

DR. CADE BRUMLEY
STATE SUPERINTENDENT



CLAIBORNE BUILDING
1201 N 3RD ST.
BATON ROUGE, LA 70802

LOUISIANA DEPARTMENT OF EDUCATION

System Leaders,

Today, BESE President Holly Boffy issued a letter¹ attempting to promulgate, as an Emergency Rule, policy creating a graduation appeals process for students who fail to pass required LEAP 2025 assessments. While the letter claimed that the action would “prevent imminent peril to the welfare of students,” the BESE Code defines an emergency condition as proclaimed by the State Superintendent of Education (LAC 28:I.305) and clearly outlines the rulemaking process that BESE must follow (LAC 28:I.1303). As I have not proclaimed any such emergency, nor did the Board approve the Rule as a Declaration of Emergency, the BESE President’s action is improper and exceeds the authority of the BESE president.

I urge you to disregard this erroneous measure.² If followed, you and your school system risk potential litigation, and students face the possible revocation of diplomas.

I encourage you to confer with your legal counsel as appropriate. Further, do not hesitate in reaching out to me if you have any questions

Sincerely,

A handwritten signature in black ink that reads "Pent Carl Brumley". The signature is written in a cursive, flowing style.

State Superintendent of Education

¹ Appendix A

² Appendix B

DR. CADE BRUMLEY
STATE SUPERINTENDENT



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LOUISIANA DEPARTMENT OF EDUCATION

Appendix A



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION
P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064 · PHONE: 225-342-5840 · FAX: 225-342-5843

James Garvey
1st BESE District

Kira Orange Jones
2nd BESE District

Sandy Holloway
3rd BESE District

Michael Melerine
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5th BESE District

Ronnie Morris
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Holly Boffy
7th BESE District

Preston Castille
8th BESE District

Belinda Davis
Member-at-Large

Thomas Roque
Member-at-Large

Doris Voitier
Member-at-Large

November 29, 2023

The Honorable John Bel Edwards
Governor
State of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804-9004

RE: Declaration of Emergency
(LAC 28: CXV.717, 2321, and 2322)

Dear Governor Edwards:

Per the Louisiana Administrative Code, Title 28. Education, Part I. Board of Elementary and Secondary Education (BESE), §305.B, the President of the Board is authorized to make ad hoc decisions for the Board in times of emergency, when the Board is not in regular or special session, subject to ratification by the Board at the next scheduled meeting.

Pursuant to that authority, I, Board President Dr. Holly Boffy, have exercised the emergency provision, in accordance with R.S. 49:953(B), the Administrative Procedure Act, and R.S. 17.6 to amend Bulletin 741, *The Louisiana Handbook for School Administrators* (LAC 28: CXV.717, 2321, and 2322) in order to prevent imminent peril to the welfare of students, as outlined in Administrative Procedure Act, R.S.49:962. Emergency Rulemaking.

The aforementioned revisions create an appeals process for graduation. This appeals process creates a rigorous evaluation method in which during senior year, a student who fails to achieve a "passing" score on the End-of-Course exam in a testing pair may demonstrate proficiency using a portfolio. All students will still be required to take all state assessments. This change will allow for an appeals process for graduation only. This Declaration of Emergency, effective November 29, 2023, is for a period of 180 days from adoption, or until finally adopted as Rule.

Shan N. Davis
Executive Director

Cade Brumley
State Superintendent

Sincerely,

Dr. Holly Boffy
President

HB:at

c: Jeff Landry, Attorney General
Clay Schexnayder, Speaker of the House
Patrick P. Cortez, Senate President
Jeff Truax, Director, Office of the State Register
Dr. Cade Brumley, State Superintendent of Education
Shan Davis, BESE Executive Director

Enclosure (1)

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Graduation Appeals Process (LAC 28: CXV.717, 2321, and 2322)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education proposes to amend LAC 28: CXV in Bulletin 741—*Louisiana Handbook for School Administrators*. The proposed revisions create an appeals process for graduation. This appeals process creates a rigorous evaluation method in which in a student's senior year, a student, who fails to achieve a "passing" score on the end-of-course exam in a testing pair may demonstrate proficiency using a portfolio. All students will still be required to take all state assessments. The change will be to allow for an appeals process for purposes of graduation only.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 7. Records and Reports

§717. Reports of High School Credit

A. – A.3.

...

