

**I. EXECUTIVE ORDERS**

MJF 97-22—Bond Allocation—Lafayette Economic Development Authority ..... 640

MJF 97-23—Mineral Board Signature Authorization ..... 640

MJF 97-24—Bond Allocation—East Baton Rouge Mortgage Finance Authority ..... 641

MJF 97-25—Bond Allocation—New Orleans Home Mortgage Authority ..... 641

**II. EMERGENCY RULES**

**Agriculture and Forestry**

Office of Agricultural and Environmental Sciences, Division of Pesticides and Environmental Programs—Registration of Pesticides; Certification of Commercial Applicators; Licensing of Owner-Operators; Restrictions on Applications in Schools (LAC 7:XXIII.13113) ..... 643

**Economic Development**

Boxing and Wrestling Commission—Deposits; Officials; Agents and Promotions (LAC 46:XI.Chapters 3 and 5) .. 644

**Education**

Board of Elementary and Secondary Education—Bulletin 1706—Exceptional Children ..... 645

Bulletin 1868—Personnel Manual (LAC 28:I.922) ..... 685

**Environmental Quality**

Office of Solid and Hazardous Waste, Solid Waste Division—Waste Tire Remediation Agreements (LAC 33:VII.10536)(SW023E2) ..... 686

Office of Water Resources—Produced Water Discharge Extension (LAC 33:IX.708)(WP023E-B1) ..... 686

**Health and Hospitals**

Office of the Secretary, Bureau of Health Services Financing—Case Management Services

Reimbursement—Infants and Toddlers with Special Needs ..... 690

Disproportionate Share Hospital Payment Methodology ..... 690

Nursing Homes—Emergency Preparedness Plan ..... 692

Portable X-Ray Crossover Claims ..... 693

**Natural Resources**

Office of the Secretary—State Lands—Reclamation (LAC 43:XXVII.Chapters 23 and 24) ..... 693

**Public Safety and Corrections**

Office of Motor Vehicles—Vehicle Registration License Tax (LAC 55:III.351-363) ..... 696

**Social Services**

Office of Rehabilitation Services—Vocational Rehabilitation Policy Manual (LAC 67:VII.101) ..... 699

**Treasury**

Board of Trustees of the State Employees Group Benefits Program—Administrative Policy—Retirees with Medicare ..... 700

Plan Document—Catastrophic Illness ..... 700

Plan Document—Point of Service PPO Regions ..... 700

Plan Document—Prescription Drug ..... 701

Plan Document—Sleep Disorders ..... 701

**III. RULES**

**Agriculture and Forestry**

Office of the Commissioner—Emergency Airstrip for Agricultural Purposes (LAC 7:I.107) ..... 703

**Civil Service**

Board of Ethics—Lobbyists Required Reporting (LAC 52:I.Chapter 17) ..... 704

**Economic Development**

Office of Financial Institutions—Depository Institution Records Retention (LAC 10:I.701 and LAC 10:III.111) .... 705

Fees and Assessments (LAC 10:I.201-205) ..... 706

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Racing Commission—Deposit for Expenses (LAC 35:V.8305)	707
Electric Battery Violation Penalties (LAC 35:I.1706)	708
Interstate Wagering (LAC 35:XIII.10379)	708
Method of Payments (LAC 35:XIII.10367)	709
Pari-Mutuel Pool (LAC 35:XIII.10365)	709
<b>Education</b>	
Board of Elementary and Secondary Education—Bulletin 741—Math Graduation Requirements	709
Bulletin 746—Ancillary Counselor for K-12 Certification	710
Student Financial Assistance Commission, Office of Student Financial Assistance—Scholarship and Grant Policy and Procedure Manual	711
Tuition Trust Authority, Office of Student Financial Assistance—Student Tuition Assistance and Revenue Trust (START Saving) Program (LAC 28:VI.Chapters 1 and 3)	711
<b>Environmental Quality</b>	
Office of Air Quality and Radiation Protection, Air Quality Division—Particulate Matter Standards (LAC 33:III.1311)(AQ148)	720
Revision to General Conformity (LAC 33:III.1405)(AQ152*)	720
Office of Solid and Hazardous Waste, Hazardous Waste Division—Treatment Facilities Exemption (LAC 33:V.105)(HW058*)	721
Solid Waste Division—Waste Tire Remediation Agreements (LAC 33:VII.10536)(SW023)	721
Office of Water Resources, Water Pollution Control Division—Louisiana Pollutant Discharge Elimination System (LPDES) Program (LAC 33:IX.Chapters 23-27)(WP020)	722
<b>Health and Hospitals</b>	
Board of Medical Examiners—Noncancer-Related Chronic or Intractable Pain Medications (LAC 46:XLV.6915-6923)	727
Office of Public Health—Orleans Parish Individual Sewage Sanitary Code—Childhood Immunizations for Day Care and School Entry (Chapter II)	728
Sanitary Code—Shellfish Tag Retention (Chapter XXIII)	729
Office of the Secretary, Bureau of Health Services Financing—Home and Community Based Services Waiver Program—Mentally Retarded/Developmentally Disabled	730
Medicaid Eligibility—Low-Income Families	731
Rehabilitation Services Reimbursement	731
Targeted Case Management Services and Reimbursement	732
Temporary Assistance for Needy Families (TANF) Work Requirements	745
Voter Registration Assistance	745
<b>Public Safety and Corrections</b>	
Gaming Control Board—Riverboat Gaming—Transfers of Interest in Licensees and Permittees; Loans and Restrictions (LAC 42:XIII.Chapter 25); Patron Disputes	746
<b>Social Services</b>	
Office of Family Support—Support Enforcement Services—Authority and Enforcement (LAC 67:III.Chapters 23, 25, and 27)	747
<b>Treasury</b>	
Housing Finance Agency—HOME Affordable Rental Housing (LAC 16:II.105)	749
<b>IV. NOTICES OF INTENT</b>	
<b>Agriculture and Forestry</b>	
Office of Agricultural and Environmental Sciences, Seed Commission—Seed Law (LAC 7:XIII.Chapter 87)	751
Structural Pest Control Commission—Termite Control (LAC 7:XXV.14135)	754
Office of Animal Health Services, Livestock Sanitary Board—Brucellosis and Pseudorabies Quarantining, Vaccinating and Testing of Swine (LAC 7:XXI.11776 and 11777)	755
Office of Marketing, Market Commission—Vegetables and Citrus Fruits (LAC 7:V.1715 and 1727)	757
<b>Economic Development</b>	
Board of Certified Public Accountants—Comprehensive Rule Revisions (LAC 46:XIX.Chapters 1-31)	759
Office of Financial Institutions—Capital Companies Tax Credit Program (LAC 10:XV.301-321)	776
<b>Education</b>	
Board of Elementary and Secondary Education—Bulletin 746—Driver/Traffic Safety Education	784
Board Advisory Councils (LAC 28:I.105)	784
<b>Environmental Quality</b>	
Office of Air Quality and Radiation Protection, Air Quality Division—Crude Oil and Condensate (LAC 33:III.2104)(AQ151)	785
Office of Solid and Hazardous Waste, Hazardous Waste Division—Financial Assurance and Cleanup (LAC 33:V.Chapters 1, 13, 19, 37, 43, and 49)(HW052)	787
Solid Waste Division—Municipal Solid Waste Landfills (LAC 33:VII.115 and 315)(SW025)	799
Office of Water Resources, Water Pollution Control Division—Louisiana Pollutant Discharge Elimination System (LPDES) Program (LAC 33:IX.2341, 2443, 2531, 2533, 2709 and Appendix N)(WP024*)	800
<b>Firefighters' Pension and Relief Fund</b>	
City of New Orleans and Vicinity—Domestic Relations Orders	803

<b>Governor's Office</b>	
Office of Elderly Affairs—State Plan on Aging (LAC 4:VII.1301-1323)	806
<b>Health and Hospitals</b>	
Board of Pharmacy—Education (LAC 46:LIII.701 and 737)	806
Licensure Renewal and Status (LAC 46:LIII.507)	807
Parenteral/Enteral Pharmacy (LAC 46:LIII.2107)	808
Pharmacy Practice (LAC 46:LIII.Chapters 9 and 11)	809
Pharmacy Technicians (LAC 46:LIII.Chapter 8 and §2535)	815
Board of Veterinary Medicine—Continuing Veterinary Education (LAC 46:LXXXV.403 and 405)	818
Office of the Secretary—Maternal and Child Health Block Grant Application, FY 1997-1998	819
Bureau of Health Services Financing—Adult Day Health Care	820
Home Health Services—Homebound Criteria	822
Hospital Program—Out-of-State Services	822
Medical Assistance Program—Nursing Facilities Vendor Payments (LAC 50:II.10146)	823
Reimbursement for Portable X-Ray Crossover Claims	826
Surveillance and Utilization Review Systems (SURS) (LAC 50:II.Chapter 41)	827
<b>Public Safety and Corrections</b>	
Gaming Control Board—Delivery of Documents, Petition for Agency Review of Rules (LAC 42:III.111 and 112); Video Poker (LAC 42:XI.2405, 2413, 2415); Riverboat Gaming—Standard Financial Statements (LAC 42:XIII.2709)	827
<b>Revenue and Taxation</b>	
Office of the Secretary—Electronic Filing Signature Alternatives (LAC 61:I.4905)	829
Severance Tax Division—Natural Resources Severance Tax Payout (LAC 61:I.2903)	830
<b>Social Services</b>	
Office of Family Support—Support Enforcement Services Recovery Action (LAC 67:III.2516)	831
<b>Wildlife and Fisheries</b>	
Office of Fisheries—Freshwater Mussel Harvest (LAC 76:VII.161)	831
<b>V. POTPOURRI</b>	
<b>Agriculture and Forestry</b>	
Office of Agricultural and Environmental Sciences, Horticulture Commission—Retail Floristry Examination	833
<b>Civil Service</b>	
Board of Ethics—Notice of Substantive Changes Hearing	833
<b>Environmental Quality</b>	
Office of Air Quality and Radiation Protection—Air Toxics; Ozone Standard Attainment; and Mobile Sources Reports	833
Clean Fuel Fleet Program—Delayed Implementation	833
<b>Health and Hospitals</b>	
Office of Public Health—Preventive Health Block Grant Hearing	334
<b>Natural Resources</b>	
Office of Conservation, Injection and Mining Division—Public Hearing—Oilfield Waste Facility	834
Public Hearing—Oilfield Waste Facility	834
Public Hearing—Oilfield Waste Facility	835
Public Hearing—Oilfield Waste Facility	835
Office of the Secretary—Agreement to Facilitate West Belle Pass Coastal Restoration Plan	836
<b>Transportation and Development</b>	
Louisiana Offshore Terminal Authority (LOTA)—License Renewal—Offshore Terminal Facility	837

# Executive Orders

## EXECUTIVE ORDER MJF 97-22

### Bond Allocation—Lafayette Economic Development Authority

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish (1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the Lafayette Economic Development Authority has requested an allocation from the 1997 Ceiling to be used in connection with the acquisition, construction, and installation of a manufacturing facility, the Loma Company LLC Project, in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$7,500,000	Lafayette Economic Development Authority	The Loma Company, LLC

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the state of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1997, provided that such bonds are delivered to the initial purchasers thereof on or before July 21, 1997.

SECTION 4: All references in this order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The

undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: This order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 21st day of May, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#015

## EXECUTIVE ORDER MJF 97-23

### Mineral Board Signature Authorization

WHEREAS: the State Mineral Board, created by Act 93 of the 1936 Regular Session and continued through R.S. 30:121 et seq., is authorized through R.S. 30:124 to lease for development and production of minerals, oil, and gas the lands belonging to the state of Louisiana and the lands to which title is held in the public, including road beds, water bottoms and lands adjudicated to the state at tax sale;

WHEREAS: pursuant to R.S. 30:129, the State Mineral Board has full supervision of all mineral leases granted by the State of Louisiana, and the general authority to take any action for the protection of the interests of the state, institute actions to annul a lease upon any legal ground, and enter into agreements and amend leases;

WHEREAS: R.S. 30:128 expressly prohibits and provides penalties for the transfer or assignment of any lease of minerals or mineral rights owned by the State of Louisiana without State Mineral Board approval; and

WHEREAS: prior to the creation of the State Mineral Board, certain state leases and other agreements pertaining to the development and production of mineral, oil and gas were executed on behalf of the State of Louisiana by the governor and, therefore, those leases and agreements contain language which require the signature of the governor prior to any transfer of interests therein;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As to those documents presented to the State Mineral Board, pursuant to R.S. 30:128, for approval of the right to transfer or assign a lease of minerals or mineral rights owned by the State of Louisiana which require the signature of the governor prior to any transfer of interests therein, and which the State Mineral Board has approved the transfer or assignment, the chair of the State Mineral Board is authorized and directed to sign the document on behalf of the governor.

SECTION 2: The provisions of this order are effective upon signature and shall remain in effect until amended, modified, terminated or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 29th day May, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#016

**EXECUTIVE ORDER MJF 97-24**

**Bond Allocation—East Baton Rouge  
Mortgage Finance Authority**

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish (1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the East Baton Rouge Mortgage Finance Authority has requested an allocation from the 1997 Ceiling to be used in connection with a program of financing mortgage loans for first time homebuyers throughout the Parish of East Baton Rouge in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$18,600,000	East Baton Rouge Mortgage Finance Authority	Single Family Mortgage Revenue Bond Program

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the state of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1997, provided that such bonds are delivered to the initial purchasers thereof on or before September 4, 1997.

