

**DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING SCHOOL CHOICE
PUBLIC COMMENTS AND RESPONSES**

Commenter Name: APSRC, 4/24/2024

Comments: [2-1.04.2] Page 4: The stricken language is still in law, at Ark. Code Ann. §6-18-1903(d)(2)(B)

Division Response: **Comment Considered, no changes made. While the old language referenced in the comment is still in code at Ark. Code Ann. §6-18-1903(d)(2)(B) this language is directly and irreconcilably contradicted by Ark. Code Ann. §6-18-1903(c)(2) which was enacted by Act 790 of 2023.**

Commenter Name: APSRC, 4/24/2024

Comments: [2.3.04.2] (stricken) Page 9: The stricken language is still in law, at Ark. Code Ann. §6-18-1905 (e)(3)

Division Response: **Comment Considered, no changes made. While the old language referenced in the comment is still in code at Ark. Code Ann. §6-18-1905(e)(3) this language is directly in irreconcilably contradicted by Ark. Code Ann. §6-18-1905(f) which was enacted by Act 790 of 2023.**

Commenter Name: APSRC, 4/24/2024

Comments: [2-3.04.3.1] (second listing of Section 2-3.4.3.1) Page 9: This language is not contained in the statutes.

Division Response: **Comment Considered, no changes made. The language is added to address the practical effects of a school choice application becoming immediately effective as required by Act 790 of 2023.**

Commenter Name: APSRC, 4/24/2024

Comments: [3.1.04] Page 15: The stricken language is still in law, at Ark. Code Ann. §6-18-227 (d)(2)(D)

Division Response: Comment Considered, a non-substantive change was made. We have removed the changes in section 3.1.04 and moved the new language to the subchapter of the rule governing military families.

Commenter Name: Kendra Clay, Springdale Public Schools, General Counsel, 4/23/2024

Comments: [1-2.02] There is inconsistency in the law about the definition of capacity. Ark. Code Ann. §6-18-1903 includes both the maximum allowed by rule or law and 90% of the maximum allowed by rule or law. Full capacity is difficult for districts to manage as it would require admission of non-resident students at the expense of not having space for resident students. Springdale has a highly mobile student population that has students moving into and out of the district daily.

Division Response: Comment Considered, no changes made. While the old language referenced in the comment is still in code at Ark. Code Ann. §6-18-1903(d)(2)(B) this language is directly and irreconcilably contradicted by Ark. Code Ann. §6-18-1903(c)(2) which was enacted by Act 790 of 2023.

Commenter Name: Kendra Clay, Springdale Public Schools, General Counsel, 4/23/2024

Comments: [2-1.03] It is difficult to determine which school the applicant would like to attend based on the school choice application. We have 19 elementary schools. Often, if there is not space at one school, the applicant is open to enrolling in another school. Consider adding which school the applicant would like to attend to the application.

Division Response: Comment considered; no change was made. The concerns of this comment can be addressed outside the rulemaking process.

Commenter Name: Kendra Clay, Springdale Public Schools, General Counsel, 4/23/2024

Comments: [2-2.07] Completing a CSAP seems unnecessary and puts an extra burden on superintendents

Division Response: Comment Considered, a non-substantive change was made. The reference to the CSAP form was removed; however, school districts still are required to comply with Ark. Code Ann. §6-18-1904(f)(2).

Commenter Name: Kendra Clay, Springdale Public Schools, General Counsel, 4/23/2024

Comments: [2-3.04] It is impossible to know capacity for the next school year in the spring of the year prior and basing on current numbers if they do not want to transfer immediately is not productive. Additionally, if the student wants to transfer immediately, there is an option to pursue a board-to-board transfer.