B. Reporting and Review for state diplomas issued on appeal.

1. No later than October 1 annually, LEAs shall submit the following graduation data by school site via the Student Transcript System (STS). The LDOE will compile and submit a report to BESE annually in December, which will include the following:

- a. the total number of students issued a diploma;
- b. the number of students issued a diploma via an appeal of the assessment requirement granted via SBLC;
- c. the number of students considered by an SBLC for appeal of the assessment requirement;
- d. the number of students in the graduation cohort who did not earn a diploma by August 31 of that year;

and

e. an example of 3 exemplary portfolios that may be used by the department as examples for LEAs and school sites.

2. At the January 2026 BESE meeting the LDOE shall submit a report to BESE, detailing data for the initial two school years of implementation regarding appeals to the assessment requirements for the purposes of graduation eligibility. The report shall serve as a reference for BESE to use in determining if policy revisions are necessary. The LDE will report to BESE annually thereafter and will include the following:

a. the percentage of college enrollment after high school exit of all graduating students, students issued a diploma via the graduation appeals process, and non-graduates in each respective graduation cohort;

b. to the extent that data is available, the percentage of employment after high school exit of all graduating students, students issued a diploma via the graduation appeals process, and non-graduates in each respective graduation cohort; and

c. the number of IBCs earned by type of all graduating students, students issued a diploma via the graduation appeals process, and non-graduates in each respective graduation cohort.

C. Auditing of diplomas issued on appeal.

1. In the event the number of students, issued a diploma via an appeal, exceeds three percent of the respective graduation cohort of a school site, the governing LEA shall submit additional data to LDOE to be included in the BESE annual report. At a minimum, the additional data shall include Subgroup population information as follows for each school site which exceeds the three-percent threshold:

- a. African American;
- b. American Indian/Alaskan Native;
- c. Asian;
- d. Hispanic;
- e. white;
- f. two or more races;
- g. economically disadvantaged;
- h. immigrants;
- i. English learners;
- j. students with disabilities;
- k. students with 504 plans;
- l. homeless students;
- m. military-affiliated students; and

n. Foster care students.

2. After an initial audit regarding the three percent threshold, a school, serving a unique population and in compliance with appeals eligibility requirements, shall be exempt from consecutive audits

3. If the initial audit yields discrepancies in the implementation of the appeals process, the State Superintendent of Education, may be the final authorizer for the respective school site the following year.

D. Random Sampling for Appeals Audits.

1. For the students described in Subsection C, the LDOE may audit a random sampling of the full appeals packets brought to SBLC team to include the following:

- a. an appeals cover page which attests completion of appeal requirements and signatures of the SBLC team in which the appeal was granted;
- b. evidence of intervention required by *Bulletin 741, §2321*, Subsection E;
- c. evidence of content proficiency through the state assessment requirement or portfolio submission;
- d. evidence of employability; and/or
- e. any additional documentation requested by the LDOE for the respective students.

E. Prior to the date of graduation or options program completion, the LDOE shall have the authority to determine the issuance of a diploma or an options program skill certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(11).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1270 (June 2005), amended LR 39:2204 (August 2013), LR 49:

Chapter 23. Curriculum and Instruction

Subchapter A. Standards and Curricula

§2321. Appeals Eligibility and Requirements

A. – B.3.d. Repealed.

A. Beginning with the 2023-2024 school year, if a student has not met state-established benchmarks in both assessments within any of the prescribed categories in *Bulletin 741, §2318 Part A*, the SBLC team may determine if the student is able to appeal the assessment requirements for the purposes of graduation eligibility.