SECTION 4: All references in this order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: This order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 6th day of June, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#090

**EXECUTIVE ORDER MJF 97-25**

**Bond Allocation—New Orleans  
Home Mortgage Authority**

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish (1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the New Orleans Home Mortgage Authority has requested an allocation from the 1997 Ceiling to be used in connection with a program of financing mortgage loans for first time homebuyers throughout the Parish of Orleans in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$15,664,475	New Orleans Home Mortgage Authority	Single Family Mortgage Revenue Bonds

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the state of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1997, provided that

such bonds are delivered to the initial purchasers thereof on or before September 4, 1997.

SECTION 4: All references in this order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: This order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 6th day of June, 1997.

M.J. "Mike" Foster, Jr.  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9706#091

# Emergency Rules

## DECLARATION OF EMERGENCY

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Division of Pesticides and Environmental Programs**

Registration of Pesticides; Certification of Commercial  
Applicators; Licensing of Owner-Operators; and  
Restrictions on Applications in Schools  
(LAC 7:XXIII.13113)

In accordance with the Administrative Procedure Act, R.S. 49:953(B) and R.S. 3:3203(A), the commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in adopting the following emergency rule for the implementation of regulations governing standard registrations of pesticides, certification of commercial applicators, licensing requirements of owner-operators, and special restrictions on pesticide applications in schools.

The commissioner has determined that an imminent peril to the public health, safety, or welfare of Louisiana citizens and school children, in particular, requires the implementation of emergency rules. These stringent regulations governing the qualifications required for pesticide registrations, certification of commercial applicators, licensing requirements of owner-operators, and special restrictions on pesticide applications in, on or around school buildings and grounds are necessary to protect individuals and the environment from illegal pesticides and to allow immediate response in the case of the improper or careless application of pesticides.

The effective date of these regulations is May 27, 1997. These regulations will remain in effect 120 days or until the final regulations take effect through the normal promulgation process, whichever occurs first.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXIII. Pesticides

#### Chapter 131. Louisiana Advisory Commission on Pesticides

##### Subchapter D. Registration of Pesticides

##### §13113. Standard Registrations

A. Application for registration shall consist of two types, namely initial registration and renewal registration. Initial registration application may be filed at any time of the year. Renewal registration application shall be filed by the first day of December each year. Application shall be made on forms or formats prescribed by the commissioner, or on forms or formats which have the prior, written approval of the commissioner.

1. Each application for the initial registration of a pesticide and for the re-registration of a pesticide for which

the label has been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. two complete copies of the labeling of the pesticide, containing:
  - i. the specific name of each active ingredient in the pesticide;
  - ii. the percentage of the active ingredients in the pesticide;
  - iii. the percentage of the inert ingredients in the pesticide;
  - iv. the net contents of each package in which the pesticide will be sold;
  - v. a statement of claims made for the pesticide;
  - vi. directions for the use of the pesticide, including warnings or caution statements.
- d. the material safety data sheet prepared in accordance with the requirements of the Environmental Protection Agency;
- e. such other information as the commissioner may require.

2. Application for re-registration of a pesticide for which the label has not been changed shall be accompanied by the following information:

- a. the brand of the pesticide;
- b. the name, address and contact person of the manufacturer of the pesticide;
- c. such other information as the commissioner may require.

3. The labeling requirements as described in LAC 7:XXIII.13113.A.1 shall be resubmitted for any pesticide for which the label has been changed within 60 days of the change.

B. Any registration may be denied by the commissioner if he determines that:

1. the composition of the pesticide is not sufficient to support the claims made for the pesticide;
2. the label on the pesticide does not comply with state and federal requirements;
3. use of the pesticide may produce unreasonable adverse effects on the environment;
4. information required in LAC 7:XXIII.13113.A has not been furnished to the commissioner by the manufacturer.

C. Any pesticide registered in Louisiana must comply with the following:

1. Any pesticide sold or offered for sale or distribution must bear a label consistent with the label submitted in the registration application.
2. Each shipping container must bear the lot or batch number of the pesticide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 15:76 (February 1989), LR 23:

Bob Odom  
Commissioner

9706#089

## DECLARATION OF EMERGENCY

### Department of Economic Development Boxing and Wrestling Commission

Deposits; Officials; Agents and  
Promotions (LAC 46:XI.Chapters 3 and 5)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the Boxing and Wrestling Commission determined a condition of emergency exists regarding the scheduling (date and site selection) of "major events" and commission approval thereof, as provided by state statute, and full disclosure of all promoter and venue information is necessary for a commission decision.

The commission may find it necessary to demand all "monies" relative to boxing venues be placed in escrow in the commission treasury in order to ensure that ring officials are paid and fighters' purses to be placed in escrow, if required.

The commission, therefore, adopts the following emergency rule, effective May 30, 1997. This emergency rule is to remain in effect for a period of 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XI. Boxing and Wrestling

#### Chapter 3. Professional Boxing

#### §304. Deposits: Closed Circuit and Pay-Per-View Television Rebroadcasting

All locations rebroadcasting television related events may be required to deposit a maximum of \$1,000, in advance, for expenses and taxes. *Location* in this particular rule means any casino, public auditorium, hotel or civic center. Money, less taxes and expenses, will be refunded by the commission to the producer if taxes collected do not equal amount deposited. If taxes exceed the deposit, then the commission will proceed with collecting taxes as outlined in R.S. 4:67. Sports bars with a 250-person capacity or less will be required to purchase a permit for \$100; sports bars with a 400-person capacity or less will be required to purchase a permit for \$200; over 400-person capacity requires a promoter's license. If sports bars are part of a location, as defined in this rule, then the same rule will apply as a location. Five percent taxes will apply as indicated in R.S. 4:67. Complimentary passes or tickets are taxable if ticket prices are outlined in the television contract or advertised and sold at a specified price. The capacity of a

location will be determined by the state/local fire marshal's office. Locations are required to obtain a promoter's license from the commission; sports bars with a capacity of less than 400 are exempt from purchasing a promoter's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:  
**§314. Prohibited Ring Official Assignments**

A ring official domiciled in the state of Louisiana shall not accept an assignment in the United States or its possessions that is not sponsored, sanctioned, approved or supervised by the commission, another official state commission, or a member of the Association of Boxing Commissions. *Official State Commission*, in this rule, means a commission domiciled and coming under the jurisdiction and regulatory powers of their state or United States' possession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:  
**§316. Hold Harmless and Indemnity Agreement**

All individuals, except the members of the commission, acting in any official capacity for any event(s) sanctioned by the commission shall be required to execute the Hold Harmless and Indemnity Agreement of the commission, prior to receiving any assignment from the commission. This shall be in addition to the agreement as set forth in the license application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:  
**§328. Event Approval**

A. A member of the Louisiana Boxing and Wrestling Commission, including the chairman, may not legally and or officially authorize and or give approval to any television network, corporation, limited liability company, promoter, matchmaker or any other entity, private or corporate, for any major event date and site selection, without the prior approval of a majority of the commission members voting in favor. *Major event* in this rule means: any boxing, kick-boxing or wrestling (WCW, WWF, etc.) contests that the state of Louisiana authorizes this commission to sanction. Minor local wrestling shows may be excluded from this rule. (Local area commissioners should coordinate these shows through the deputy commissioners and chairman, once they are made aware of such events.)

B. Once a commissioner is contacted by a promoter, he must advise the promoter that a typewritten request on official letterhead must be submitted to the chairman by mail or facsimile. In the request, disclosure must be made regarding the venue (television contracts, promoter, matchmaker, number of bouts, bout contracts, arena contracts, sanctioning bodies, ticket information, etc.) After date and site selection are approved, full disclosure of all venue information must be submitted no later than two weeks prior to the event.

C. Once an official request is made, the chairman must call a meeting to approve or reject the request. A quorum, according to state statute, must be present to approve or reject

such requests. An emergency meeting will not be necessary, if the timetable is such, that the request may be discussed at the regular scheduled commission meeting.

D. The commission may demand that all monies relative to boxing venues be placed in escrow in the commission treasury. *Monies* in this rule is to mean fighters' purses and ring officials' (referees, timekeepers, inspectors, physicians, judges, etc.) expenses. All ring officials' pay will be predetermined and coordinated through the commission with the promoter. The ring officials will be paid by commission checks the same day or night before the start of the first bout. If the commission required fighters' purses to be placed in escrow then the fighters also will be paid by commission checks, less any expenses due the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61D and R.S.4:64

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§335. Compensation of Officials**

All officials, including ring doctors, who participate in an event sanctioned by the commission, shall be compensated by the promoters/producers. The amount compensated will be predetermined, prior to the event, between the commission and the promoter/producer. Officials, in this rule, do not include the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§353. Penalties and Sanctions**

Anyone licensed and/or subject to the authority of the commission who violates any of the rules and regulations of the commission as set forth in Title, Parts, and Chapters shall be subject to such sanctions as imposed by the commission which may result in fines, suspensions and revocations of licenses to be determined by the commission pursuant to the laws of the state of Louisiana and the authority of the commission vested to the commission by those laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:82.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§522. Wrestling Event Deposits**

Wrestling promoters/producers will be required to deposit, in advance with the commission, \$250 to secure a date for their scheduled event. This amount will be applied to taxes and deputy expenses. Any cancellation of the advanced booking will result in the loss of the deposit and will be deposited in the commission's treasury. If taxes and expenses do not exceed the \$250 deposit, the commission will refund the excess to the promoter/producer. If expenses and taxes exceed the \$250 deposit, the commission will then collect taxes as outlined in R.S. 4:67.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§523. Wrestling Booking Agent**

Repealed (Reserved).

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

### **§525. Wrestling Promoters**

Repealed (Reserved).

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Boxing and Wrestling Commission, 1967, amended 1974, repealed by the Department of Economic Development, Boxing and Wrestling Commission, LR 23:

Mike Cusimano  
Chairman

9706#028

## **DECLARATION OF EMERGENCY**

### **Board of Elementary and Secondary Education**

#### **Bulletin 1706—Exceptional Children**

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, Bulletin 1706, regulations for implementation of the Exceptional Children's Act. Re-adoption of the emergency rule is necessary in order to continue the federally required changes until they are finalized as a rule. The effective date of this emergency rule is June 20, 1997. It will remain in effect for 120 days or until finalized as a rule, whichever occurs first.

Emergency adoption is necessary because the Office of Special Education Programs in the U.S. Department of Education has been assured that these regulations would be in effect and enforceable by July 1, 1994. This is required in order for the Louisiana State Plan for Special Education to be approved and Part B dollars to be released to Louisiana.

#### **Part 100. Responsibilities of the Board of Elementary and Secondary Education**

##### **§101. Free Appropriate Public Education**

A. The Louisiana State Board of Elementary and Secondary Education (the state board) shall be responsible for the assurance of a free appropriate public education to all exceptional students, ages 3 through 21 years, and at the discretion of the local education agency (LEA) and with parental approval to those students with disabilities who will turn 3 years old during the school year; and shall exercise supervision and control of public elementary and secondary education.

B. The state board shall be directly responsible for the provision of a free appropriate public education to exceptional students, ages 3 through 21 years, who are within the jurisdiction of Special School District Number 1, or in the state board special schools (Louisiana School for Visually Impaired, Louisiana School for the Deaf, or Louisiana Special Education Center).

### **§102. Issuance of Regulations**

The state board shall adopt, amend, or repeal rules, regulations, standards, and policies necessary or proper for the provision of a free appropriate public education developed pursuant to R.S. 17:1944(c).

### **§103. Compliance with Federal Rules**

The state board has the responsibility of complying with rules and regulations governing grants for educational purposes from the federal government or from any other person or agency, which are not in contravention to the Constitution and laws, and the authority to take all action necessary to achieve compliance.

### **§104. Approval of Nonpublic Schools**

The state board shall approve each participating nonpublic school that provides special education in accordance with standards established by the state board.

### **§105. Approval of IDEA - Part B State Plan**

The state board will review and approve the State Plan described in §330 of these regulations before its submission to the U.S. Department of Education.

### **§106. Opportunity of Hearing**

The state board shall provide an opportunity for a hearing according to procedures set out in Education Division General Administrative Regulations (EDGAR) at 45 CFR 100b.401d before the department disapproves any school system application for federal entitlement funds for special education under Chapter 1 S.O.P. or IDEA - Part B.

### **§107-129. Reserved**

### **§130. State Advisory Council**

A. The State Board of Elementary and Secondary Education and the department shall appoint a state advisory council for the education of exceptional students. The membership shall be 11. Procedures shall follow existing state board procedures for appointing such councils.

B. Membership of the council shall, at all times, include at least one person representing each of the following groups:

1. individuals with disabilities;
2. teachers of students with disabilities;
3. teachers of regular students;
4. parents of exceptional children;
5. state and local education officials;
6. special education program administrators;
7. representatives of recipients of special education and related services and their families;

8. representatives of advocate agencies for the disabled, for colleges and universities, and for vocational/technical schools.

C. The Advisory Council shall perform the following:

1. advise the state board of unmet needs in the education of exceptional students, including needs identified through study and analysis of the findings and decisions of the hearings;

2. comment publicly on the state annual program plan and rules or regulations proposed for issuance by the state regarding the education of exceptional students and the procedures for distribution of funds under IDEA - Part B;

3. assist the state in developing and reporting such information and evaluations as may assist the U.S.

commissioner of Education in the performance of responsibilities under Section 618 of IDEA - Part B.

### **D. The Procedures of the Advisory Council**

1. The advisory council shall meet as often as necessary to conduct its business.

2. By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the state board. This report must be made available to the public in a manner consistent with other public reporting requirements under this Part.

