

## **Title 6. Education**

### **Chapter I. Division of Elementary and Secondary Education**

#### **Subchapter B. Student Enrollment and Choice**

#### **Part 37. Rules Governing Petitions for Student Transfers**

##### **Subpart 1. Generally**

###### **6 CAR § 37-101. Purpose.**

The purpose of this part is to set out the process and procedures necessary for the State Board of Education to fulfill its responsibilities regarding legal transfers under Arkansas Code §§ 6-18-307 and 6-18-316.

###### **6 CAR § 37-102. Definitions.**

As used in this part:

(1) "Receiving district" means another public school district to which a student is petitioning for a transfer; and

(2) "Resident district" means the public school district in which a student petitioning for a transfer is physically present and maintains a permanent place of abode for an average of no fewer than four (4) calendar days and nights per week for a primary purpose other than school attendance.

###### **6 CAR § 37-103. General provisions.**

(a) The transfer of a student under this part is prohibited when:

(1) Either the resident district or the receiving district is under a desegregation-related court order; and

(2) The transfer in question would violate the court order.

(b) Each form filed with the Division of Elementary and Secondary Education reporting a legal student transfer must be accompanied by an affidavit signed by each member of both school district boards of directors stating that the transfer does not violate the prohibition in subsection (a) of this section.

(c)(1) If the transfer fails to comply with subsection (a) of this section, the division

shall withhold from each district state aid in an amount equal to that to be generated by the student in question in the respective districts.

(2)(A) State aid shall be withheld from the resident district under this subsection for the school year in which the transfer occurred.

(B) If the resident district has received state aid for the student prior to the transfer, the state aid provided in the following school year shall be reduced by the amount of aid generated by the student in the year that the student was transferred.

(3) State aid shall be withheld from the nonresident district under this subsection for:

(A) The initial school year in which the district would otherwise receive aid for that student; and

(B) Each subsequent year in which the requirements of subsection (b) of this section are unsatisfied.

(d) A student who transfers under this part may complete all remaining school years at the receiving district so long as the student continues to attend school in the district.

(e) A student who transfers under this part shall not be:

(1) Denied participation in an extracurricular activity at the nonresident school district to which he or she transfers based exclusively on his or her decision to transfer to the nonresident school district; or

(2) Disciplined in any manner based on the exercise of his or her right to transfer to another nonresident school district under this part.

(f) If a school district denies a legal transfer under this part or conditions a legal transfer on the acceptance of a tuition agreement, which has the effect of denying the petition, the school district shall notify the petitioner that the:

(1) Actions of the school board may be appealed to the State Board of Education by filing a petition for appeal with the division in accordance with 6 CAR § 37-106(b); and

(2) Appeal must be filed or postmarked within ten (10) days.

**6 CAR § 37-104. Petitions for legal transfers.**

(a)(1) Upon the petition of a student in their resident district to transfer to a receiving district, the board of directors of the resident district may enter into an agreement with the board of directors of the receiving school district transferring the student to the receiving district for purposes of education.

(2) Forms for use in transferring a student from one (1) school district to another shall be provided by the Division of Elementary and Secondary Education.

(b)(1) A transfer petition received by a school district under this section shall be placed on the agenda of the next regular monthly meeting of the school district board of directors or a specially called meeting of the school district board of directors, whichever occurs first.

(2) A petition received fewer than five (5) days before the next school board meeting may be placed on the agenda for the following meeting.

(c) At least five (5) days before a regular monthly meeting of a school district board of directors or a specially called meeting of a school district board of directors, whichever occurs first, the superintendent of the school district shall notify the school district board of directors regarding:

(1) All transfer petitions received under this section; and

(2)(A) The superintendent's recommendation concerning each transfer petition received under this section, as required by subdivision (c)(2)(C) of this section.

(B) If a student's transfer petition is recommended by a school district superintendent for denial, the school district superintendent shall provide a written explanation of the reasons for the recommendation to the:

(i) School district board of directors; and

(ii) Parent, legal guardian, or person standing in loco parentis to the student.

(C) The superintendent is required to recommend in writing that the school district board of directors:

(i) Approve the petition; or

(ii) Deny the petition for reasons described in the recommendation.

(d)(1) Each transfer petition received by a school district under this section and placed on the agenda of a school district board of directors as required under this part shall:

(A) Be considered individually; and

(B) Receive a separate vote by the school district board of directors.