Division Response: **Comment considered; no changes made. Determinations of capacity are already being made in the current school year for the upcoming school year due to the fact that the school choice deadline is in the spring of the current school year and has historically taken effect for the upcoming school year. The remaining comments raise a policy concern which is governed by a statutory provision. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Roland Popejoy, Valley View Public Schools, Superintendent, 4/22/2024

Comments: [1-2.02 / 2-1.03 / 2-1.04] Changing "lack of capacity" to the maximum student-to-teacher ratio will be extremely problematic for public school districts as this ratio varies from day to day, grade level to grade level, course to course, and program to program. By no longer providing the 90% capacity and thus 10% allowance for natural growth in a grade, course, program, etc., this in essence requires districts to be ready to hire new staff at any point in the year to accommodate new resident students moving into the district following transfer/school choice students that may cause the district to reach the maximum ratio in a grade, course, or program. Based on experience, I feel that it is extremely important for the rules governing public school choice to provide a percentage capacity lower than 100% maximum capacity in order to not put a growing district in the position to have to hire new staff or add portable buildings throughout the year to accommodate the ever changing student-teacher ratio that exists with resident students moving into/out of the district.

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Roland Popejoy, Valley View Public Schools, Superintendent, 4/22/2024

Comments: [2-3.04] Enacting a 15-day running application to decision window during the public school choice application period will result in strain on most, if not all public school districts, especially districts that have increasing resident student enrollment. I feel that it is important to continue the rule that was in place previously and allow districts until July 1 to make school choice decisions to ensure that the district has the ability to serve both the resident

students of the district as well as students of parents applying to attend the new choice district. Throughout the spring semester, building and district administrators are constantly monitoring current student numbers as they build budgets and plan for the upcoming school year. If choice decisions must be made within 15 days of the application being received and the opportunity continues to exist for the parent to decide to immediately transfer to the choice district, this could result in districts denying some students that they might have approved if the deadline remained July 1 after most of the employment decisions and classroom locations have been made for the new year.

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Mike Mertens, Arkansas Association of Educational Administrators, Assistant Executive Director, 4/22/2024

Comments: [1-2.02 & 2-1.04.1] Section: 1-2.02 and 2-1.04.1 changes the definition of “lack of capacity” from 90% of the maximum authorized student population in a program, class, or school building to the maximum student-to-teacher ratio allowed under or law or the rules for standards of accreditation.

Suggested Change/Concern: Leave the current definition of “lack of capacity” as 90% of the maximum authorized student population in a program, class, grade level or school building.

Rationale: Schools, especially those that are growing due to factors other than school choice, need this flexibility as they establish specific standards for acceptance or rejection of school choice applications. It is not practical to require districts to accept all school choice applications when past history clearly indicates that classrooms will be filled by new families moving into the community.

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Mike Mertens, Arkansas Association of Educational Administrators, Assistant Executive Director, 4/22/2024

Comments: [2-3.04] Section: 2-3.04. The proposed change states that a nonresident school district must notify the applicant in writing as to whether the application has been accepted or rejected within 15 calendar days of receipt of the application.

Suggested Change/Concern: Delete this proposed language and keep the provision in the law that schools have until July 1 to notify parents whether or not the student’s application has been accepted or rejected.

Rationale: The proposed draft rules allow an approved transfer to be effective immediately or at the beginning of the following school year at the choice of the student. This provision can cause extreme difficulty on school districts and their ability to plan for staffing needs. Additionally, a school district may not have room for the student during the current school year but may have room for the student the following year.

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: John Unger, West Fork School District, Interim Superintendent, 4/19/2024

Comments: [1-2.02] We need a better definition of capacity. Each school will be different based on the size of the school, number of teachers employed, number of available schedule options, and other variables that can’t be described in legal terms.

Division Response: Comment Considered, no changes made. Capacity is defined by a separate rule titled the *DESE Rules Governing Class Size and Teaching Load*. The maximum teaching load is defined under this rule as 150 students per teacher per day in grades five through twelve. See §4. The maximum class size varies from 20 students per teacher to 30 students per teacher depending on the grade level and other factors. See §3.

Commenter Name: John Unger, West Fork School District, Interim Superintendent, 4/19/2024

Comments: [2-2.06.1] Does this mean that regardless of grade, students are eligible for athletic participation once they are accepted as long as there is a Changing Schools/Athletic Participation form?

Division Response: Comment Considered, no changes made. No, the text of the rule states that a student transferred shall not be “...[d]enied 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...” Prohibiting denial of participation exclusively due to a transfer does not guarantee participation.

Commenter Name: John Unger, West Fork School District, Interim Superintendent, 4/19/2024

Comments: [2-3.04. & 2-3.04.3] This means that students can School Choice from January to May of the year they apply and don't have to wait until the following year. What is the reasoning for this?