3. Official minutes must be kept on all council meetings and shall be made available to the public on request.

4. All Advisory Council meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

5. Interpreting and other necessary services must be provided at council meetings for council members or participants.

6. The Advisory Council shall serve without compensation, but the State Department of Education must reimburse the council for reasonable and necessary expenses for attending meetings and performing duties.

### **§131-199. Reserved**

### **Part 200. Responsibilities of the Superintendent of Public Elementary and Secondary Education and the Department of Education**

### **§201. General Responsibilities and Authorities**

The state superintendent of public Elementary and Secondary Education (the superintendent) and the State Department of Education (the department) shall administer those programs and policies necessary to implement R.S. 17:1941 et seq. Responsibilities of the state superintendent and the department include the following:

A. approving, in accordance with standards approved by the state board, each public school program that delivers special education;

B. recommending to the state board approval, in accordance with standards approved by the state board, of each participating nonpublic school program that delivers special education;

C. receiving, administering, and directing distribution of federal funds for education of exceptional students, except those received directly by school systems;

D. recovering any funds made available under IDEA-B for services to any student who was determined to be erroneously classified as eligible to be counted.

### **§202-204. Reserved**

### **§205. Preparation of Annual Budget**

The department shall prepare and submit to the state board for review and approval a comprehensive budget for the next fiscal year that at a minimum proposes the appropriations by the Louisiana Legislature of whatever state funds are needed by the department, Special School District Number 1, and city/parish school systems to comply fully with all of the requirements established by the regulations for the Implementation of the Exceptional Children's Act (with due regard to federal maintenance of effort, nonsupplanting, comparability, and excess cost requirements).

**§206-219. Reserved**

**§220. Certification of Personnel**

The department must develop as needed, Louisiana standards for state certification of school and other program personnel, subject to approval by BESE, for all public and participating nonpublic program staff who provide special education, administrative, ancillary, pupil appraisal and related services to exceptional students (birth through age 21) under Part B and Part H of IDEA.

**§221-229. Reserved**

**§230. Review of Enforcement Recommendations**

The state superintendent, after review of the recommendations from the office, submits to the state board at the next regularly scheduled meeting all recommendations of the department to withhold state or federal funds for special education or to take other necessary enforcement action in accordance with the procedures described in the *Louisiana Administrative Code*.

**§231-239. Reserved**

**§240. Hearing Officers**

The department and each local agency shall maintain a list of qualified hearing officers. The list will include a statement of the qualifications of each of those persons and, to the extent possible, include representation from all regions of the state. The department ensures that these hearing officers have successfully completed an inservice training program approved by the department and meet all other criteria established by the department. Additional inservice training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

**§241-250. Reserved**

**§251. Relationship Between Special Education and Competency-Based Education**

**§252. Competency-Based Assessment Program**

A. No exceptional student shall be automatically excluded from participation in any educational assessment program. Individual exemption from any such assessment program requires formal parental approval and will be reflected in the student's IEP.

B. Individual exemption from any such assessment program will be appropriate for exceptional students who are not following a curriculum based on Louisiana's grade level standards for and who are not pursuing a regular high school diploma.

C. Exceptional students who take part in the testing program shall have available to them certain procedural modifications in the administration of the tests when indicated on the student's IEP.

**§253-259. Reserved**

**§260. Full Educational Opportunity**

The department must ensure that all public education programs of the state strive to meet the goal of providing full service to all exceptional students, ages birth through 21 years, by the year 2010.

**§261. Arts for Students with Disabilities**

The department shall encourage the use of the arts as a teaching tool and the recognition of the importance of artistic and cultural activities in the education of students with disabilities.

**§262-269. Reserved**

**§270. Interagency Agreements**

The department is authorized to enter into any agreement developed with another public or private agency, or agencies, which is:

- A. consistent with Part 800 of these regulations;
- B. essential to the achievement of full compliance with these regulations;
- C. designed to achieve or accelerate the achievement of the full educational goal for all exceptional students;
- D. necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the state;
- E. necessary to promote the successful transition of youths with disabilities into adult services and agencies.

**§271. Approval of Out-of-District Placement**

The department shall approve or disapprove each request made by a school system to place an exceptional student outside the geographic boundaries of that school system unless the placement is in an approved cooperative operated by the school system.

**§272-274. Reserved**

**§275. Fiscal Agent**

The department shall act as the fiscal agent in disbursing funds under Chapter 1, State Operated Programs (SOP) for Students with Disabilities, including transfers of such funds to city/parish school systems. No provision of the Louisiana competency-based education program shall be construed to interfere with the provision of a free appropriate public education to exceptional students under these regulations [R.S. 17:24.4(D)]. from state-operated programs and state-supported programs.

**§276-289. Reserved**

**§290. Nondiscrimination**

The State Department shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d-4)	45 CFR Part 80
Discrimination on basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683)	45 CFR Part 86
Discrimination on basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 974) Act 665 of the 1980 La. Legislature (R.S. 46:2251-2256)	45 CFR Part 84
Discrimination on basis of age	The Age Discrimination Act (42 U.S.C. 6101 et seq.)	45 CFR Part 90

**§291-299. Reserved**

**Part 300. Responsibilities and Activities of the Office of Special Educational Services**

**§301. General Supervision**

The Office of Special Educational Services is established within the department to provide general supervision of all

education programs for exceptional students within the state, including all participating nonpublic school programs and all education programs administered by other state or local agencies. *General Supervision* is defined as the responsibility to perform the following:

A. ensure that all necessary state standards for implementation of the act are established;

Comment: Any state standard affecting other state agencies and established under the general supervision requirement shall be developed in cooperation with such agencies.

B. disseminate such standards and revisions to all public and nonpublic agencies bound by them and provide parents and all citizens with information requested regarding implementation of such state standards;

C. provide technical assistance to all public and nonpublic agencies bound by such standards in their proper implementation;

D. monitor according to written procedures the implementation of state standards in each public and each participating nonpublic agency. Such monitoring shall include child identification and programmatic, administrative, and fiscal issues;

E. institute a system for complaint management and investigation regarding the implementation of state standards.

### **§302. Monitoring, Complaint Management and Investigation**

A. The office is authorized to implement the monitoring, complaint management and investigatory provisions of these regulations.

B. The office must monitor in accordance with the procedures established in the *SDE Monitoring Procedures*, Bulletin 1922, all public and participating nonpublic schools and other education agencies for compliance with these and other applicable federal regulations, state statutes and standards.

C. The office, through its complaint management procedures, shall:

1. investigate allegations of failure to comply with any provision of these regulations and other applicable state or federal laws, regulations or state standards;

2. conduct hearings when necessary; and

3. issue subpoenas on behalf of the department to require attendance, testimony by witnesses and the production of documentary evidence.

D. The office, in carrying out its investigatory responsibilities, may require school systems and participating nonpublic education agencies to keep certain records, and submit to the office complete and accurate reports at such time and in such form and containing such information as is determined necessary to enable the office to fulfill its responsibilities of ensuring compliance.

### **§303-328. Reserved**

### **§329. State Plan under the Individuals with Disabilities Education Act**

The office shall prepare for submission to the state board the state plans required under IDEA according to applicable federal requirements for such plans.

### **§330. The State Plan: Public Notice and Participation**

A. In the preparation of the State Plan required under IDEA - Part B, the office must perform the following:

1. publish in newspapers of general circulation throughout the state, other media, or both, a summary of the proposed program plan indicating its purpose and scope, its public availability, the timetable for final approval, the procedures for submitting written comments, any policy changes from previous plans, and a list of the times and places of public meetings to be held. Such notice shall occur between 45 and 60 calendar days prior to submission of the program plan to the state board;

2. distribute to any parent organization, child and youth advocacy organization, school board, approved nonpublic school program, public college or university, or affected state agency, operating in Louisiana, which has previously registered with the office, a copy of the proposed plan and a list of the times and places of public meetings to be held. This distribution must occur no less than 30 calendar days prior to submission of the proposed plan to the state board;

3. publish on each of the three days preceding a public meeting a description of the time, place, and purpose of the meeting in newspaper(s) of general circulation in the area of the state in which the meeting will be held;

4. hold a series of open public meetings in which parents and other interested persons throughout the state are afforded a reasonable opportunity to comment on the proposed plan;

5. file in a publicly available location a written or electronic verbatim record of the public meetings and any written comments received;

6. review and consider all public comments which might warrant modification of the plan;

7. attach a summary of the comments made during the public meeting or received by the state board to the proposed final plan submitted to the state board;

8. publicize the approval by the state board of a final plan and the location at which copies of the plan can be obtained by the public;

9. publicize the approval or disapproval by the U.S. Department of Education of the annual plan and the location at which copies of the plan can be obtained by the public.

B. The office must make all reasonable efforts to inform potentially interested parent and child advocacy organizations throughout the state, and all school boards, approved nonpublic school programs, public colleges and universities, and affected state agencies of the requirements of this Subpart and of §488.

C. The office shall maintain a list of each interested group identified as a result of Subsection B above.

### **§331-339. Reserved**

### **§340. Review and Approval of Annual Applications of School Systems**

A. The office must review each annual application for IDEA - Part B funds submitted by a school system, and:

1. provide written notice of whether an application is or is not in substantially approvable form (and if not, the reasons therefore) within 45 days from the receipt of the application;

2. provide formal written approval (or disapproval) within 10 operational days following receipt by the department of an approved grant award document for expenditure of IDEA - Part B funds from the U.S. Department of Education.

B. Applications for federal and/or state funds in periods during which they may be applied for shall be approved or disapproved by the office according to applicable federal or state procedures.

**§341. Provisions for FAPE by the Department**

When the department does not distribute IDEA - Part B funds to a school system in accordance with §230 and §373.B, the office shall use those funds to ensure the provision of a free appropriate public education to students with disabilities residing in the area served by the school system either directly, by contract, or through other arrangements. The department may provide special education and related services in the manner and at the location the department considers appropriate, consistent with the requirements of these regulations.

**§342-354. Reserved**

**§355. Confidentiality of Records**

The office must comply with all of the requirements of §517 pertaining to confidentiality of personally identifiable education records.

**§356. Notification of Child Identification Effort**

Notice of the child identification effort regularly undertaken by the department and school systems must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state.

**§357-369. Reserved**

**§370. Comprehensive System of Personnel Development**

In planning, coordinating, implementing, and evaluating the comprehensive system of personnel development (CSPD) required under IDEA, the Office of Special Educational Services is responsible for the following tasks:

A. conduct a comprehensive needs assessment at least once every three years in conjunction with the development of the Special Education Annual Plan to determine supply/demand personnel projections for the subsequent five-year period for qualified special education instructional, leadership, pupil appraisal, related services, and support personnel required to assure a free appropriate public education for all exceptional students (birth through age 21). After the initial comprehensive needs assessment, follow-up assessment in targeted areas of need will be conducted during the ensuing two years to determine changes or corrections in the course of action for the three-year program plan. The comprehensive needs assessment may be conducted more often if deemed appropriate;

B. identify, on the basis of the comprehensive needs assessment, target populations for personnel preparation (preservice) and personnel development (continuing education), and describe procedures to ensure that activities are carried out and the program plan is on schedule;

C. coordinate and facilitate efforts among the department, LEAs, IHEs, professional associations, parent associations, and other support groups and councils, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities through support of CSPD statewide committee activities, regional CSPD activities, and multi-agency and interdisciplinary collaborative planning;

D. establish, with the approval of BESE, a system for dissemination, statewide, of information on effective practices for the delivery of special educational services, and procedures for replication and/or adoption of effective practices and/or programs.

**§371. Preservice Training Agreements**

The Office of Special Educational Services shall develop, in concert with colleges and universities within the state, preservice training arrangements necessary to support approved local public and participating nonpublic school systems and service providers in complying with the requirements of IDEA in achieving the goal of full educational opportunity in the least restrictive environment for exceptional students in Louisiana.

**§372. Training of Personnel in Participating Nonpublic Schools**

The office, for the department, shall provide the opportunity for continuing education (inservice training) of personnel of participating nonpublic schools.

**§373. Administration of Funds**

A. The office shall ensure the proper receipt and disbursement of all state and federal funds administered by the department specifically for the provision of special education and related services for exceptional students.

B. The office shall not distribute funds to a school system in any fiscal year if the school system:

1. does not submit an annual application that meets the requirements of §487 of these regulations;
2. is unable or unwilling to establish and maintain programs of free appropriate public education;
3. is unable or unwilling to enter into a cooperative agreement with other school systems in order to establish and maintain those programs;
4. has not implemented the provisions of a hearing officer's decision which was adverse to the school system; or
5. has failed to comply with a corrective action plan developed to eliminate compliance deficiencies found through state monitoring, a complaint investigation, or a due process hearing order.

C. An on-site fiscal review and compliance monitoring will be conducted in accordance with the *SDE Monitoring Procedures*, Bulletin 1922.

D. The BESE establishes the policy to seek to recover any funds made available under IDEA-B for services to any student who is determined to be erroneously classified as eligible to be counted.

E. Determination of misclassified students shall be accomplished through the verification procedures of the SDE regarding the child count as detailed in §491. In order to verify the accuracy of each count submitted, the office will conduct the following activities:

1. The current child count from each school system will be compared with the previous count. Discrepancies of  $\pm 10$  percent in any disability category will be noted.
2. The current child count incidence figures from each school system will be compared with incidence figures from the previous state child count. Discrepancies of  $\pm 2$  percent in any disability category will be noted.