(2) In addition, the school district board of directors shall provide a basis for the board of directors' action if the board of directors:

(A) Denies the petition; or

(B) Conditions approval on acceptance of a tuition agreement.

(e) A parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older who submits a petition for a transfer under this section shall be given at least five (5) minutes to present the student's case for a transfer to a school district board of directors.

(f)(1) A school district board of directors may adopt a resolution that delegates its authority to approve a petition for a transfer received under this section to:

(A) The school district superintendent; or

(B) An individual member of the school district board of directors.

(2) If a school district board of directors has adopted a resolution delegating its authority to approve a petition for a transfer under this part, a petition that has been approved shall not be required to be heard at a meeting of the school district board of directors.

(3)(A) If a school district board of directors has adopted a resolution delegating its authority to approve a petition for a transfer under this part, the petition must be approved within ten (10) business days.

(B) If a petition is not approved within ten (10) business days, it shall be scheduled for consideration by the school district board of directors pursuant to subsection (b) of this section.

(C) A petition may be approved by the official authorized to approve petitions under this subsection after the petition has been added to an agenda, in which case no action shall be taken by the school district board of directors related to that

petition.

(g) A school district board of directors shall not delegate its authority to deny a petition for a transfer received under this section.

(h)(1) If a petition for a transfer received under this part is denied, the parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older who submitted a petition for a transfer may appeal the decision of the school district board of directors to the State Board of Education.

(2) An approval of a petition that is conditioned on the acceptance of a tuition agreement constitutes a denial of the petition for the purposes of appeal.

(3) The failure of a school district to comply with the requirements of subsection (b) of this section constitutes a denial of the petition for the purposes of appeal.

(4) An appeal must be filed in accordance with 6 CAR § 37-106(b).

(i) After a petition for a transfer has been approved by a school district board of directors of the resident district and a school district board of directors of the receiving district, copies of approved transfers shall be filed by the receiving district with the:

- (1) Office of the county clerk;
- (2) Administrative offices of the respective school districts; and
- (3) Department of Education's Office of School Choice using the address

below:

Arkansas Department of Education  
Attn: Office of School Choice  
Four Capitol Mall  
Little Rock, AR 72201

(j)(1) Upon approval of a petition to transfer by a resident district, the receiving district may also enter into a tuition agreement with either the resident district or the parent, legal guardian, or person standing in loco parentis to the transferring student involved whereby the resident district or the parent, legal guardian, person standing in

loco parentis to a student, or a student who is eighteen (18) years or older will make tuition payments to the receiving district to compensate the receiving district for local taxes not received on behalf of the transferring student.

(2) The annual amount of the tuition shall not exceed the average amount of local property tax per pupil collected in the receiving district in the preceding year.

(k) Student petitions for transfers granted under this part that include a tuition agreement shall be reviewed at the end of four (4) years by the school districts involved to determine whether a tuition agreement, if one exists, should be renewed.

(l) Student petitions for transfers granted under this part:

(1) Constitute an independent agreement between the resident district and the receiving district; and

(2) Are not subject to the provisions and limitations of other student transfer laws.

**6 CAR § 37-105. Transfer to adjoining school district.**

(a)(1) The parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older whose place of residence is at least fifteen (15) miles from a school in the resident district and whose place of residence is within seven (7) miles of a school in an adjoining district may petition the board of directors of the resident district for a transfer to the adjoining district if the adjoining district has agreed in writing to accept transfer of the child.

(2) The minimum distances prescribed by this part shall be computed using highways that could reasonably and safely be traversed by school buses.

(b) A copy of such written agreement by the receiving district shall be filed with any such petition.

(c) If several parents, legal guardians, persons standing in loco parentis to a student combined with or students who are eighteen (18) years or older students in a particular area meet the requirements prescribed in this part, those persons may jointly petition the board of directors of the resident district for transfer of their students to the adjoining district.

(d) When any individual or joint petition under 6 CAR § 37-104 is filed with the board of directors of any school district, the board of directors shall within thirty (30) days after the date of the filing of the petition either grant or deny the transfer.

(e) If the board of directors denies the petition, the petitioners may appeal to the State Board of Education.

**6 CAR § 37-106. Appeals before the state board.**

(a) A parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older whose petition for a transfer under this part is denied may request a hearing before the State Board of Education to reconsider the petition for transfer.