Division Response: **Comment Considered, no changes made. The language addressed by the comment is required by Act 790 of 2023. The department cannot speak to the legislative intent behind Act 790.**

Commenter Name: John Unger, West Fork School District, Interim Superintendent, 4/19/2024

Comments: [3-1.06] What is the reason that the Opportunity Public School Choice doesn't take effect until the following school year? Why not open it up for transfer between January 1 and May 1?

Division Response: **Comment Considered, no changes made. The language addressed by the comment is existing law required by A.C.A. §6-18-227. The department cannot speak to the legislative intent behind A.C.A. §6-18-227.**

Commenter Name: John Unger, West Fork School District, Interim Superintendent, 4/19/2024

Comments: [5-1.00] What is the value of the reporting requirement? Can the state not pull this information?

Division Response: **Comment Considered, no changes made. The reporting requirement is designed to identify geography where large numbers of students are transferring into a contiguous district. The reporting requirement is necessary because the department does not have the information necessary to identify the areas from which the students transferring.**

Commenter Name: Larry Dugger, Pottsville School District, Superintendent, 4/17/2024

Comments: [1-2.02] Ark Code Ann. 6-18-1903(d)(2)(b) states that a district may include a claim of lack of capacity by the school district only if the school district has reached a maximum capacity of 90% in a program, class, grade level or school building. The proposed rules by my

interpretation do away with that state law which is a concern for Pottsville School District. We need that 90% capacity to allow for local growth. If we go by maximum student ratio and I have a new student move into the district this will cause a financial burden on our district to employ more staff.

Division Response: Comment considered; no changes made. While the old language referenced in the comment can be found at Ark. Code Ann. §6-18-1903(d)(2)(B) this language is directly and irreconcilably contradicted by Ark. Code Ann. §6-18-1903(c)(2) which was enacted by Act 790 of 2023. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Larry Dugger, Pottsville School District, Superintendent, 4/17/2024

Comments: [2-3.01.3] 2-3.01.3 is in conflict with Ark. Code 6-18-1905(e)(1) in that the proposed rule states a district must notify the applicant within 15 days of approval or denial and law states the nonresident district has until July 1st to notify the applicant.

The proposed rules also allows for a school choice applicant to enroll immediately, again this conflicts with the date allowed by law for notification.

School Choice for Pottsville is a good thing, but too much of a good thing will cause major issues for us. Currently about 600 of our 1800 students are school choice or transfers but we have to limit due to classroom space. Our local community defeated a proposed millage to build a new school and the main reason that was relayed to me was we accept too many students outside our district boundaries that don't pay local taxes.

Division Response: Comment Considered, no changes made. While the old language referenced in the comment is still in code at Ark. Code Ann. §6-18-1905(e) this language is directly in irreconcilably contradicted by Ark. Code Ann. §6-18-1905(f) which was enacted by Act 790 of 2023. Ark. Code Ann. §6-18-1905(f) explicitly states; “a transfer of the student is effective immediately upon the nonresident district's written notification of an acceptance.”

Commenter Name: John Ciesla, Greenwood School District, Superintendent, 4/17/2024

Comments: I have a real concern about the lack of flexibility and local control that local school districts may lose if the revised definition of "Lack of Capacity" is approved. Under the new definition--this may force districts to hire additional personnel for "resident" students that may enroll after the school choice deadline. In addition, there is growing frustration amongst resident taxpayers because they believe the district may be forced to build facilities for non-resident

students whose parents are not paying debt-service mills to support new and current district facilities.

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Aaron M. Randolph, Cabot School District, Assistant Superintendent, 4/15/2024

Comments: [1-2.202 & 2-1.04.2] – There’s a discrepancy in the allowable basis to deny school choice. 1-2.02 (p. 2) says that “lack of capacity” means that the District has reached the maximum student-to-teacher ratio allowed under law or rules. But 2-1.04.1 (p. 4) states that one standard for accepting/denying would be the “capacity of a program, class, grade level, or school building” and 2-1.04.2 (p. 4) says that lack of capacity can only mean that the school district has reached the maximum student-to-teacher ratio.