3. An on-site child count review will be conducted in accordance with the *SDE Monitoring Procedures*, Bulletin 1922. If necessary, each system can be monitored for previous years to verify the accuracy of the child count. During fiscal monitoring of each school system, the monitors will randomly select at least 10, but not more than 20, cells from the child count report. For each cell, the school system must provide the student name, date of birth, evaluation report, IEP, class rolls, and any other information that may be necessary to verify the accuracy of the count.

4. Administrative on-site reviews are conducted in accordance with the *SDE Monitoring Procedures*, Bulletin 1922. Any multidisciplinary evaluation reviewed which are not in compliance with state guidelines, to the extent that it cannot be determined that the student is disabled, will result in the exclusion of that student from the child count.

5. If a student's IEP is monitored during the on-site administrative review process and it is determined that the student is not receiving all the special education and related services specified on the IEP, the student will be excluded from child count.

6. The school system will be afforded an opportunity to present supportive or explanatory documentation to refute OSES and must be formally accepted. If the evidence cannot justify the count, the count will be disallowed.

F. Recovery of Funds for a Misclassified Student. If the school system has received funds based on an erroneous count and the office has documented the extent of the error, the department will reduce the grant award if the error occurred in the current budget and all of the funds have not been expended or request that the school system return such funds. In the event the school system refuses to comply within 10 operational days, these procedures will be followed:

1. The Office of Special Educational Services will submit written documentation of the error in the count to the state superintendent of Education.

2. Within 10 days of this submission, the state superintendent will request the State Board of Elementary and Secondary Education (BESE) to require the school system to repay the funds.

3. BESE has the responsibility to offer an opportunity for a hearing to a school system prior to a determination to withhold funds.

4. Funds recovered by the department and BESE will be handled within the guidelines set forth by OSEP, U.S. Department of Education.

G. Comparison of State National Child Count Data. The office will compare the incidence figures for the state with national figures provided by Office of Special Education and Rehabilitative Services, U.S. Department of Education. Discrepancies of  $\pm 2$  percentage points will be analyzed to determine if changes are required in the statewide student evaluation procedures.

#### **§374. Nonbias of Testing and Evaluation Materials**

The office, on the behalf of the department, shall, with the approval of the state board, establish procedures to ensure that testing and evaluation materials used for evaluation and placement are free of racial, cultural, and/or sexual bias.

### **§375-399. Reserved**

#### **Part 400. Responsibilities of City and Parish School Boards, Special School District Number 1 and State Board Special Schools**

#### **§401. Responsibilities of Public School Systems**

A. Each school system shall identify, locate, and evaluate each student suspected to have disabilities (regardless of the severity of the disabilities), birth through 21 years of age, and each student suspected to be gifted or talented, 3 through 21 years of age, residing within its jurisdiction.

B. Each school system is responsible for providing, or causing to be provided, a free appropriate public education to each eligible exceptional student who resides within its jurisdiction except those voluntarily enrolled in a nonpublic school program.

#### **§402. Definitions**

##### **A. Free Appropriate Public Education (FAPE)**

1. *Appropriate Public Education*—all special education and related services provided each exceptional student which:

a. meet state board standards, including these regulations and all applicable bulletins approved by the state board (e.g., Bulletin 741, Bulletin 746, Bulletin 1508); and

b. are provided in conformity with an IEP at public expense, under public supervision and direction, and without charge, including preschool, elementary school, or secondary school education.

2. *Free*—without charge, including the following:

a. costs for all room, board, and nonmedical care provided when residential educational placement is necessary;

b. transportation costs provided in order to assure access of persons to services necessary to implement a student's IEP. Exceptional students shall be provided, on a comparable basis with that of students who are nonexceptional, an opportunity to receive transportation services funded out of state or local resources;

c. The term *free* does not preclude incidental fees normally charged to nondisabled students or their parents/guardians) as a part of the regular educational program.

3. Nothing in these regulations shall relieve in any way, an insurer, similar third party, or other public state or local agency from an otherwise valid obligation to provide or to pay for services to which an exceptional student is entitled as a client or beneficiary of such third party under state or federal entitlement or laws or under policies or contracts. This does not prohibit the use of insurance payments or private donations for use in the provision of a free appropriate public education.

4. Whatever state, local, federal, and private sources of support are available may be used to provide a free appropriate public education, including joint agreements between agencies for sharing the costs of those services.

B. Jurisdiction is the right of a school system to exercise authority over all students residing within its geographic area and over each student placed by the school system in an educational program within the geographic area of another school system or in an approved educational program out of the state.

1. For city/parish school systems, the geographic area is the boundary of the school board as defined in the Louisiana Revised Statutes.

2. For SSD#1, the geographic area is the boundary of the state-operated treatment and care residential facilities.

3. For a state board special school, the geographic area is the boundary of the educational facility.

Comment:

1. If there is a transfer of jurisdiction from one system to another for the provision of a free appropriate public education initiated by a school system, this is indicated by using the word "referral." According to these regulations, such a referral culminates in the establishment of responsibility for FAPE for the student by the receiving school system. All transfers of jurisdiction are considered significant changes in placement.

2. If there is a placement of a student in another school system or an approved nonpublic school, the student so placed remains within the jurisdiction of the placing school system. The responsibility for FAPE remains with the placing school system and, in the case of placement in an approved nonpublic facility, also with the state board.

#### C. Eligible Students

1. Free appropriate public education must be available to all exceptional students reaching the age of 3 years, regardless of when the birthday occurs during the school year. At the discretion of the LEA and with parental approval, FAPE may be provided to an eligible student with disabilities whose third birthday occurs during the school year.

2. An exceptional student remains eligible until reaching age 22 unless such student was terminated to participate in elementary or secondary education as indicated by a state diploma or Certificate of Achievement. An exceptional student whose twenty-second birthday occurs during the course of the regular school year (as defined by the school system), shall be regarded as eligible for the entire school year.

#### §403. Reserved

#### §404. Day Care and Adult Services

A. School systems which operate a day care program or activity for nondisabled students may not exclude any person with disabilities and must take into account the need(s) of these persons in determining services to be provided.

B. School systems which operate an adult education program or activity for nondisabled adults may not exclude disabled or other exceptional persons and must take into account the need(s) of these persons in determining services to be provided.

#### §405. Special Education and Early Intervention Services for Infants and Toddlers with Disabilities Less Than 3 Years of Age

School systems may provide special education and early intervention services to infants and toddlers with disabilities who are from birth to 3 years of age. The ratios established in Appendix I, Part B shall be used for those programs serving infants and toddlers with disabilities.

#### §406 - 409. Reserved

#### §410. Child Search Definitions

A. *Identified*—a student is suspected of being exceptional and in need of special education and related services as a result of:

1. child search activities as defined in §411;
2. school building level identification activities as defined in §413.

B. *Locate*—determining where an identified student is residing and whether the person with whom the student is residing is one of the following:

1. a natural parent,
2. the legal guardian of the student, or
3. a parent as defined in §959.

Comment: If neither a natural parent nor a legal guardian is located, the school system shall refer to §516.

#### §411. Child Search Activities

A. Each school system, in accordance with the requirements of this Subpart, shall document that the effort of ongoing identification activities are conducted to identify and locate each student who is under its jurisdiction, suspected of being exceptional, in need of special education and related services, and is one of the following:

1. enrolled in an educational program operated by a school system;
2. enrolled in a nonpublic school program;
3. enrolled in a public or nonpublic preschool or day care program;
4. is out of school, except for students who have graduated or otherwise successfully completed a program as documented by a state diploma or Certificate of Achievement.

B. If, in the process of implementing these regulations, any school system locates a student who is suspected of being in need of treatment, care, or habilitation and rehabilitation, the school system should request that the agency designated by the state to provide such assistance explore this suspected need with the parents.

#### §412. Responsibilities of the Child Search Coordinator

Each school system shall designate a child search coordinator who shall be responsible for:

1. tracking the progress of referral and evaluation activities required by §411, §413-414, and §430-436 for each student suspected of being exceptional;
2. ensuring that the parent of each student initially identified as suspected of being exceptional and in need of special educational services is provided a copy of all safeguards available to the parents on rights of parents and students at the time of referral for an individual evaluation;
3. activities assigned under IDEA - Part H.

#### §413. Students in a Regular Education Program

A. A school system shall identify a student as suspected of being exceptional by the School Building Level Committee (SBLC) conducting and documenting results of educational screening, sensory screening, speech and language screening, motor screening, and results of the intervention efforts as defined in the *Pupil Appraisal Handbook*, Bulletin 1508.

B. The SBLC referral to pupil appraisal for an evaluation which determines eligibility for services under IDEA shall be made through the principal or designee for pupil appraisal services and shall include documentation of all screening activities.

C. An immediate referral may be made to pupil appraisal services for an individual evaluation of any student suspected of a severe or low-incidence impairment, or who is of danger to himself or others. Screening activities, such as educational, sensory, and motor screenings, should be completed as part of the evaluation for these students.

D. Pre-evaluation activities as listed in Bulletin 1508, under "Initial Responsibilities" of the evaluation coordinator, must be conducted within 10 days after receipt of the referral by the pupil appraisal office for an individual evaluation.

#### **§414. Students in Nonpublic School Programs**

Students enrolled in nonpublic school programs shall be identified according to the procedures noted in §413.A and shall be referred to the school system's child search coordinator.

#### **§415. Students Out of School**

Students out of school, including students ages birth through 5 years and students who have left school without completing their public education by obtaining a state diploma or Certificate of Achievement shall be referred to the school system's child search coordinator, who shall locate and offer enrollment in the appropriate public school program and refer them for an individual evaluation, if needed. Students may be enrolled with the development of an interim IEP during the evaluation process if they meet the criteria in §416 below. If the Louisiana evaluation is current, students may be enrolled with the development of a review IEP within five operational days.

#### **§416. Students with a Documented Severe or Low-Incidence Impairment; Students who may be Transferring from Out of State; and Infants and Toddlers with Disabilities**

Students who possess a severe or low-incidence impairment documented by a qualified professional; and who may have been receiving special education in another state shall be initially enrolled special education program concurrent with the conduct of the evaluation according to the requirements of Bulletin 1508. Students with other documented impairments; and who may have been receiving special education in another state may be initially enrolled in a special education program concurrent with the conduct of the evaluation according to the requirements of Bulletin 1508. This enrollment process, from the initial entry into the school system to placement, shall occur within 10 calendar days and will include the following steps:

1. approval by the city/parish school system's supervisor of special education;
2. a review of all available evaluation information by pupil appraisal personnel;
3. the development of an interim IEP in accordance with §440-446; and
4. obtaining formal parental approval for the temporary placement.

The duration of the completion of the evaluation and the interim placement shall not exceed the evaluation time lines specified in §436, with the initial IEP/Placement document developed within 30 calendar days from the date of dissemination of the written evaluation report to the city/parish school system's supervisor of special education.

Any infant or toddler moving to Louisiana who has an Individualized Family Service Plan (IFSP) will be referred to the child search coordinator who will assist the family in accessing family service coordination. The student will be evaluated to determine eligibility for Part H services in Louisiana.

#### **§417. Exceptional Students Transferring from one LEA to Another LEA Within Louisiana**

Students who have been receiving special education in one school system in Louisiana and transfers to another school system within Louisiana shall be enrolled in the appropriate special education program in the new school system with the current IEP or the development of a review IEP within five operational days.

Infants and toddlers with disabilities who have an Individualized Family Service Plan (IFSP) and who receive services from a LEA and transfer to another LEA must receive those services from the LEA in which the student resides.

#### **§418. Formal Parental Approval**

A. Initial Evaluation. For an initial evaluation the school system must obtain formal parental approval. If the parent denies or fails to give formal approval for the individual evaluation, the school system may seek appropriate legal action.

B. Re-evaluation. Formal parental approval is not required for the re-evaluation of a student currently enrolled in a special education program, but full and effective notice, including a copy of the parents' rights, must be provided to the parents prior to the re-evaluation.

#### **§419-429. Reserved**

#### **§430. Pupil Appraisal Personnel**

School systems shall regularly employ pupil appraisal personnel to conduct individual evaluations and may, when necessary:

A. use qualified examiners who are available from the Department of Health and Hospitals, the Department of Public Safety and Corrections, the state board special schools, or other public agencies;

B. contract with individuals or organizations to provide specialized assessments needed to provide a comprehensive individual evaluation of an identified student;

C. use a combination of the approaches listed above;

D. regardless of the approach used for conducting individual evaluations, school systems retain full responsibility. Any failure by an employee or contractor to meet any requirements of this Part constitutes a failure by the school system to comply with these regulations.

#### **§431. Required Individual Evaluation**

A. An initial evaluation shall be conducted whenever the student is not enrolled in special education and one of the following conditions exists:

1. formal parental approval for the initial evaluation has been requested and received by the school system;

2. a direct request for an individual evaluation of an enrolled student from sources other than the SBLC must be routed through the SBLC for the collection of the required screening information and the conduct of the pre-referral procedures. If the LEA suspects that the student is exceptional, an evaluation must be conducted. If the LEA disagrees with the referral source, and does not suspect that the student is exceptional, it may refuse to conduct an evaluation. When the LEA refuses to initiate an evaluation upon parental request, the parent must be provided a copy of all procedural safeguards which include the right to a due process hearing;

3. a final written decision has been issued by a court of competent jurisdiction requiring that an individual evaluation be conducted;

4. a written request for an individual evaluation has been issued by a hearing officer or the Office of Special Education appeals panel.