B. Students who appeal the assessment requirement for graduation eligibility, shall be afforded the same opportunities to pursue a standard diploma to exit high school with all course credits, honors, and financial awards as other students. A student is not guaranteed a diploma and shall meet either the standard requirements for graduation or, using the process outlined in subsection D of this Chapter, appeal to the respective School Building Level Committee (SBLC) team to be awarded a diploma.

C. Pursuant to the Elementary and Secondary Education Act (ESEA), the state academic content standards shall apply to all public schools and public school students in the state and include the same knowledge and skills expected of all students and the same level of achievement expected of all students, with the exception of students with the most significant cognitive disabilities who may access alternate academic achievement standards and achievement levels. Only diplomas earned by students who have pursued the regular academic state standards and who have earned all state-required Carnegie credits shall be considered regular diplomas in the state and district accountability system, pursuant to federal laws and regulations.

D. Appeals Eligibility.

1. Students are eligible for an appeal to the assessment requirement no earlier than senior year and shall fulfill the following criteria:

a. earn all Carnegie Units required for either the TOPS University Diploma or Career Diploma, as prescribed in *Bulletin 741, §2318 and §2319*; and

b. fulfill at least one of the following conditions to demonstrate evidence of employability:

i. demonstrate workforce readiness by a score of Silver or higher on ACT WorkKeys;

ii. eligibility for the TOPS Tech Award; or

iii. demonstrate mastery of specific employability skills by earning a graduation-qualifying, Industry-Based Credential (IBC), outlined in *Bulletin 741, §2319*, regardless of the diploma pathway that the student is pursuing.

c. fulfill at least one of the following conditions to demonstrate evidence of content proficiency:

i. fulfill the standard assessment requirement for the assessment pairs prescribed in *Bulletin 741, §2318, Subsection A*, or

ii. For the freshman cohort entering 2022-2023 and beyond, complete a portfolio of work that meets the content proficiency requirement, as measured by the LDOE standardized rubric, for both LEAP 2025 courses in the assessment pairs in which the standard assessment requirement was not fulfilled.

iii. For students entering the freshmen cohort prior to 2022-2023, the portfolio requirement may be satisfied by completing a portfolio aligned to one course in each corresponding LEAP 2025 assessment pair that was not fulfilled by the standard assessment requirement.

2. Pursuant to *Bulletin 741, §707*, for a transfer student transferring into a Louisiana public school district from an out-of-state school, nonpublic school, or approved home study program, proficiency shall be demonstrated via successful completion of coursework and the issuance of Carnegie credit. A transfer student is not required to

take the LEAP 2025 assessment in the courses that were transferred and accepted as Carnegie credit. For the purposes of appeals eligibility, a portfolio of work need not be completed for coursework fulfilled for transferred Carnegie credit.

E. Monitoring Progress and Responsibilities for Appeals Eligibility.

1. The SBLC shall monitor the progress of each student, who has not met a least one assessment requirement for graduation. The SBLC shall ensure that the student:

a. receives appropriate academic supports in any and all subjects for which the standard assessment requirement was not achieved. Additionally, each individual student graduation plan shall outline all academic supports provided. Progress, pursuant to such specified academic supports, shall be reviewed at least once throughout the school year in order to determine needed adjustments as well as effectiveness;

b. completes 30 hours of required remedial or co-requisite instruction for the LEAP 2025 exam in which the standard assessment requirement was not achieved, per *Bulletin 741*, §2318 and §2319;

c. is provided dropout prevention and mentoring services, based on proven strategies to retain and graduate at-risk students. The LDOE shall make available to LEAs, a list of strategies, as well as technical assistance needed to offer students such services; and

d. is scheduled for a meeting in order to determine eligibility for local career support with a representative from a Workforce Innovation Opportunities Act Provider, Vocational Rehabilitation Services Provider, or other local career support agency and its affiliated providers.

