

Involuntary Transfer of Students

A principal may initiate the transfer of a student who has not been determined to be a student with a disability or presumed to have a disability, from one school program or facility to another school program or facility where it is believed that the student would benefit from the transfer or when the student would receive an adequate and appropriate education in such program or facility. The principal may make a recommendation for transfer only after the student and his/her parent/guardian have been provided with written notification that a transfer recommendation is being considered. The notification must set forth a time and place for an informal conference with the principal and the right to be accompanied by counsel or another person of their choice. After the conference, if the principal concludes that the student would benefit from the transfer, the principal may recommend the transfer to the Superintendent, in writing, which must include:

- a description of the behavior and/or academic issues indicating the need for a transfer; and
- a description of the alternatives explored and prior action taken to resolve the problem.

A copy of the principal's recommendation letter must be sent to the student and his/her parent/guardian together with a letter notifying them of their right to a fair hearing on the issue of the involuntary transfer within 10 days of receipt, if they disagree with the principal's recommendation. The letter must also provide a list of community agencies and free legal assistance, if any, which may be of assistance to them. The proposed transfer will not take effect without parental consent until the 10 day period has elapsed or a decision has been rendered after a fair hearing, whichever is later.

If the parent/guardian requests a hearing, a notice of hearing describing the reasons for the proposed transfer shall be served upon the parent/guardian. The notice shall also contain provisions indicating that the student has the right to be represented by an attorney or lay counsel, to present witnesses and evidence on his/her behalf, to cross-examine witnesses and that a transcript of the hearing will be prepared (tape recording or stenographic record). The time, date and location of the hearing shall also be set forth in the notice. If the student is 18 years of age or older, the letter described above will be mailed to the student as well as his/her parent/guardian.

The hearing shall be conducted by the Superintendent or a designated Hearing Officer, who shall make findings of fact and a determination regarding the transfer. The Superintendent's determination may be appealed to the Board of Education within 10 days of receipt of the Superintendent's decision. The Board's determination may be appealed to the Commissioner of Education within 30 days of receipt of the Board's decision.