

October 17, 2008

Kerri L. Briggs  
Assistant Secretary  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Dear Assistant Secretary Briggs:

I am writing to obtain clarification on the criterion used in terminating payment for a student's transportation under the public school choice requirements of Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act (Act). *See* Act § 1116(b)(13) and 34 C.F.R. § 200.44(i).

Pursuant to § 1116(b)(1)(E)(i) of the Act, when a school is "identified for improvement the local educational agency (LEA) shall, not later than the first day of the school year following such identification, provide all students enrolled in the school with the option to transfer to another school that has not been identified for school improvement." A school in need of improvement must provide all its students with "the option to transfer to another public school."

The law requires the LEA to "provide" or "pay for the provision of transportation for the student to the public school the student attends." The duty to pay for transportation is constrained, however, by the 20 percent choice/SES cap. In the event there is insufficient funding within that cap and the LEA chooses to spend no more than that amount, the LEA "shall give priority [for funding] to the lowest achieving children from low income families." § 1116(b)(1)(E)(ii) of the Act and 34 C.F.R. § 200.44(e)(1).

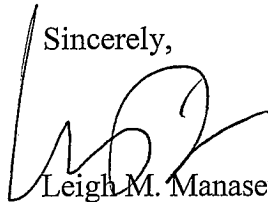
The LEA "shall permit a child who transferred to another school under this subsection to remain in that school until the child has completed the highest grade in that school." §§ 1116(b)(9) and (b)(13) of the Act and 34 C.F.R. §§ 200.44(i)(1) and (g)(1). The statute and regulations, however, are silent on whether an LEA can terminate its obligation to pay for a student's public school choice transportation because fewer funds are available than at the time the decision to transport was made.

Our question follows:

A student attends school (X) that is identified as a school in need of improvement and the student transfers to school (Y), which is not classified as a school in need of improvement and at no time becomes one. In order to attend school (Y), the LEA selected the student as eligible to have transportation paid under the above criteria. If the funds available to the LEA under the 20% set-aside for choice transportation and SES are reduced due to a reduction in Title I funds or if the LEA cannot provide as much transportation due to an increase in transportation costs, what factors may the LEA use to determine which, if any, student's public school choice transportation can be terminated?

Thank you for the opportunity to raise these questions. These are issues of compelling and immediate interest to many of our clients and your response will be greatly appreciated. Thank you in advance for your prompt assistance.

Sincerely,



Leigh M. Manasevit