F. Appeals Consideration.

1. The SBLC shall review and consider individual student appeals for any student, who meets the appeal requirements, as outlined in Subsection D. Additionally, the SBLC may consider the following in determining an appeal decision:

a. the course grade awarded for the course which the student did not attain the standard assessment requirement for graduation on the LEAP 2025;

b. the score achieved on each LEAP 2025 assessment for which the student did not attain the standard assessment requirement for graduation;

c. the score achieved on the ACT, ACT WorkKeys, and, if applicable, TOPS or TOPS Tech scholarship eligibility;

d. the rigor of secondary coursework, including, successful completion of honors courses, Advanced Placement courses, IAB, and/or dual enrollment courses;

e. completion of a sequence of courses for an IBC within the Career Diploma;

f. the strength of an attained IBC in alignment with definitions outlined in *Bulletin 111*, §709;

g. overall preparedness for postsecondary success, including letters or certificates of acceptance to post-secondary institutions; and

h. any other academic information designated for consideration by the LEA for appeal consideration by the SBLC.

G. For students meeting the requirements outlined in Subsection D, the SBLC may determine that the student is eligible to graduate, subject to final approval of the Local Education Agency (LEA) head. A student who appeals the assessment requirement for graduation may graduate and receive a high school diploma on the basis of the committee decision by majority and the LEA head. This subsection does not create a property interest in graduation. The decision of the SBLC and LEA head is final and may not be appealed. Should an SBLC and LEA head not recommend a student for graduation eligibility by appeal, a student may only graduate through standard assessment requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, R.S. 17:183.2, and R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), repromulgated LR 41:1483 (August 2015), LR 49:

§2322. Senior Projects

[Formerly §2321]

A. A senior project is a focused rigorous independent learning experience completed during the student's year of projected graduation from high school.

B. Each LEA allowing students to complete a senior project in partial fulfillment of the requirements for an academic endorsement shall develop local policy for senior projects that includes these requirements.

1. Each student must choose a challenging topic of interest approved by their parents or guardians and the school-level senior project committee.

2. Each student must have a senior project mentor.

3. Students must successfully complete the four components listed below with a score of satisfactory or higher on each component. The components will be evaluated locally using rubrics provided by the LDOE:

a. research paper of 8 to 10 pages on an approved topic of the student's choice;

b. product or service related to the research requiring at least 20 hours of work;

c. portfolio that documents and reflects the senior project process; and

d. presentation to a panel of three to five adults from the community and school.

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COMPARISON DOCUMENT

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:240 (February 2006), repromulgated LR 41:1483 (August 2015), LR 49:

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, R.S. 17:183.2, and R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:

Holly Boffy
President

November 29, 2023

DR. CADE BRUMLEY
STATE SUPERINTENDENT



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1201 N 3RD ST.
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LOUISIANA DEPARTMENT OF EDUCATION

Appendix B

DR. CADE BRUMLEY
STATE SUPERINTENDENT



CLAIBORNE BUILDING
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BATON ROUGE, LA 70802

LOUISIANA DEPARTMENT OF EDUCATION

Governor Edwards,

Today, BESE President Holly Boffy issued a letter to you.¹ I am notifying you that her improper action exceeds her authority as BESE President. I am providing applicable BESE policy to explain my rationale, and I am further advising school systems to disregard her measure.

In the letter, the BESE President claims her action will “prevent imminent peril to the welfare of students.” She also claimed authority based on the emergency rulemaking authority of agencies as outlined in R.S. 49:962 and the ability of the BESE President to make ad hoc decisions for the board as outlined in BESE code contained in LAC 28:I.305.

BESE code² clearly defines steps to be taken when emergency authority is invoked. The policy defines an emergency condition “as proclaimed by the state superintendent of education.”³ The BESE President “may make a decision on behalf of the board, upon the receipt of a written memorandum from the state superintendent or his/her designee, setting forth the request for action.” As neither I, nor any designee of mine, have made such proclamation or memorandum of emergency, ad hoc authority cannot be claimed as the basis for the above declaration. This is quite clear.