B. An individual re-evaluation shall be conducted every three years, or more frequently if conditions warrant, whenever the student is enrolled in special education and one of the following occurs:

1. it is requested in writing by the student's teacher or by the local school system's special education supervisor/director;

2. it is requested in writing by the student's parent(s);

3. a significant change in educational placement of a student is proposed by the school system, the parent, or both;

4. a final written decision has been issued by a court of jurisdiction requiring that an individual re-evaluation be conducted.

C. A school system is not required to conduct a re-evaluation of exceptional students who transfer with a current evaluation into its jurisdiction from another jurisdiction in Louisiana.

D. In the event a parent has privately obtained an individual evaluation, the school system must consider the individual evaluation in accordance with §504 of these regulations.

E. Transitional needs must be addressed as part of all evaluations occurring after the fourteenth birthday of a student with disabilities.

#### §432. Reserved

#### §433. Evaluation Coordination

A. Upon identification of a student suspected of being exceptional, a qualified pupil appraisal staff member shall be designated as evaluation coordinator.

B. The evaluation coordinator shall ensure that the evaluation is conducted in accordance with all requirements in Bulletin 1508, including the following:

1. initial responsibilities following receipt of referral;
2. selection of participating disciplines;
3. procedural responsibilities; and
4. mandated time lines.

#### §434. Evaluation Process

A. Individual evaluations shall be conducted according to the "Procedures for Evaluation" for each exceptionality as listed in the *Pupil Appraisal Handbook*, Bulletin 1508.

B. The determination of an exceptionality must be based upon the "Criteria For Eligibility" established in Bulletin 1508.

C. All evaluations shall be conducted according to the following standards:

1. No single procedure may be used as the sole criterion for determining an appropriate educational program for the student. A variety of instruments, procedures, and sources of information shall be used.

2. Tests and other evaluation procedures and materials shall be administered by trained personnel in conformance with the instructions provided by their producer and are as follows:

a. tailored to assess specific areas of educational need;

b. recommended by their producer and validated adequately for the specific purpose(s) for which they are used;

c. appropriate for the age and stage of development of each person to whom they are administered;

d. free of racial, cultural, language, or sex bias. In no event shall IQ scores be reported or recorded in any individual student's evaluation report or cumulative folder;

e. written and administered in the native language or conducted in the mode of communication most familiar to the person being assessed (i.e., nonverbal intellectual assessment of deaf students) unless it can be demonstrated that it is infeasible to do so;

f. selected to ensure that when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the factor(s) the test purports to measure rather than reflecting the student's impaired sensory, manual, or speaking skills (except in those cases in which those skills are the factors the test purports to measure);

g. selected to ensure that intellectual assessment instruments were standardized using samples which included representatives of the socioeconomic and social heritage of the student being tested, when possible and not merely those which are designed to provide a single general intelligence quotient.

#### §435. Evaluation Report

A. The written report must be an integrated compilation of the data collected during the evaluation process and include all components stated in Bulletin 1508.

B. The final signed report must accurately represent the conclusion of the members of the multidisciplinary evaluation team. If a participating appraisal person disagrees with the conclusion(s) in the integrated report, that person may submit a separate signed dissenting opinion stating the disagreement, giving supporting data and conclusions prior to the IEP meeting.

C. The report must be written in language that is clear to the individuals who will use it.

D. Any extensions of the individual evaluation time lines must be explained and documented in the evaluation report.

E. The written report must be disseminated to the student's parent with an opportunity for an oral interpretation prior to the initial IEP placement meeting.

#### §436. Time Lines

A. There shall be no more than 10 operational days from the date of receipt of the referral for an individual evaluation of an identified student by pupil appraisal to the date when the request is made for parental approval to conduct the individual evaluation.

B. Each individual evaluation must be completed and the evaluation report disseminated, within 60 operational days of receipt of parental approval.

C. Extensions of evaluation time lines must be justified as defined in Bulletin 1508.

D. The required triennial re-evaluation must be completed on or before the third-year anniversary date and must include, at a minimum, the core elements as listed in Bulletin 1508.

**§437 - 439. Reserved**

**Individualized Education Program**

**§440. Initial IEP/Placement Responsibilities**

A. Each student initially determined to be exceptional and in need of special education and related services shall be provided these services in accordance with an IEP. Before any action is taken for each student initially determined to be exceptional and in need of special education and related services, school systems shall conduct a meeting or meetings to carefully consider the multisource data collected on the exceptional student in the individual evaluation process which included a full and individual evaluation of the student's educational needs; and must develop the initial written individualized education program (IEP) including the educational placement which meets all the requirements of this Subpart and Bulletin 1530, *The IEP Handbook* and Bulletin 1891, *The Gifted/Talented IEP Handbook*.

B. School systems shall include on each IEP all special educational and related services necessary to accomplish comparability of educational opportunity between exceptional students and students who are not exceptional.

C. Each initial IEP/Placement document must be completed within 30 calendar days from the date of dissemination of the written evaluation report to the special education supervisor.

D. Responsibility for the development and implementation of each initial IEP rests with the school system's special education supervisor.

E. School systems shall prepare a progress report related to the short-term objectives in the IEP for each exceptional student and must provide it to the parent at the same time as report cards are provided to all students.

F. The IEP shall be developed on the form issued or approved by the department.

G. The school system shall provide a copy of each completed IEP/Placement document to the student's parent(s) signed by the officially designated representative of the school system.

H. At the beginning of each school year, each school system shall have in effect an IEP for every exceptional student who is receiving special education in that school system.

**§441. IEP Meeting Participants**

For an exceptional student who has been evaluated for the first time, the school system shall ensure that each IEP/Placement meeting includes the following participants:

A. an officially designated representative of the school system, other than the student's teacher, who is qualified to provide or supervise the provision of special education. This person shall also be knowledgeable about the placement options and shall have the authority to commit the school system's resources to implement the IEP;

B. the student's teacher;

C. one or both of the student's parents, subject to §442 and §959;

D. the student, unless deemed otherwise by the parent. If the student does not attend a meeting involving transition planning, the school system shall take other steps to ensure that the student's preferences and interests are considered.

Comment: The school system, following prior notice guidelines in §504 of these regulations, is required to invite each student to participate in his or her IEP meeting if the purpose of the meeting is the consideration of transition services. For all students who are 16 years of age or older, one of the purposes of the meeting will be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are initially discussed at the meeting that does not include the student, the school system must ensure that before a decision about transition services for the student is made, another IEP meeting is conducted for that purpose, and the student is invited to attend, again following prior notice guidelines in §504 of these regulations;

E. other individuals at the discretion of the parent or school system;

F. the evaluation coordinator, or a member of the evaluation team which evaluated the student, unless some other person is present at the meeting who is knowledgeable about the evaluation procedures used with that student and is familiar with the results of that particular evaluation;

G. for school systems planning transition services, a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the school system shall take other steps to obtain the participation of the other agency in the planning of any transition services.

Comment:

1. In deciding which teacher will participate in meetings on a student's individualized education program, the school system may wish to consider the following possibilities:

a. For an exceptional student who is receiving special education, the "teacher" could be the student's special education teacher. If the student's exceptionality is a speech impairment, the "teacher" could be the speech-hearing/language specialist.

b. For an exceptional student who is being considered for placement in special education, the "teacher" could be the student's regular teacher, a teacher qualified to provide education in the type of program in which the student may be placed, or both.

c. If the student is not in school or has more than one teacher, the school system shall designate which teacher(s) will participate in the meeting.

2. Either the teacher or the school system's representative should be qualified in the area of the student's exceptionality.

**§442. Parent Participation**

A. School systems shall take steps to ensure that one or both of the parents of the exceptional student are present at each IEP meeting. School systems shall contact the parent(s) in writing regarding each meeting early enough to ensure that they will have an opportunity to attend and schedule the meeting at a mutually agreed upon time and place.

This written contact must indicate the purpose, time, and location of the meeting, and who will be in attendance.

Comment: If a purpose of the meeting is the consideration of transition services for a student the notice must also: 1) indicate this purpose; 2) indicate that the school system will invite the student; and 3) identify any other agency that will be invited to send a representative.

B. If parent(s) do not attend a scheduled IEP/Placement meeting for which arrangements have been made in accordance with these regulations, other methods shall be used by the school system to ensure parental participation. These other methods include making individual or conference telephone calls, rescheduling the meeting, sending

correspondence summarizing the meeting, and requesting parental suggestions.

C. When the parent does not attend the IEP/Placement meeting, the meeting may be conducted without the parent in attendance providing that:

1. another method for parental participation is used and documented;
2. the school system has documented attempts to arrange a mutually agreed on time and place, such as:
  - a. detailed records of telephone calls made or attempted and the results of those calls;
  - b. copies of correspondence sent to the parents and any responses received;
  - c. detailed records of visits to the parents' home or place of employment and the results of those visits.

D. The school system shall take whatever action is necessary to ensure that the parent(s) understand(s) the proceedings at a meeting, including arranging for an interpreter for parent(s) who are deaf or whose native language is other than English.

#### **§443. Parental Approval of Placement**

A. Each school system shall obtain formal parental approval of the educational placement decisions prior to providing initial special education and related services. The IEP will be considered in effect after the parent(s) indicate formal written approval by signing the IEP/Placement document.

B. Implementation of educational placement shall begin as soon as possible but no later than 10 calendar days following receipt by the school system of formal parental approval.

C. If the parent(s) withhold formal written approval of the educational placement, the school system parish supervisor shall within 10 calendar days either:

1. recommend a modified educational placement to which the parent(s) will provide approval; or
2. indicate to the parent(s) in writing that no placement modification will be made (in which case the student shall be maintained in the present placement or be offered placement in the school system with approval of parent(s) until the matter is resolved).

D. The parent(s) may request a hearing in accordance with §507 of these regulations in order to resolve any disagreement over the proposed IEP/Placement of the student.

E. If the school system wishes to override the parental decision to withhold a formal written approval for the initial placement of the student in special education, the school system may appeal to the appropriate state court within the time prescribed by state law.

#### **§444. IEP/Placement Content and Format**

A. Each completed IEP shall contain the following instructional components:

1. a general overview of the student's needs; and specific current performance in the curriculum areas in which special education is recommended;

*Comment:* Beginning no later than age 16 (and at a younger age, if determined appropriate) the IEP must include a statement of needed transition services which are instruction, community experiences, development of employment and other post school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation; and each participating agency's responsibilities and/or linkages before the student leaves the school

setting. If the IEP Committee determines that services are not needed in one or more of the above noted areas, the IEP must include a statement to that effect and the basis upon which the determination was made. When determining if transition services should begin at a younger age, the LEA must consider students at risk for dropping out, students with severe disabilities, and students who may need more than one or two years of transition services.

2. annual educational performance goals for the student;
3. short-term objectives that describe either measurable sequential steps or major component parts of the goals;
4. appropriate objective criteria and evaluation procedures and schedules for determining whether the short-term objectives and annual goals are being achieved;
5. the identification of those types of persons/agencies responsible for the implementation of the IEP/Placement.

B. Each completed IEP shall contain the following program/services components:

1. the identification of the IEP/Placement participants as required in §441;
2. the long-term educational goal and description of the educational program, indicating whether the student shall address the regular education competencies or an approved alternative curriculum;
3. the extent to which the student will be able to participate in regular education classes and activities;
4. the screening date(s) and criterion/criteria by which the student will be screened to determine extended school year program (ESYP) eligibility;
5. the type of physical education program to be provided as indicated in §445.C;
6. a description of special education and related services needs and the date for initiation of each type of service and the anticipated duration of each. When a related service is included, the frequency (range of time per session and the number of sessions per week) and whether the service will be individual or group shall be indicated;
7. assistive technology devices or assistive technology services, or both, as those terms are defined in the 900 Subsection of these regulations are made available to a student with a disability if required as a part of the student's special education, related service needs, or needs under supplementary aids and services.

*Comment:* Items 2-5 of Part B not applicable for gifted and talented.

#### **§445. Least Restrictive Environment Assurances and Considerations**

A. Each completed IEP shall contain the following placement components:

1. a description of the specific educational environment in which the student is to be placed for the first year (or partial year) of the IEP and the reasons that it is the least restrictive environment possible. In considering the educational placement of each exceptional student, the least restrictive educational environment will be a placement, whether in existence or not which can appropriately meet the student's individual educational needs, including necessary resources.

2. If the placement decision is not instruction in regular class/setting, a description must be provided which includes evidence of specific constraints that prohibit accomplishment of IEP goals and objectives in the regular classroom. This evidence should document that:

- a. the student did/will not benefit from being in a regular class/setting;

b. removing the student from regular class/setting results in improved educational opportunities; or

c. necessary services provided in a separate class/setting cannot be provided in a less restrictive environment.

3. In addition, the following noted assurances must be provided:

a. the placement is in the school which the student would attend if not exceptional unless the IEP of the student requires some other arrangement. If the placement is not in the school the student would normally attend, the placement is as close as possible to the student's home.

b. the school and the class are chronologically age appropriate for the student. No student shall be placed in a setting which violates the maximal pupil/teacher ratio or the three-year chronological age span.

c. the school/setting selected is accessible to the student for all school activities.

d. the classroom is comparable to and integrated with regular classes.

Comment: Any deviation from these assurances must be documented and justified on the IEP.

In selecting an alternative setting, the school system shall consider any potential harmful effect on the exceptional student or the quality of services needed.