Division Response: Comment Considered, no changes made. To the extent that prior existing language addressing a district’s policy in Ark. Code Ann. §6-18-1903(d) and section 2-1.04 of the rule can be interpreted to allow a district to deny a school choice transfer despite remaining within acceptable student-to-teacher ratios under section 1-2.02, that no longer applies now that Act 790 of 2023 only allows a denial of a transfer when the receiving district is at capacity, which is defined as the maximum student-to-teacher ratio. See Ark. Code Ann. §6-18-1903(c).

Aaron M. Randolph, Cabot School District, Assistant Superintendent, 4/15/2024

Comments: [2-3.04] –Section 2-3.04 (p. 8) states that applications must be accepted or rejected within 15 calendar days of the receipt of the application. Because a student could apply on January 1 and districts have not been bound to answer until July 1, this may impose a hardship on districts who may not yet be aware of their capacity status for the following school year.

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Aaron M. Randolph, Cabot School District, Assistant Superintendent, 4/15/2024

Comments: [2-3.04.3] –Will families be required to disclose if they intend to enroll immediately (2-3.04.3.1, p. 9) or will delay until the beginning of the next school year (2-3.04.3.2, p. 9)? That could be a determining factor in whether a district is able to accept a student.

– Is there any middle ground between immediately and the next school year? If a student applies on January 2 and we notify the family of approval by January 17, could the family decide to enroll, for example, at the end of the 3rd nine weeks?

Division Response: Comment Considered, no changes made. The district may require the families to disclose when they will shift the student’s attendance if this would allow the transfer to be accepted. While the current language does not explicitly address this question, the two schools and the families could, by mutual agreement, shift the student’s attendance at a prearranged time period such as a quarterly break.

Aaron M. Randolph, Cabot School District, Assistant Superintendent, 4/15/2024

Comments: It seems that there are several options that allow for students to attend a nonresident district with overlapping timelines and rules for each. Families now have the option of public school choice, opportunity school choice, military school choice, legal transfer, and adjoining district transfer. To streamline the process for efficiency, if there really is no ability for a receiving district to deny a petition for legal transfer, it might be better for both families and district to have (1) only legal transfers or (2) a full year school choice window.

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Rachael Vaughn, Marion School District, Dir. Of HR / Legal Affairs, 4/15/2024

Comments: [1-2.02 and 2-1.03] 1-2.02 and 2-1.03 do not address SPED educators at maximum capacity - can you deny the application of a student with an IEP in that situation? Is SPED one of the "programs" whose capacity can be included as a reason for rejection under 2-1.04.1?

Division Response: Comment Considered, no changes made. A district cannot reject a student simply because of an IEP. Federal and Arkansas law prohibit discrimination on the basis of “gender, national origin, race, ethnicity, religion, or disability.” Ark. Code Ann. § 6-18-1903(d)(3). If the district’s capacity to accommodate a student’s disability is the sole reason for a district’s denial of a school choice application, such a denial would violate Ark. Code Ann. § 6-18-1903(d)(3).

Commenter Name: Rachael Vaughn, Marion School District, Dir. Of HR / Legal Affairs,
4/15/2024

Comments: [2-1.04.2] 2-1.04.2 strides the 90% rule and refers to the "maximum student-to-teacher ration allowed" under law. Does that track with state law? Please see ACA 6-18-1903(d)(2)(B). Also, certain classes as the secondary level may be at the Maximum ration allowed, while other are not. Can we deny the application if at least one class is at the maximum ration allowed?

Division Response: **Comment Considered, no changes made. While the old language referenced in the comment is still in code at Ark. Code Ann. §6-18-1903(d)(2)(B) this language is directly in irreconcilably contradicted by Ark. Code Ann. §6-18-1903(c)(2) which was enacted by Act 790 of 2023.**

Commenter Name: Rachael Vaughn, Marion School District, Dir. Of HR / Legal Affairs,
4/15/2024

Comments: [2.3.04.3.1] 2.3.04.3.1 allows the student to transfer IMMEDIATLEY. That can cause difficulty for school districts. Is the district forced to deny the application if it is at the maximum ration currently, but might otherwise have room the next school year?

