low-income families, or that has a school enrollment of which not less than 40 percent of the students are from such families, and that uses its Title I funds to upgrade the educational program of the entire school, rather than to provide services only to students identified as most at risk of failing to meet State standards. *[Section 1114.]*

**Supplemental Educational Services:** Supplemental educational services (SES) are additional academic services designed to increase the academic achievement of low-income students in schools identified for school improvement, corrective action, or restructuring. These services may include tutoring, remediation, or other educational interventions that are consistent with the content and instruction used by the LEA and are aligned with the State's academic content standards. SES are in addition to instruction provided during the regular school day. SES must be high quality, research-based, and specifically designed to increase the academic achievement of eligible students. *[Section 1116(e)(12)(C); 34 C.F.R. §200.47(b)(2)(iii)(C).]*

**Targeted Assistance Program**: A targeted assistance program is a Title I program in which a school uses its Title I funds to provide services only to the students who have been identified as being most at risk of failing to meet State academic content and achievement standards. *[Section 1115.]*

# APPENDIX B

## Flowchart: Requirements and Responsibilities for Meeting the 20 Percent Obligation

* An LEA may count costs for parent outreach and assistance toward meeting its unexpended obligation in the subsequent school year only if it cid not reach the 1 percent cap in the first year (based on the LEA's Title I, Part A allocation that year). (See K-16.)
**The SEA determines whether an LEA has met the criteria through its regular monitoring process. The SEA must also review for compliance any LEA that has spent a significant portion of its 20 percent obligation on other allowable activities and has been the subject of multiple credible complaints, and must complete any such review by the start of the next school year. (See K-8.)