Further, the BESE process for rulemaking is clearly defined in LAC 28:I.1303, with no authority for emergency rulemaking given to the BESE President to act on behalf of the board. Her erroneous action not only creates chaos and confusion; further, it places educators and school systems at risk of liability.

Please reach out with any questions.

Sincerely,

State Superintendent of Education

CC: Jeff Landry, Attorney General
Clay Schexnayder, Speaker of the House
Patrick P. Cortez, Senate President
Jeff Truax, Director, Office of the State Register
BESE Members

¹ See attached.

² LAC 28:I.305.

³ See also LAC 28:I.305.B.1 and 2.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 3; R.S. 17:1; and R.S. 17:2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:409 (March 2008).

§305. Election of Officers and Their Duties

A. The board shall elect a president, a vice-president, and a secretary-treasurer from its membership whose terms of office are fixed by the board, not to exceed one year. These officers shall assume their duties at the board meeting immediately following their election.

B. The president shall conduct board meetings and perform duties designated by the board or by statute. The president shall appoint members of committees of the board. The president shall sign, on behalf of the board, contracts, agreements, and/or official documents approved by the board. The president is authorized to make ad hoc decisions for the board in emergency situations when the board is not in regular or special session and where policies and statutes are silent. However, excluding emergency contract approval outlined in §1103.C.5 of this Part, any such decisions that constitute an obligation, official position, or action of the board are subject to ratification by the board at the next scheduled meeting.

1. An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as proclaimed by the state superintendent. The existence of such condition creates an immediate and serious need for action by the board that cannot be met through normal board procedures and the lack of which would seriously threaten:

- a. the functioning of Louisiana government;
- b. the preservation or protection of property; or
- c. the health or safety of any person.

2. In the event there is an emergency situation, as defined in applicable law and BESE policy, or when the board is not in regular or special session, the president, upon signature, may make a decision on behalf of the board, upon the receipt of a written memorandum from the state superintendent or his/her designee, setting forth the request for action.

a. The state superintendent or his/her designee shall forward the request to the BESE executive director to include the following:

- i. the reason for the request;
 - ii. a description of the services to be provided;
- and
- iii. any necessary backup documentation to support the request.

b. The emergency decision shall be communicated electronically by the executive director, to the extent possible, including all of the aforementioned information, to all board members within 24 hours of action, as well as presented at its next meeting for ratification.

C. The vice-president shall preside at board meetings in the absence of or at the request of the president and shall perform any other duties specifically assigned by the board and any other such duties as requested by the president.

D. The secretary-treasurer shall preside at board meetings in the absence of both the president and the vice-president and shall perform any other duties specifically assigned by the board and any other duties as requested by the president.

E. The state superintendent shall serve as ex officio secretary of the board. As ex officio secretary, he/she shall have powers and functions assigned by the board, among which shall be the authority with the president of the board, to authenticate and verify official documents of the board and to submit agenda items for consideration by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3 and R.S. 17:22.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:409 (March 2008), amended LR 38:3149 (December 2012), LR 39:3262 (December 2013), LR 48:2558 (October 2022), LR 49:241 (February 2023).

§307. General Powers and Duties

A. The board exercises its supervision and control over the public elementary and secondary schools under its jurisdiction, and exercises its budgetary responsibility for all funds appropriated or allocated by the state for public elementary, and secondary schools placed under its jurisdiction, through general powers and duties that shall include, but not be limited to, the following:

1. adopt a minimum foundation program and adopt a formula for the equitable allocation of minimum foundation funds to city, parish, or other local public school systems. The board shall adopt such program and formula for each ensuing fiscal year in a timely manner so that the program and formula may be submitted to the Joint Legislative Committee on the Budget in accordance with R.S. 17:22(2)(d);