4. The educational placement of deaf and (hard-of-hearing) students will be determined primarily by the provision of a free appropriate public education (FAPE) and the consideration of the Least Restrictive Environment (LRE) will be of secondary consideration.

a. Full consideration of the unique needs of a deaf and hard-of-hearing student will ensure an appropriate education as required by the Individuals with Disabilities Education Act (IDEA) are met.

b. Factors that will be considered in developing an IEP for a deaf or hard-of-hearing student are:

i. communication needs and the student's and family's preferred mode of communication;

ii. linguistic needs;

iii. severity of hearing loss and potential for using residual hearing;

iv. academic level;

v. social, emotional, and cultural needs including opportunities for peer interaction and communication;

vi. consideration of curriculum content and method of curriculum delivery.

B. For each educational placement, the school system shall ensure that:

1. it is determined at least annually;

2. it is based on an IEP/Placement document;

3. exceptional students are educated with students who are not exceptional including students in public and private institutions or other care facilities served with IDEA funds, to the maximum extent appropriate. In making this decision, the following four areas must be considered:

a. physical integration—the student will share the same facilities with nondisabled students;

b. social integration—the student will participate in co-curricular and extra-curricular activities with nondisabled students;

c. academic integration—the student will participate in regular classroom activities; and

d. community integration—the student will participate in activities out in the community;

Comment: Communication and related needs of a student with disabilities must be considered when determining the LRE for that student.

4. special class, separate schooling, or other removal of exceptional students from the regular educational environment occurs only when the nature or intensity of the individual's needs are such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;

Comment: Reasons for selecting a more restrictive environment may not include administrative convenience, availability of related services, or special equipment.

5. the special education program in which each educational placement is made, including day or residential nonpublic schools, meets the standards of the state board.

C. Physical education services in accordance with the IEP/Placement document, must be provided to students with disabilities in the regular physical education program or the adapted physical education program as specified in §904.

D. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP/Placement document for each student with disabilities. At a minimum, this continuum shall include (in order of restrictiveness as it applies to each student):

1. instruction in regular classes, including:

a. supplemental aides and services to the student; and/or

b. special education instruction;

2. instruction in special classes, all or part of the day;

3. special school, all or part of the day;

4. homebound;

5. instruction in hospitals and institutions.

Comment: Instruction may take place in other settings such as the community and job sites.

E. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP/Placement document for each student with disabilities (birth through age 5). At a minimum, this continuum shall include (not in order of restrictiveness as it applies to each student):

settings for students 3 through 5, including but not limited to:

1. school/center—head start, high risk 4-year-old programs, private child care, public preschool classroom, Chapter I classroom, and kindergarten;

2. itinerant/homebased—child's home, caregiver's home, itinerant to head start, child care settings, kindergarten, high risk 4-year-old programs, and Chapter I classrooms;

3. combination parent/child intervention—any intervention with the parent may be combined with any of the above in 1 and 2 and will be considered a parent/child intervention setting.

Comment:

1. Students who are 3 through 5 years of age or are eligible for Part B services according to the LEA's policy on age of eligibility and who identified with speech impairments only are entitled to be served in any of the above preschool settings. The setting for a student with

speech impairments only must be determined by the needs of the student; the student may need communication intervention in settings with other students to meet his or her needs.

2. The school system must make available center-based settings comparable in time to that of kindergarten age students if the student with a disability is kindergarten age. The pupil/teacher ratio established in Appendix I, Part B is used. The teacher providing the service must be certified in noncategorical preschool or in the area of exceptionality served if the class is categorical. The frequency and intensity of services is flexible and dependent upon the needs of the individual student and family.

Settings for infants and toddlers birth to 3 years old include:

1. school/center settings—private child care, public and private early intervention programs, and hospital;
2. itinerant/homebased training—child's home, child care (itinerant to any setting not considered the child's residence);
3. combination parent/child intervention—any intervention with the parent may be combined with any of the above in Paragraphs 1 and 2 and will be considered a parent/child setting. For infants and toddlers, it is expected that most interventions will involve the family directly or indirectly.

Comment: Services to infants and toddlers with disabilities must be provided in the natural environments in which the child would be if he/she did not have a disability. The persons providing the service must be certified, licensed or credentialed in the area of the service being delivered.

F. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP for each student who is gifted or talented. At a minimum, this continuum shall include (not in order of restrictiveness as it applies to each student):

1. regular classroom with supplemental aids/services;
2. resource with regular classroom;
3. self-contained; and
4. preschool.

G. A continuum of alternative educational settings shall be available to the extent necessary to implement the IEP for each student who is deaf or hard of hearing. At a minimum, this continuum shall include (not in order of restrictiveness as it applies to each student):

1. homebound or hospital instruction;
2. special school, all or part of the day;
3. instruction in special classes, all or part of the day;
4. special education instruction in regular classes

including:

- a. service to or consultation with the regular classroom teacher; and/or
- b. services to exceptional students within the regular classroom.

H. The least restrictive environment rules may not be waived by any party, including the parent(s).

I. If there is evidence that a school system or any participating agency makes placements that are not consistent with these regulations, the office shall:

1. review the school system's or participating agency's justification for its action; and
2. shall assist in developing and implementing the required corrective action.

#### **§446. Nonacademic Setting Requirements**

A. Nonacademic and extracurricular services and activities (including counseling, recreational athletics, intramural and interscholastic athletics, transportation, health services, and clubs sponsored by the school system) must be offered in a way that allows equal opportunity for each exceptional student to participate in services and activities.

B. Nonacademic and extracurricular services, meals, and recess periods must be provided in the most inclusive setting appropriate to the needs of the student.

#### **§447. Duration of Educational Placement Rules**

A. School systems shall provide special education and related services to students with disabilities in accordance with an IEP for no less than the normal 180-day school cycle. Extended school year programming (ESYP) is the provision of educational and related services to students with disabilities in excess of the 180-day school year.

B. School systems shall provide educational and related services in excess of 180 school days to students with disabilities when these students are determined to be in need of or eligible for such services. Student eligibility is to be determined in accordance with extended school year program eligibility criteria requirements in Bulletin 1870, Determining Eligibility for Extended School Year Programs.

C. The student's extended school year program is to be designed according to the standards in Bulletin 1871, Program Standards for Extended School Year Services. ESY IEP participants, in determining the length and type of an extended school year program, shall not be bound or limited by any predetermined program or length. The type and length of the extended school year program shall be determined on an individual basis for each student. A program ranging anywhere from 181 up to 240 days shall be available when appropriate.

#### **§448. Hospital/Homebound Placement Rules**

The placement of an exceptional student, excluding students whose only exceptionality is hospital/homebound, by a school system in a program of homebound or hospital instruction may be proposed only if one of the following exists:

A. The exceptional student possesses a physical impairment or illness which directly (or because of treatment required) precludes the student's movement from a hospital or home environment to the general educational environment.

B. Consistent with the requirements of these regulations, the student has been determined to be emotionally/behavior disordered and either:

1. a psychologist or psychiatrist who is licensed to practice in Louisiana has certified in a signed written report filed with the office that the student is admitted to a full-time inpatient program of care and treatment in a hospital certified or licensed by the state of Louisiana and that continued participation in the inpatient program is necessary to the proper care and treatment of the student; or

2. a psychologist or psychiatrist who is licensed to practice in Louisiana has certified in a signed written report submitted to the school system and filed with the office that the student's current educational placement is not appropriate and that there is a need for the student to be placed at home

where he will be provided a program of continuous care and treatment. Upon the receipt of this report the school system shall:

- a. conduct a formal re-evaluation which specifically addresses the behavior exhibited by the student;
- b. conduct a review IEP/Placement meeting;
- c. write and implement a behavior plan which addresses the specific behaviors preventing the student from attending school;
- d. establish an approximate date for the student to return to school and measurable criteria which when achieved would allow the student to return to school on or before the established date;
- e. student progress towards meeting the behavior goals and objectives will be maintained by the teacher through data checklists and progress reports;
- f. the behavior goals and objectives will be reviewed during each grading period to determine if they are still appropriate and attainable by the student.

C. A student who is awaiting approval for placement in a residential facility and for whom a school-based interim program has been unsuccessfully implemented because of the severity of the disability or threat of danger to self or others.

D. An exceptional student is detained by court order in a juvenile detention facility.

E. An exceptional student is undergoing disciplinary action. Time limits are subject to the provisions of §459.

#### **§449. IEP/Placement Meeting(s) for Exceptional Students in Other School Systems or in Participating Nonpublic Schools**

A. Before a school system places, refers, or provides services to an exceptional student in another school system or in a participating nonpublic school, the school system shall initiate and conduct a meeting to develop an IEP for the student in accordance with these regulations. In preparation for this IEP/Placement meeting, the school system shall perform the following:

1. apply to SSD#1 for approval of placement out of the geographic attendance area of the school system or for a transfer of jurisdiction in accordance with §451.B unless the placement is in an approved cooperative operated by the school system;
2. discuss with an authorized representative of the receiving school system or the approved nonpublic school:
  - a. the student's eligibility for admission;
  - b. the education records necessary to determine eligibility for admission;
  - c. the availability of services; and
  - d. the likelihood of the student being accepted by the system if the IEP/Placement meeting resulted in such a recommendation;
3. for placement consideration at or referral to a state board special school, the proposed educational placement and supporting information must be forwarded to both SSD#1 for its review and approval in accordance with §271 and to the appropriate state board special school for its review and agreement.

B. The school system shall ensure that a representative of the participating nonpublic school or the other school system attends the IEP/Placement meeting. If the representative cannot attend, the school system shall use other methods to ensure participation by the nonpublic school or other school system, including individual or conference telephone calls.

#### **§450. Direct Service Rules**

School systems must provide direct services themselves or through approved cooperatives in the alternative setting needed by an exceptional student if:

1. there are sufficient numbers of such exceptional students who need similar alternative special educational settings, who are within a three-year chronological age span, and who are under the jurisdiction of the school system;
2. such direct services are consistent with these regulations which have given particular attention to LRE rules.

#### **§451. Alternative to Direct Services**

A. An exceptional student may be placed in an approved public or nonpublic day or residential school program within the geographic area of the school system only if the direct service provisions of §450 do not require the establishment of instructional programs by the school system directly or through approved cooperatives with other school systems.

B. School systems must apply to the department when a student is referred to or is to be placed in an approved public or nonpublic day or residential school outside the geographic area of the school system, unless the placement is in an approved cooperative operated by school systems.

1. In determining whether to approve a request for referral or placement in an approved public or nonpublic day or residential school program located outside the geographic area of the school system but within the state, the department will consider the following:

- a. the short-term and long-term educational needs of the student;
- b. the alternative educational placements available within the school system or through a cooperative agreement;
- c. the potential for creating a new alternative educational placement within the school system or by cooperative agreement which would be less restrictive than the proposed placement; and
- d. the proximity of the proposed placement to the residence of the student (e.g., greater metropolitan area).

2. In determining whether to approve a request for referral or for placement in an approved public or nonpublic day or residential school program located outside the state, the department, in addition to considerations listed above, must also consider the ability of the proposed educational program and facility to meet the minimum standards for special schools of Louisiana. In this determination:

- a. the nonpublic school must be approved by the SEA of the state in which it is located;
- b. an on-site visit by department personnel must be conducted prior to placement;
- c. the state in which the facility is located must have an approved annual plan for implementation of IDEA - Part B;

d. the public or nonpublic school must provide necessary data to establish comparability of educational programs to similar programs operated in Louisiana.

Comment:

1. The provisions of R.S. 17:1946 (Act 728 of 1979) shall be adhered to in regard to day placements made by DHH prior to July 1, 1979. Nothing in this Subpart shall be construed to limit or restrict the obligation of school systems under IDEA - Part B of this Part to provide services to voluntarily enrolled students with disabilities in approved nonpublic schools. School systems which place an exceptional student in an approved nonpublic school program must provide the approved nonpublic school whatever resources are necessary to provide the student and the student's parents all of the rights, privileges, and services established by these regulations.

2. Exceptional students placed in approved nonpublic schools by a school system remain within the jurisdiction of that school system regardless of the geographic location of that approved nonpublic school.

3. School systems remain fully and directly responsible for the complete compliance of the educational program being provided with the requirements of these regulations.

4. City/parish school system referral of an exceptional student to a state board special school is always an out of district placement unless a cooperative agreement exists with the city/parish school system; and if the student is admitted to such a school, the student is transferred to the state board special school's jurisdiction.

#### **§452. IEP/Placement Review Procedures**

A. Each school system shall ensure that each IEP/Placement review meeting is conducted at least annually in accordance with §442, §443, §444, §445, §449; the IEP is reviewed and revised if appropriate, and includes at least the following participants:

1. an officially designated representative of the school system, other than the student's teacher, who is qualified to provide, or supervise the provision of, special education. This person shall also be knowledgeable about the placement options and shall have the authority to commit school system resources to implement the IEP/Placement document;

2. the student's teacher;

3. one or both of the student's parents;

4. student, unless deemed otherwise by the parent. If the student does not attend a meeting involving transition planning, the school system shall take other steps to ensure that the student's preferences and interests are considered.

Comment: The school system, following prior notice guidelines in §504 of these regulations, is required to invite each student to participate in his or her IEP meeting if the purpose of the meeting is the consideration of transition services. For all students who are 16 years of age or older, one of the purposes of the annual meeting will be the planning of transition services, since transition services are a required component of the IEP for these students.

For a student younger than age 16, if transition services are discussed at the annual meeting that does not include the student, the school system must ensure that before a decision about transition services for the student is made, another IEP meeting is conducted for that purpose, and the student is invited to attend, again following prior notice guidelines in §504 of these regulations;

5. other individuals at the discretion of the parent(s) or school system;

6. for school systems planning transition services, a representative of any other agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the school system shall take other steps to obtain

the participation of the other agency in the planning of any transition services.

