

July 28, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

Henry Johnson
Assistant Secretary
Office of Elementary and Secondary Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Assistant Secretary Johnson:

I am writing to obtain clarification on an issue related to public school choice under Title I, Part A and the local education agency's (LEA) obligation to pay transportation costs.

As you are aware, when a school has failed to make adequate yearly progress (AYP) for two consecutive years it is identified for improvement (school A). Once a Title I school is so identified, the enrolled students are eligible to transfer to another school, selected by the LEA. The LEA is responsible for paying the transportation costs necessary for students to attend their new schools, subject to certain limitations under section 1116(b)(10). 34 C.F.R. 200.44.

If an eligible student exercises the option to transfer from school A to another public school (school B) an LEA must permit the student to remain in that school until he or she has completed the highest grade in the school. *See* Public School Choice Non-Regulatory Guidance, Draft dated, February 6, 2004 Q&A: B-7. However, if the school of origin (school A) is no longer identified for school improvement, the LEA's obligation to pay for transportation to school B ceases. *Id.*

If a child's new school (school B) is subsequently identified for improvement, that child must be offered the choice of attending a third school (school C) that has not been so identified and offered the opportunity to receive transportation to this third school. (Q&A: B-8). Our question concerns the situation where the student elects to remain at school B, electing not to transfer to a third school. In our question the original school (school A) is still identified for improvement and now the second school (school B) is also identified for improvement.

In this context, we ask the following:

If a student, in accordance with Title I, Part A, has transferred to school B when school B is not identified for improvement and school B is subsequently identified for improvement, is the LEA, still responsible to pay that student's transportation costs if that student decides to remain at school B instead of transferring to a third school? Thus: School A is identified for improvement and is required to offer public school choice. The student chooses to attend school B, which is not identified for improvement. After two years, school B is identified for improvement and school A continues to be identified for improvement. The LEA offers the student the option to attend school C, which is not identified for improvement. The student chooses to stay in school B despite its identification. Under Title I, Part A, is the LEA required to continue paying for the student's transportation to school B? At the present there is no guidance or other definitive answer to this question.

I greatly appreciate your attention to this question. Thank you in advance for your prompt assistance.

Sincerely,

Leigh M. Manasevit

LMM/trw