2. exercise budgetary responsibility and allocate for expenditure by the schools and programs under its jurisdiction all monies appropriated or otherwise made available for purposes of the board and of such schools and programs;

3. supervise, manage, and operate or provide for the supervision, management, and operation of a public elementary or secondary school which has been determined to be failing, including the power to receive, control, and expend state funds appropriated and allocated pursuant to La. Const. Art. VIII, Sec. 13(B), any local contribution required by La. Const. Art. VIII, Sec. 13, and any other local revenue available to a school board with responsibility for a school determined to be failing in amounts that are calculated based on the number of students in attendance in such a school, all in the manner provided by and in accordance with law;

a. Low income and English language learner student count, also referred to as economically disadvantaged, shall be determined by the number of students with the following characteristics:

- i. is eligible for Louisiana's food assistance program for low-income families;
- ii. is eligible for Louisiana's disaster food assistance program;
- iii. is eligible for Louisiana's program for assistance to needy families with children to assist parents in becoming self-sufficient;
- iv. is eligible for Louisiana's healthcare program for families and individuals with limited financial resources;
- v. is eligible for reduced price meals based on the latest available data;
- vi. is an English language learner;
- vii. is identified as homeless or migrant pursuant to the McKinney-Vento Homeless Children and Youth Assistance Act and the Migrant Education Program within the Elementary and Secondary Education Act;
- viii. is incarcerated with the Office of Juvenile Justice or in an adult facility;
- ix. has been placed into custody of the state.

b. Career and technical education unit count shall be determined by the number of secondary career and technical education courses per student as reported by the school districts through the Louisiana education accountability data system (LEADS) for the prior year.

c. Special education—other exceptionalities student count shall be determined by the number of special education students identified as having “other exceptionalities” in the special education reporting (SER) database as of the student count date(s) including:

- i. infants and toddlers ages 0-2, who have a current individual family service plan (IFSP) and are currently receiving services; and
- ii. both public and nonpublic special education students ages 3-21 identified as having a disability, as defined by R.S. 17:1943, who have a current individual education plan (IEP) and are currently receiving services from any local public school system or school. (Students serviced by SSD #1 and certain correctional facilities are excluded.)

d. Special education—gifted and talented student count shall be determined by the number of special education students in the SER database as of the student count date(s), which includes both public and nonpublic special education students ages 3-21, identified as gifted and talented, as defined by R.S. 17:1943, who have a current IEP and are currently receiving services from any local public school system or school.

e. Economy of scale student count shall be determined by the number of students in the base student membership count as defined in LAC 28:I.1107.C.1.

AUTHORITY NOTE: Promulgated in accordance with Art. VIII §13 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:425 (March 2008), amended LR 37:1142 (April 2011), LR 37:3219 (November 2011), LR 38:1404 (June, 2012), LR 38:3155 (December 2012), LR 39:3266 (December 2013), LR 44:744 (April 2018).

§1109. Expenditure of Public Education Monies

A. All public education funds, in particular all state and federal monies, shall be allocated and expended in compliance with applicable federal and state laws, regulations, and policies. Any public employee of the board office who knowingly recommends or authorizes contract awards and/or expenditure of funds in violation of federal and state laws and/or BESE regulations or policies shall be subject to disciplinary action, including dismissal from employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:426 (March 2008), amended LR 39:3267 (December 2013).

Chapter 13. Regulatory Documents

Subchapter A. Regulatory Documents

§1301. Bulletins

A. All regulatory policies and procedures adopted in response to state statutory requirements, most noticeably Louisiana Revised Statutes, Title 17, are contained in bulletins. Regulatory policies and procedures must be adopted by BESE as Rules through the rulemaking process set forth in Louisiana Administrative Procedure Act (APA). Once adopted, rules have the force and effect of law. The *Louisiana Register* requires that rules be codified, adhering to a prescribed uniform system of indexing, numbering, arrangement of text, and citation of authority and historical notes. APA requirements include an advertisement and comment period, as well as oversight procedures for the legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:426 (March 2008).