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Rachael Vaughn, Marion School District, Dir. Of HR / Legal Affairs,
4/15/2024

Comments: [2-3.04] 2-3.04 strikes the July 1 deadline for notifying parents and requires notification of each within 15 days of receipt of the application. Does that track with state law? Please see ACA 6-18-1905(e)(1) and (3). Also ACA 6-18-1905(f)(1). These sections are very confusing and seem to conflict.

Division Response: **Comment Considered, no changes made. While the old language referencing the July 1 deadline is still in code at Ark. Code Ann. §6-18-1905(e)(3) this language is directly in irreconcilably contradicted by Ark. Code Ann. §6-18-1905(f) which**

was enacted by Act 790 of 2023. Consequently, the 15-day deadline is the controlling provision of law.

Commenter Name: Charlsie Wisdom, Farmington School District, Teacher, 4/14/2024

Comments: [1-2.02 (definitions) 2-1.03] Please clarify if a school district will be able to deny a school choice application for a student with an IEP if the District is at capacity and has a maximum caseload for special educators and caseloads.

Division Response: **Comment Considered, no changes made. A district cannot reject a student simply because of an IEP. Federal and Arkansas law prohibit discrimination on the basis of “gender, national origin, race, ethnicity, religion, or disability.” Ark. Code Ann. § 6-18-1903(d)(3). If the district’s capacity to accommodate a student’s disability is the sole reason for a district’s denial of a school choice application, such a denial would violate Ark. Code Ann. § 6-18-1903(d)(3).**

Commenter Name: Charlsie Wisdom, Farmington School District, Teacher, 4/14/2024

Comments: [2-1.04.2] How will school districts with high numbers accept all school choice students and plan for student growth during that current school year? If the 90% cap rule is removed, how will districts/schools have/provide adequate facilities when they are already at capacity? Will additional funding be allocated for growth in these districts?

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Charlsie Wisdom, Farmington School District, Teacher, 4/14/2024

Comments: [2-3.04] Clarify or elaborate how non-resident districts must notify applicates within 15 days when staffing for the next calendar year is not complete? Based on current grade level and classroom standards, many applicates would be denied because of the non-resident school currently being at capacity.

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Charlsie Wisdom, Farmington School District, Teacher, 4/14/2024

Comments: [2-3.04.3] Clarify if students can transfer immediately. And if so, why is there a provision that application can not be postmarked or delivered earlier than January 1 and no later than May 1 of the year the students seeks to begin the fall semesters.

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Kimberly Starr, Fort Smith Public Schools, Dir. Of Elementary Education, 4/11/2024

Comments: [2-3.01.3] The school choice application window is between January 1 - May 1; however, 2-3.04 states that a nonresident school district must notify the applicate in writing as to whether the application has been accepted or rejected within 15 calendar days of receipt of the application. However, Ark. Code Ann. 6-18-1905(e)(2) states that if the application is accepted, the nonresident school district shall state in its notification letter a reasonable deadline by which the student shall enroll in the nonresident district and after which the acceptance notification is null. None of these codes are found in the rules. The law and draft rules allow an approved transfer to be effective immediately or at the beginning of the following school year at the choice of the student. This rule can cause problems for school district to plan for staffing needs. What if there is no room at the school district for the current school?

Division Response: **Comment Considered, no changes made. While the old language referenced in the comment is still in code at Ark. Code Ann. §6-18-1905(e)(3) this language is directly in irreconcilably contradicted by Ark. Code Ann. §6-18-1905(f) which was enacted by Act 790 of 2023.**

Commenter Name: Jeff Mock, Harmony Gove High School, Principal, 4/10/2023

Comments: To the Members of the Arkansas State Board of Education,

I would like to extend to you some of my immediate concerns related to the proposed changes in rules governing public school choice in Arkansas. In general, the proposed changes to school choice appear to be total in nature and not just limited in scope. I have concerns that the changes suggested are an overreach of the authority provided to the state board of education and reach far beyond the intent of the legislature. This issue should be debated by the representatives of the

people in the legislature and not be determined by a non-elected board with limited debate and input by the people of Arkansas. This is an election year and the next legislative session is the best place for this issue to face consideration and debate.