(b)(1) An appeal before the state board shall be requested in writing and shall be received or postmarked no later than ten (10) calendar days after the parent, legal guardian, person standing in loco parentis to a student, or a student who is eighteen (18) years or older (hereafter "appealing party") receives a notice of rejection of the petition under this part and shall be delivered or mailed to:

Arkansas Department of Education  
Attn: Legal Services Unit  
Four Capitol Mall  
Little Rock, AR 72201

(2) The state board may waive the deadline to file an appeal if the:

(A) Notice of rejection does not inform the petitioner of the right to appeal and the deadline to file an appeal; or

(B) Petitioner makes a good faith attempt to file a timely appeal.

(c) Contemporaneously with the filing of the written appeal with the Division of Elementary and Secondary Education's Legal Services Unit, the appealing party must also provide a copy of the written appeal to the superintendent of each school district.

(d) In his or her written appeal, the appealing party shall state his or her basis for

appealing the decision of the receiving district.

(e) The appealing party shall submit, along with his or her written appeal, the:

(1) Original petition for a transfer sent by a parent or eligible student to each school district; and

(2) Denying school district's reasons for denying the transfer if provided to the appealing party.

(f)(1) Upon receipt of the written appeal, the division shall notify each district of the appeal.

(2) Each district may submit, in writing, any additional information, evidence, or arguments supporting its rejection of the student's application by mailing such a response to the Department of Education.

(3) Such a response shall be postmarked no later than ten (10) days after the district receives notice of the appeal.

(4) Any response shall be mailed to:

Arkansas Department of Education  
Attn: Legal Services Unit  
Four Capitol Mall  
Little Rock, AR 72201

(g) The division shall notify the appealing party and each district of the date, time, and location of the hearing before the state board.

(h) Prior to the hearing, the appealing party may submit supporting documentation that the transfer would be in the best educational, social, or psychological interest of the student.

(i) If the state board overturns the determination of either district on appeal, the state board shall notify the appealing party, the nonresident district, and the resident district of the basis for the state board's decision.

(j) The state board shall either grant or deny an appeal filed pursuant to 6 CAR § 37-105(e) not more than forty-five (45) days after the day the appeal is received.

**6 CAR § 37-107. State board hearing procedures.**

(a) All persons wishing to testify before the State Board of Education shall first be placed under oath by the Chair of the State Board of Education.

(b)(1) Each party that wishes to participate in the hearing may take up to fifteen (15) minutes to present its case, beginning with the nonresident school district, followed by the resident school district, and then the appealing party.

(2) The chair may allow the parties additional time to present their cases.

(c)(1) The state board, at its discretion, shall have the authority to require any person associated with the application to appear in person before the state board as a witness during the hearing.

(2) The state board may accept testimony by:

- (A) Affidavit;
- (B) Declaration;
- (C) Deposition transcript; or
- (D) Hearing transcript.

(d) The state board will resolve the appeal based upon the totality of evidence presented.

(e) On appeal, the school district denying a petition:

- (1) Bears the burden of justifying its decision to deny a family's petition; and
- (2) Must overcome that burden with a clear and convincing reason for that decision.

(f)(1) When hearing an appeal, the state board may take one (1) of the following actions:

- (A) Affirm denial of a petition by the school district board of directors;
- (B) Overturn the school district board of directors and grant the transfer petition; or
- (C) Table the petition for consideration at a future meeting to be held not more than forty-five (45) days from the date of the initial hearing.

(2) In addition, the state board may reduce or eliminate any tuition agreement

obligation attached to a legal transfer on appeal under this part.

(g) The consideration of a petition under this part shall be conducted in an open meeting.

(h) The state board shall provide a written decision to the Division of Elementary and Secondary Education, the appealing party, the nonresident district, and the resident district within fourteen (14) days of announcing its decision under this section.

**6 CAR § 37-108. Effect of a board-to-board transfer.**

(a) The ruling of the State Board of Education shall be the final administrative ruling on the petition.

(b) A transfer resulting from an appeal granted by the state board is effective upon the receipt by the receiving district of the written decision of the state board.

(c) The transfer of a student under this part:

(1) Places the responsibility for the education of the student on the receiving district; and

(2) Permits the receiving district to count a student who transfers under this part for purposes of average daily membership for state and federal aid purposes.

(d) The transfer of a student under this part does not transfer the local tax money from a resident district.