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LOUISIANA DEPARTMENT OF EDUCATION

Governor Edwards,

Today, BESE President Holly Boffy issued a letter to you.<sup>1</sup> 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 code<sup>2</sup> 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.”<sup>3</sup> 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,

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

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

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<sup>1</sup> See attached.

<sup>2</sup> LAC 28:I.305.

<sup>3</sup> 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).