The current proposal under consideration limit the denial of school choice to only the lack of capacity. Capacity is then defined as the “maximum student-to-teacher ratio allowed” under the law. This does not allow any consideration to older schools and facilities with smaller classroom sizes that will not allow for the maximum capacity of students under the law. This process would only place a greater burden on a district with limited facilities, personnel, and funding.

I strongly encourage the board to consider postponing this decision and allowing the state legislature to consider changes to the school choice law. The legislature is the best place for this debate and consideration.

I am available for questions and clarification. You can contact me at 870-574-0867 or mockj@hgsd1.com. Thank you for your time.

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Anne Martfeld, Pea Ridge School District, Assistant Superintendent, 4/8/2024

Comments: [1-2.02 & 2-1.03] 1-2.02 (definitions) and 2-1.03 - Does this mean that if state rules only allow a maximum caseload for special educators and caseloads are at capacity district-wide, you can deny a school choice application for a student with an IEP?

Division Response: Comment Considered, no changes made. A district cannot reject a student simply because of an IEP. Federal and Arkansas law prohibit discrimination on the basis of “gender, national origin, race, ethnicity, religion, or disability.” Ark. Code Ann. § 6-18-1903(d)(3). If the district’s capacity to accommodate a student’s disability is the sole reason for a district’s denial of a school choice application, such a denial would violate Ark. Code Ann. § 6-18-1903(d)(3).

Commenter Name: Anne Martfeld, Pea Ridge School District, Assistant Superintendent, 4/8/2024

Comments: [2-3.04.3] 2-3.04.3 - Does this mean students can transfer immediately? If so, why is there a provision that applications can not be postmarked or delivered earlier than January 1 and no later than May 1 of the year in which the student seeks to begin the fall semester?

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Anne Martfeld, Pea Ridge School District, Assistant Superintendent, 4/8/2024

Comments: [1-2.02 & 2-1.04.1] Section 1-2.202 states that a “lack of capacity” means a school district has reached the maximum student-to-teacher ratio allowed under law or rules. Section 2-1.04 states that a school district board of directors may adopt by resolution specific standards for acceptance or rejection of applications, and those standards may include the capacity of a program, class, grade level, or school building. Those two provisions apparently conflict.

Moreover, Ark. Code Ann. 6-18-1903(d)(2)(b), as currently codified in state law, states that a district may include a claim of lack of capacity by a school district only if the school district has reached at least 90% of the maximum authorized student population in a program, class, grade level or school building. Though that provision still appears in state law, it has been stricken from the rules. May school districts still rely upon this provision of law? If not, why not?

Finally, at the secondary level, a school district may have reached the maximum student/teacher ratios for some classes but not others. What is a school district to do then? Is it the position of DESE that a school district may not deny transfers based upon capacity of programs, grade levels or school buildings?

Division Response: Comment Considered, no changes made. While the old language referenced in the comment regarding a 90% threshold is still in code at Ark. Code Ann. §6-18-1903(d)(2)(B) this language is directly in irreconcilably contradicted by Ark. Code Ann. §6-18-1903(c)(2) which was enacted by Act 790 of 2023.

Commenter Name: Anne Martfeld, Pea Ridge School District, Assistant Superintendent, 4/8/2024

Comments: [2-3.01.3 & 2-3.04] Section 2-3.01.3 allows a school choice application window between January 1 - May 1. 2-3.04 states that a nonresident school district must notify the applicant in writing as to whether the application has been accepted or rejected within 15 calendar days of receipt of the application. However, Ark. Code Ann. 6-18-1905(e)(1) states that a nonresident school district has until July 1 to notify the applicant about whether a particular transfer has been accepted or rejected. Ark. Code Ann. 6-18-1905(e)(2) states that if the application is accepted, the nonresident school district shall state in its notification letter a reasonable deadline by which the student shall enroll in the nonresident district and after which the acceptance notification is null. However, neither of those provisions appear in the rules. In

fact, the provision in Ark. Code Ann. 6-18-1905(e)(2) is stricken from the rules even though it still appears in state law.

Those provisions are in conflict with Ark. Code Ann. 6-18-1905(f) as well as Sections 2-3.04 and 2-3.04.3.

Division Response: Comment Considered, no changes made. While the old language referenced in the comment is still in code at Ark. Code Ann. §6-18-1905(e)(3) this language is directly in irreconcilably contradicted by Ark. Code Ann. §6-18-1905(f) which was enacted by Act 790 of 2023.