§1303. Rulemaking

A. *Rule*—each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. *Rule* includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and

the criteria or qualifications for licensure or certification by an agency. A *rule* may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

B. All rules adopted by the board must be adopted in accordance with the Louisiana Administrative Procedure Act (APA).

C. The following process must be followed for adoption of a new policy, the amendment of an existing policy, or the repeal of an existing policy.

1. The board approves a proposed Rule to be advertised as a Notice of Intent. The Notice of Intent approval will serve as authorization for the BESE executive director to submit the Notice of Intent to the Division of Administration's Office of the State Register to be published in the *Louisiana Register* for final adoption as a Rule at the expiration of the required 90-day advertisement period, if no public comments are received relevant to said Notice of Intent. If comments are received regarding the Notice of Intent, the comments will be considered by the board prior to final adoption as a Rule (refer to Subparagraphs 2.e-2.f.ii of this Subsection).

2. Following approval of a proposed Rule to be advertised as a Notice of Intent:

a. the appropriate LDE/BESE staff is requested to submit proposed policy language, a Family Impact Statement, a Poverty Impact Statement, a Small Business Analysis, a Provider Impact Statement, a Public Comments paragraph, a Public Hearing paragraph (if applicable), a Fiscal and Economic Impact Statement (FEIS), and comparison language to the board recorder for processing;

b. These documents are submitted to the Legislative Fiscal Office (LFO) for approval.

c. after the FEIS is approved by the LFO, the board recorder prepares the Notice of Intent in compliance with statutory specifications and submits it to the *Office of the State Register* for publication in the *Louisiana Register*. A report regarding the Rule is also submitted to the appropriate legislative committees;

d. Upon publication of the Notice of Intent in the *Louisiana Register*, a period of 90 days must elapse before the Notice of Intent can be adopted as a final Rule.

e. Any public comments received during the comment period are forwarded to the LDE/board office, to the appropriate BESE committee, and to the appropriate legislative committees for consideration.

f. In the event that substantive changes are made to the Notice of Intent as a result of the public comments received, the board can choose to:

i. approve for final adoption only those Sections that will not be changed as a result of the public comments

and re-advertise as Notice of Intent only those Sections requiring substantive change; or

ii. not approve the Notice of Intent for final adoption, and begin the entire process anew.

3. The deadline for submission of information for publication in the *Louisiana Register* is the tenth of the month unless the tenth falls on a weekend or holiday, in which case the deadline will be the last business day prior to the tenth of the month.

D. Due to the board meeting schedule, the FEIS approval process, and the *Louisiana Register* deadlines, the entire process takes a minimum of five months to complete.

E. *Louisiana Administrative Code*, Title 28, Part Numbers XI, ad infinitum, have been reserved for board and LDE bulletins.

F. Codified board policies are posted on the Office of the State Register's website and are also accessible through links on the BESE website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:426 (March 2008), amended LR 37:3220 (November 2011), LR 38:3156 (December 2012), LR 39:3267 (December 2013), LR 44:745 (April 2018), LR 44:1996 (November 2018).

§1305. Amendments

A. Rules may be amended by an affirmative vote of six BESE members at any regular meeting of the board or at any special meeting where the proposed amendment is included on the agenda. The text of any proposed amendment shall be submitted, in writing, to the board and received by its members at least 10 days prior to the meeting at which action is to be taken.

B. The adoption of amendments to rules must follow the procedures outlined in §1303.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:427 (March 2008).

§1307. Federal Eligibility Documents

A. State plans, consolidated state applications, and/or other eligibility documents are state policies and procedures adopted in accordance with federal regulations and/or administrative procedures for the operation of a specific federal program. Such policies and procedures are promulgated in accordance with all federal administrative laws and/or procedures. Examples of federal laws requiring state plans and/or eligibility documents are: Elementary and Secondary Education Act, Individuals with Disabilities Act, and the Adult Education Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:427 (March 2008).