B. One IEP/Placement review meeting must be conducted annually. More than one IEP/Placement review meeting may be conducted at the discretion of the school system. If a parent makes a written request for a IEP/Placement review meeting, the school system must respond within 10 days in writing to that request. Other IEP/Placement review meetings that must be conducted in addition to the required annual meeting are listed in Bulletin 1530.

C. School systems shall include on each IEP/Placement document all special education and related services necessary to accomplish comparability of educational opportunity between exceptional students and students who are not exceptional.

D. School systems shall prepare a progress report related to the short-term objectives in the IEP/Placement document for each exceptional student and must provide it to the parent at the same time as report cards are provided to all students.

E. If a participating agency fails to provide agreed upon transition services contained in the IEP, the school system or public agency responsible for the student's education shall initiate a meeting, as soon as possible, for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

#### **§453. Change to Less Restrictive Environment**

A. During each IEP review or revision, the educational placement of the exceptional student must be changed to a less restrictive environment, unless the school system documents that the educational needs indicated on the updated IEP/Placement document indicate that a change in educational placement would cause a reduction in quality of services needed or have a potentially harmful effect on the student.

B. Significant change in educational placement is defined as moving a student from one alternative setting to another which is more restrictive or which transfers jurisdiction; such a change requires a re-evaluation. A re-evaluation is not required to precede a placement change to a less restrictive environment occurring as a result of an annual IEP/Placement document update.

#### **§454. Approved Nonpublic Schools—Review of IEP**

A. Participation of Exceptional Students in Nonpublic Schools Placed or Referred by Public School Systems

1. After an exceptional student who was referred or placed by a school system enters a participating nonpublic school, any meetings to review and revise the student's IEP/Placement document may be initiated and conducted by the participating nonpublic school or facility at the discretion of the school system.

2. If the participating nonpublic school initiates and conducts these meetings, the school system shall ensure that the parents and a representative of that school system are involved in any decision about the student's IEP/Placement document and agree to any proposed changes in the program before those changes are implemented.

B. Participation of Exceptional Students Voluntarily Enrolled in Nonpublic Schools

1. After an exceptional student enters a participating nonpublic school and receives special education and related

services from the public school system, any meetings to review or revise the student's IEP/Placement document must be initiated and conducted by the public school system.

2. The school system must ensure that a representative of the participating nonpublic school attends the IEP/Placement meeting. If the representative cannot attend, the school system shall use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls.

**§455. Special School District #1 and State Board Special School - Review of IEP**

If, during the review or revision of an IEP of a student in the jurisdiction of Special School District #1 or a state board special school, a change in placement in or a referral to a city/parish school system is considered, a representative of that school system, in addition to other meeting participants required by §454, must be involved in any decision about the student's IEP/Placement.

**§456. IEP Declassification Placement**

When a re-evaluation indicates that an exceptional student currently enrolled in special education no longer meets all the criteria in Bulletin 1508 for classification as an exceptional student, the school system shall either:

A. place the student in regular education if the student is still eligible for regular education; or

B. recommend that the student be placed in an appropriate alternative setting for up to a one-year period of special education programming. The declassification program shall be provided in accordance with an IEP/Placement document and shall include a regular education membership using resource or itinerant services if needed.

Comment: The student will be referred to the School Building Level Committee for appropriate accommodations or modifications as a handicapped student still eligible under Section 504 of the Rehabilitation Act of 1973.

**§457. Reserved**

**§458. IEP Interim Placement**

Refer to §416.

**§459. Review of Placement Resulting from Disciplinary Action**

**A. Definitions**

1. *Suspension*—

a. in-school cessation of educational services for one day or longer; and/or

b. removal from school for not more than nine school days.

2. *Expulsion*—removal of a student from school for 10 or more consecutive days.

3. In-school alternative discipline program which includes educational services shall not be considered a suspension.

4. Re-evaluation due to disciplinary action must be specific to the referral questions and would, generally, include the same components as specified in Bulletin 1508 under Re-evaluation and should address the specific behaviors exhibited by the student.

5. *Determination*—assessing of the student's behavior as it relates or is influenced by his/her disability. This documented determination must be made by at least one

person knowledgeable about the student (e.g., a teacher) and one person knowledgeable about the disabling condition of concern (e.g., a teacher certified in the disability, a pupil appraisal staff member).

B. Prior to administering any form of discipline that may result in the cessation of the educational program of a student with disabilities, a determination (§459.A.5) must be made and documented as to whether the behavior is related to the student's disabling condition. The Special Education administrator or designee shall immediately (within one day) be notified of the determination decision regarding the behavior, and whether disciplinary action is taken.

During any suspension, removal or temporary placement of the student, the school system shall provide continued appropriate educational services and planning.

C. If the determination is made and documented that the behavior is related to the student's disability, then the student shall neither be suspended or expelled.

1. The student may remain in his/her current educational setting; or

2. The student's IEP Committee may be convened to consider modifications to the student's program/placement (i.e., additional related services, counseling, changes in his/her behavior management plan, increased time in the current Special Education program, change of class schedule, teacher, etc.).

D. If the determination is made and documented that the behavior is not related to the student's disability the student may be suspended in accordance with discipline policies for nondisabled students. The school system must notify the parents regarding the relatedness determination if it involves a change in placement. This notice shall also provide them with all procedural safeguards including the right to appeal or challenge the decision in accordance with §443 and §507 of these regulations.

E. If the determination is made that the behavior is not related to the student's disability and an expulsion is being considered, prior to the expulsion:

1. The IEP committee must be convened to:

a. familiarize the IEP committee with the determination decision;

b. review the student's IEP/Placement; and

c. plan for services to be provided to the student if he/she is to be out of school. Components of the plan must include follow procedures in §448.B.2.a-f;

2. If expulsion is recommended at the expulsion hearing:

a. a re-evaluation must be conducted;

b. the IEP committee must be convened to develop an alternative education program that shall be provided to the student during the period of expulsion following procedures in §448.B.2.a-f; and

c. the school system must notify the parents regarding the relatedness determination if it involves a change in placement. This notice shall also provide them with all procedural safeguards including the right to appeal or challenge the decision in accordance with §443 and §507 of these regulations.

F. The IEP shall be convened to review the behavior plan, the program and/or placement of a student classified as disabled within three days following:

1. nine school days in, or repetitive assignments to a structured in-school alternative discipline program;
2. the third occurrence of a suspend able infraction; or
3. cessation of educational services for nine cumulative school days due to one or more suspensions.

G. At each IEP meeting there must be a discussion of the behavioral needs of the student. This should include the following:

1. addressing any behavioral problem(s) of the student that are related to the disabling condition;
2. developing a structured program of behavior management (including goals and objectives) for dealing with the behavior; and
3. a review and determination of the effectiveness of any prior plan of behavior management.

Note: Any structured program of behavior management which is included in a student's IEP shall not be considered disciplinary action.

H. When the student poses an immediate danger to self or others or is significantly destructive to property, the student may be removed from the school immediately. A determination decision and other due process procedures must be carried out within three school days from the day of the incident.

#### **Services to Voluntarily Enrolled**

##### **Students in Participating Nonpublic Schools**

#### **§460. Services to Exceptional Students in Nonpublic Schools**

A. Participation of Exceptional Students in Nonpublic Schools Placed or Referred by Public Agencies

1. City/parish school systems placing or referring exceptional students to a nonpublic school or facility as a means of providing special education and related services must ensure that these services are provided:

- a. in conformance with an Individualized Education Program that meets the requirement of 34 CFR §300.340-300.350;
- b. at no cost to the parent;
- c. at an approved nonpublic school or facility that meets the education standards that apply to public schools and/or facilities including personnel standards; and
- d. the student has all rights of an exceptional student served by a public agency.

2. City/parish school systems and the state education agency must monitor compliance of these agencies, provide them with information on applicable standards and allow them an opportunity to submit revisions in the development of such standards.

B. Participation of Exceptional Students Voluntarily Enrolled in Nonpublic Schools. School systems must also operate programs and services assisted or carried out under funds received from the Individuals with Disabilities Act in order that exceptional students voluntarily enrolled in nonpublic schools have a genuine opportunity to participate equitably in such programs and services consistent with their number and their need. To meet this requirement, school systems must comply with 34 CFR 76.651-76.662 (EDGAR),

34 CFR 300.450-300.452 and the Louisiana Special Education State Plan.

1. If an exceptional student has a free and appropriate public education available and the parent chooses to place the student in a nonpublic school or facility, the city/parish school system is not required by this Part to pay for the student's education at the nonpublic school or facility. However, the public agency shall make services available to the student as provided under 34 C.F. 300.450-300.452.

2. The types of services in addition to student identification and evaluation service mandated at §414 of these regulations, to be provided to a student with a disability enrolled in nonpublic schools by their parents must be determined through the process of consultation with private school representatives (34 CFR Part 76) and through the IEP process. Which services will be provided and where such services are provided must be also be addressed in consultation with nonpublic school personnel.

3. Consideration must be given to the Establishment Clause of the United States Constitution, which mandates the separation of church and state, and all applicable state statutes when providing services at nonpublic schools.

#### **§461. Training of Personnel in Participating Nonpublic Schools**

The department must provide the opportunity for continuing education (inservice training) of personnel in participating nonpublic schools.

#### **Accessibility**

#### **§462. Facility Accessibility**

A. Facilities used by school systems, directly or through contractual arrangement, must be accessible to and usable by exceptional persons. Architectural barriers shall not prevent an exceptional student from being educated in the least restrictive educational environment as defined in §445 of this Part.

B. New facilities or new parts of facilities:

1. may not be approved for construction unless and until the department and the state board give express written approval on the basis of a satisfactory showing by a school system that adequate provision has been made for the necessary access of the exceptional students;
2. must be designed and constructed in a manner which results in their being readily accessible to and usable by exceptional persons;
3. must be constructed to at least meet the current level of accessibility provided by the Americans with Disabilities Act (ADA) Accessibility Guidelines for Building and Facilities.

C. Facilities which are altered for the use of school systems must be altered to the maximum extent feasible in a manner which results in the altered portion of the facility being readily accessible to and usable by exceptional persons.

#### **§463. Program Accessibility**

Program accessibility must be ensured within existing facilities.

A. Program accessibility may be accomplished through one of the following:

1. alteration of existing facilities; or

2. nonstructural changes: redesign of equipment; assignment of communicative aids; reassignment of classes or other services to accessible buildings; assignment of aides to students; home visits; and delivery of health, welfare, or other social services at alternative accessible sites.

B. In choosing among available methods for meeting the program availability requirement, a school system shall give priority to those methods that offer programs and activities to persons with disabilities in integrated settings.

C. Structural changes in facilities do not need to be made where other methods effectively ensure program accessibility; where structural changes are necessary, they must be made as expeditiously as possible.

D. All nonstructural changes necessary to ensure program accessibility must be made immediately.

#### **§464. Facility Comparability**

Facilities identifiable as being for exceptional students and the services and activities provided therein must meet the same standards and level of quality as do facilities, services, and activities provided to other students.

#### **§465-469. Reserved**

##### **Local Advisory Council**

#### **§470. Membership**

Each city/parish school board shall establish a local advisory council which shall consist of at least 10 and no more than 20 persons. The city/parish school board shall ensure that the membership of the advisory council shall consist of a representative of each of the following groups with at least 50 percent of the membership consisting of consumers and/or families of exceptional students. (Each council member can represent only one of the groups.) The local council's membership should match the cultural/ethnic ratio of the community:

- A. individuals with disabilities;
- B. teachers of students in special educational services;
- C. teachers of non-disabled students;
- D. parents of exceptional children;
- E. parents of regular classroom children;
- F. state and local education officials;
- G. special education program administrators;
- H. representatives of consumers, colleges and universities, or vocational-technical schools.

#### **§471. Appointment Procedures**

The membership of the advisory council by the city/parish school board shall be appointed according to the following procedures:

A. Each of the parent organizations and/or youth advocacy organizations registered with the school system pursuant to §488 shall nominate no more than two persons for appointment to the advisory council by the city/parish school board.

B. The city/parish school board shall appoint at least four persons from nominations submitted in accordance with Subsection A above.

C. If the nomination list described above consists of fewer than four nominations, the city/parish board shall select the balance without such nomination.

D. The balance of the membership shall be appointed by the city/parish school board.

#### **§472. Terms of Office**

Council members shall serve for three years. Initially, one-third of the members of the council shall serve for a term of one year, one-third for a term of two years, and one-third for three years. One person shall be elected chairman; subsequently a chairman shall be elected each year. Upon the expiration of any term of office of a member of the advisory council, the city/parish school system shall reappoint a person eligible in the same manner as the person being replaced.

#### **§473. Functions**

A. The local advisory council shall assist the city/parish school board in the development of local plans for the provision of special education and related services to exceptional students by reviewing, prior to adoption, all policy and budgetary matters included in each such plan.

B. The local advisory council shall transmit to the superintendent and the president of the board, in writing, the results of its review and any recommendations.

C. The advisory council shall meet as often as necessary to fulfill its responsibilities.

D. Agenda items must be publicly announced prior to meetings in accordance with school system policies on such announcements.

E. The advisory council shall send the name and address of its chairman to the office annually.

#### **§474. Responsibilities of City/Parish School Systems**

A. The city/parish school system shall provide as necessary:

1. interpreters at the local advisory council meetings;
2. supportive services necessary for the council to fulfill its responsibilities, consistent with city/parish school board policy.