Commenter Name: Anne Martfeld, Pea Ridge School District, Assistant Superintendent, 4/8/2024

Comments: [2-3.04] The law and draft rules allow an approved transfer to be effective immediately or at the beginning of the following school year at the choice of the student. This provision can cause extreme difficulty on school districts and their ability to plan for staffing needs. Additionally, a school district may not have room for the student during the current school year but may have room for the student the following year. How are school districts to navigate these issues?

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Julia Williams, Randall G. Lynch Middle School, Principal, 4/5/2024

Comments: [2-1.4.2] Our School district is growing rapidly. Many subdivisions still need to be completed, and we need to know the projections for the following year. It is wrong to be forced to receive school-choice students before our local students are accounted for. The time frame of notifying applicants within 15 days before staffing is complete needs to be revisited. Space can only be created with significant time allowed to apply and build. Why are we penalized for having a solid school system by looming overcrowding and a disproportionate number of students?

Division Response: Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.

Commenter Name: Jon Laffoon, Farmington School District, Superintendent, 4/4/2024

Comments: [2-1.04.2] Districts experiencing continuous growth may not have room for the growth of students moving into the district if the 90% cap rule is removed. How do districts that have high numbers of additional housing accept all school choice students and plan for student growth during the year? We are growing so fast that we would not have adequate facilities and should not approve any applications unless additional funding is allocated for growth districts.

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Jon Laffoon, Farmington School District, Superintendent, 4/4/2024

Comments: [2-3.04] How can non-resident districts notify applicants within 15 days before staffing for the next calendar year is complete? If we notify school choice applicates based on current grade level and classroom standards so quickly, many applications would be denied due to capacity.

Division Response: **Comment considered; no changes made. The comment presented raises policy concerns which are governed by statutory provisions. The rule cannot conflict with state law and therefore, the changes proposed in the comment would require a legislative change.**

Commenter Name: Lucas Harder, ARSBA, Attorney, 4/3/2024

Comments: [1-2.08] Due to additional definitions, the “and” should be removed from the end of this section.

Division Response: **Comment Considered, a non-substantive change was made.**

Commenter Name: Lucas Harder, ARSBA, Attorney, 4/3/2024

Comments: [1-2.09] Due to the additional definitions, the period at the end here should be changed to a semicolon.

Division Response: **Comment Considered, no change was made.**

Commenter Name: Lucas Harder, ARSBA, Attorney, 4/3/2024

Comments: [2-2.07] As this is under the Public School Choice Act rather than the Opportunity School Choice Act, the citation should be to 6-18-1904(f)(2)(A) instead of 6-18-227(m).

Division Response: **Comment Considered, a non-substantive change was made.**

Commenter Name: Lucas Harder, ARSBA, Attorney, 4/3/2024

Comments: [2-3.04.3] The proposed Rules are lacking language as how to handle a student who requests an immediate transfer but is found to be over the district's current capacity. Is the student automatically placed in the group of transfers for the next school year or would the student have to apply again and request the transfer for the next year? Additional language on how this kind of situation should be handled should be added.

Division Response: **Comment Considered, no changes made. If a district lacks capacity to accommodate a student under this rule the school will deny the transfer. Any student who is denied my request a school choice transfer at a later date or avail themselves of the legal transfer process under Ark. Code Ann. §6-18-316 if capacity becomes available in the future.**

Commenter Name: Lucas Harder, ARSBA, Attorney, 4/3/2024

Comments: [2-401.1] There appears to be a "shall" missing between "rules" and "proof."

Division Response: **Comment Considered, a non-substantive change was made.**

Commenter Name: Lucas Harder, ARSBA, Attorney, 4/3/2024

Comments: [3-2.04] This should be "Commissioner of Elementary and Secondary Education" instead of just "Education".

Division Response: **Comment Considered, a non-substantive change was made.**

Commenter Name: Lucas Harder, ARSBA, Attorney, 4/3/2024

Comments: [3-4.01] This should be changed to " a student who is eighteen (18) years or older" for consistency.

Division Response: **Comment Considered, a non-substantive change was made.**