B. Advisory council members shall serve without compensation.

#### **§475-479. Reserved**

##### **Administrative Matters of School Systems**

#### **§480. Nondiscrimination in Employment**

A. Each school system must comply with all of the federal and state requirements governing nondiscrimination in employment.

B. Each school system must extend grievance procedures now in effect pursuant to the regulation issued by the U.S. Department of Education implementing Title IX of the Education Amendments of 1972 (45 CFR 86.8) to include any grievance of employees with disabilities.

#### **§481. Appointment of a Supervisor/Director of Special Education**

Each school system must employ a certified supervisor/director of special education on a full- or part-time basis.

#### **§482. Certification of Personnel**

Personnel of local school systems and other local agency providers who deliver special educational services (including instructional, appraisal, related, administrative, and support services) to exceptional students (birth through age 21) must currently meet all applicable Louisiana Standards for State Certification of School Personnel or, as specified under Part H requirements for IDEA and stipulated in the approved

Louisiana State Plan for Infant and Toddlers with Disabilities and Their Families (Component IX, Personnel Standards.)

**§483. Continuing Education (Inservice Training)**

Each local school system and other agency providers must participate fully in the preparation and implementation of the statewide Comprehensive System of Personnel Development. Each local entity participating in the Louisiana special education service delivery system must provide continuing education (inservice training) to personnel who identify, evaluate, place, and provide special education or related services to exceptional students (birth through age 21). Continuing education activities must be coordinated with the continuing education efforts of other local entities to support collaboration among programs, reduce overlapping service delivery, and improve outcomes for exceptional students and their families.

**§484. Reserved**

**§485. Assurance of Compliance**

A. In connection with each annual application for state and federal financial assistance, each school system must sign a written assurance that the preschool, elementary, and secondary program operated by the school board is currently in compliance and will, in the future, be operated in compliance with these regulations and any applicable federal regulations.

B. Each school system shall permit access by the staff of the office during regular business hours to any sources of information necessary to ascertain compliance with these regulations.

**§486. Procedure for Application for State or Federal Funds**

Each school system requesting state or federal funds administered by the department shall do so according to the procedures established by the department.

**§487. Annual Application for IDEA - Part B Funds**

On or before June 1 of each year, each school system must submit an application to the office which sets forth a request for IDEA - Part B funds sought by the school system to provide a free appropriate public education to exceptional students.

A. The annual application must be submitted on forms issued by the department and must contain any request which the school system intends to make for federal funds.

B. The annual application must be approved by the school system governing authority before the submission to the office.

C. The annual application must include all state and federal procedures and assurances necessary to receive such federal funds.

**§488. Preparation of Application**

A. In the preparation of the application required under IDEA - Part B, the school system must:

1. publish a summary of the application for IDEA - Part B flow-through funds (the application) indicating its purpose and scope, its public availability, the timetable for final approval, the procedures for submitting written comments, any policy changes from previous applications, and a list of the time and place of the public meeting to be held. Such notice shall occur between 45 and 60 calendar

days prior to submission of the program plan to the governing authority of this school system;

2. distribute to any parent organization, child and youth advocacy organization, approved nonpublic school program, public college or university, or other affected agency operating in the jurisdiction of the school system which has previously registered with the school system, a copy of the proposed application and a list of the times and places of the public meeting to be held. This distribution must occur no less than 30 calendar days prior to submission to the governing authority of the school system of the proposed application;

3. publish within the week preceding the public meeting a description of the time, place, and purpose of the meeting in newspaper(s) of general circulation in the jurisdiction of the school system;

4. hold the public meeting in which parents and other interested persons throughout the geographic area of the school systems are afforded a reasonable opportunity to comment on the application;

5. file in a publicly available location a written or electronic verbatim record of the public meeting and any written comments received;

6. review and consider all public comments which might warrant modification of the application;

7. attach a summary of the comments made during the public meeting or received by the governing authority of the school system to the proposed final application submitted to the governing authority of the school system;

8. publicize the approval by the governing authority of the school system of the final application and the location where copies of the plan can be obtained by the public;

9. publicize the approval or disapproval by the department of the application and the location where copies of the final application can be obtained by the public;

10. inform potentially interested parent and child advocacy organizations, approved nonpublic school programs, public colleges and universities, and other affected agencies in the jurisdiction of the school system of the requirements of this Subpart.

B. The school system shall provide a list of the organizations to which a distribution of the application is made upon submission of the application to the Office of Special Educational Services.

**§489. Reserved**

**§490. Maintenance of Special Education Enrollment**

Each school system shall maintain and assure the accuracy of the required elements for each student record on the Louisiana Network of Special Education Records (LANSER), the automated special education tracking system.

**§491. Child Counting**

A. Each school system shall use LANSER for the purpose of tracking students with disabilities. Data from this system shall be used to produce the annual child count, as of December 1, for the purpose of generating grant awards under IDEA-B, Section 619 Preschool and Chapter 1 S.O.P.

B. Each school system/state agency must determine the eligibility of each student for inclusion in the December 1 Child Count, which will generate funds under IDEA-B, and

Chapter 1 S.O.P. It is the responsibility of the school system/state agency to verify that each eligible student is receiving the special education and related services stated on the Individualized Education Program or early intervention services, as stated on the Individualized Family Service Plan. Eligibility requirements for IDEA - Part B and H and Chapter 1 S.O.P. must be determined as specified in the *SDE Monitoring Procedures*, Bulletin 1922.

**§492. Dissemination of Student and Parent Rights**

Each school system shall reprint and provide to each parent of a student who is currently receiving special education or who is identified as suspected of being exceptional, a written explanation of all the procedural safeguards available to the parents and shall refer any request for a copy of these regulations to the office.

**§493. Use of IDEA - Part B Flow-through Funds**

A. A school system may only use IDEA - Part B funds for the excess cost of providing special education and related services for students with disabilities. Costs must be directly attributable to the education of a student with disabilities. IDEA - Part B funds received must not be commingled with State funds.

B. The school system meets the excess cost requirement if it has on the average spent at least the amount determined under 34 CFR 300.184 for the education of each of its students with disabilities. This amount may not include capital outlay or debt service. The excess cost requirement prevents a school system from using funds provided under IDEA - Part B to pay for all of the costs directly attributable to the education of a student with disabilities. However, the excess cost requirement does not prevent a school system from using IDEA - Part B funds to pay for all of the cost directly attributable to the education of a student with disabilities in any of the ages of 3, 4, 5, 18, 19, 20, or 21 years, if no local or state funds are available for nondisabled students in that age range. However, the local educational agency must comply with the nonsupplanting and other requirements of this Part, providing the education and services.

C. School systems may not replace state and local funds with IDEA - Part B funds. To determine that requirement is met, school systems must be able to demonstrate that the total amount, or average per capita amount, of state and local school funds budgeted for expenditures in the current fiscal year for the education of students with disabilities is at least equal to the total amount, or average per capita amount, of state and local school funds actually expended for the education of students with disabilities in the most recent preceding fiscal year for which the information is available. Allowance may be made for decreases in enrollment of students with disabilities and expenditures of unusually large amounts of funds for such long-term purposes as the acquisition of equipment and the construction of school facilities.

D. School systems must use state and local funds to provide services to students with disabilities receiving IDEA - Part B funds which, taken as a whole, are at least comparable with services provided to other students without disabilities.

E. School systems must maintain records which demonstrate compliance with the excess cost, nonsupplanting, and comparability requirements.

**§494. Use of Chapter 1 S.O.P. Funds**

A. If more than one state agency is directly responsible for providing a free appropriate public education to a student with a disability, or early intervention services to a infant or toddler with a disability, the state agency that is primarily responsible for the provision of education to that or early intervention services to that infant or toddler, as determined by the state educational agency, is the only state agency that must count that infant, toddler, or student with a disability.

B. A state agency or a local educational agency may use Chapter 1 S.O.P. funds only for programs and projects that are designed to supplement the provision of special education and related services or early intervention services to infants, toddlers, and students with disabilities who are eligible to be served.

C. The application for Chapter 1 S.O.P. funds must be submitted on forms issued by the department and must contain a narrative description of activities, a budget reflecting the use of funds, and procedures and assurances necessary for receipt of such federal funds for the provision of special education and related services.

**§495. Interagency Coordination**

A. Each school system shall, upon request, assist the department in the development and implementation of any interagency agreements designed to improve the delivery of special education and related services to exceptional students.

B. Each school system shall enter into interagency agreements in §830 to the extent necessary to comply with all provisions of these regulations.

C. Each agreement shall be consistent with §800 of these regulations.

**§496. Responsibilities for Placed Students**

City/parish school systems shall enroll exceptional students currently enrolled in SSD#1 or state board special schools for provision of special education in the least restrictive environment when the student is placed by SSD#1 or state board special schools. Such an exceptional student remains in the jurisdiction of SSD#1 or the state board special schools, which shall reimburse the city/parish school system for any costs for providing such services based on an interagency agreement. A city/parish system or SSD#1 which places students with severe or low-incidence disabilities in state board special schools must reimburse state board special schools for any costs for providing such services based on an interagency agreement. The school system which retains jurisdiction retains fiscal responsibility for funds not available to the other system from the state. A city/parish school system that disagrees with such a placement may, on an individual basis, apply to the state board for exemption from the state board from this obligation.

**§497. Reserved**

**§498. Discharge from Treatment Care and Habilitation**

Upon receipt of notification from the appropriate agency, a city/parish school system shall conduct an IEP/Placement meeting according to §400 for exceptional students who were

discharged from state-operated residential facilities and are still eligible exceptional students.

**§499. Reserved**

**Part 500. Procedural Safeguards**

**§501. General Responsibility**

Each school system shall establish and implement procedural safeguards which meet the requirements of these regulations.

**§502. Opportunity to Examine Records**

The parents of an exceptional student have a right to inspect and review educational records with respect to the identification, evaluation and placement of the student and the provision of a free appropriate public education as described in §517.C.

**§503. Independent Educational Evaluation**

The parents of an exceptional student have a right to obtain an independent educational evaluation of the student. The school system must provide on request, information to the parent about where an independent educational evaluation may be obtained. For the purpose of this Part:

*Independent Educational Evaluation (IEE)*—an evaluation conducted by a qualified examiner who is not employed by the school system responsible for the education of the student in question.

*Public Expense*—that the school system either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

Comment: If a school system must pay for an IEE, the cost shall not exceed the average cost of such an evaluation conducted within the state of Louisiana and within a 75-mile radius of the school system.

A. An independent educational evaluation is provided at public expense and at no cost to the parents, if:

1. the parent disagrees with an evaluation provided by the school system; and/or
2. a hearing officer requests an IEE as part of a due process hearing.

B. When a school system is notified in writing by the parent that the parent disagrees with the school systems' education evaluation, the school system has 10 operational days of receipt of the notice to initiate a due process hearing to show that its evaluation is appropriate. If the hearing decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation but not at public expense. If the school system does not initiate a due process hearing when the parent disagrees with an evaluation, then the IEE must be at public expense.

Comment: Failure of a parent to provide a school system with written notice of a disagreement with the school system's evaluation does not release the school system of its responsibility to pay for an independent educational evaluation that meets the other requirements as stated above.

C. An IEE obtained at public expense must meet the same criteria established by these regulations and Bulletin 1508, including the location of the evaluation and qualifications of the examiner.

D. If the parents obtain an independent educational evaluation at their own expense, the results of the evaluation:

1. must be considered by the school system in any decision made with respect to the provision of a free appropriate public education to the student. The school

system is not required to use the IEE obtained at the parents' expense as its only criteria for deciding the content of the student's special education program; and

2. may be presented as evidence at a due process hearing.

**§504. Prior Notice**

A. Written notice must be given to the parents of an exceptional student a reasonable time before the school system:

1. proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student, or

2. refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

B. The prior notice must include:

1. a full explanation of all the procedural safeguards available to the parents, including confidentiality requirements;

2. a description of the action proposed (or refused) by the school, an explanation of why the school system proposes or refuses to take the action and a description of any options the school system considered and reasons why those options were rejected;

3. a description of each evaluation procedure, test, record or report the school system uses as a basis for the proposal or refusal; and

4. a description of any other factors that are relevant to the school system's proposal or refusal.

C. The notice must be:

1. written in language understandable to the general public; and

2. provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so; and

3. if the native language or other mode of communication of the parent is not a written language, the local agency must take steps to insure that:

- a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication, if the native language or other mode of communication is not written language;

- b. notices scheduling Individualized Education Program (IEP) meetings shall contain a description of the purpose of the meeting, date, time, location of the meeting and a list of who will be in attendance; and

- c. the school system must maintain written evidence that the requirements of Paragraph 3 (a) and (b) of this Section have been met, and that the parent(s) understands the content of the notice.

**§505. Consent**

*Consent* means that:

A. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

B. the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

C. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

D. parental consent must be obtained before:

1. conducting a pre-placement or initial evaluation; and
2. initial placement of an exceptional student in a program providing special education and related services.

Comment:

1. If the parent's decision is to withhold formal written approval for the initial evaluation or placement of the student in special education, the school system may appeal to the appropriate state court within the time prescribed by state law.

2. A school system may not require parental consent as a condition of any benefit to the parent or student except for the services or activity for which consent is required under this Part.

3. Each school system in the state must establish and implement effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the student with FAPE.

### **§506. Conciliation and Mediation**

A. School systems shall make all reasonable efforts consistent with their obligations under these regulations to resolve informally any ongoing dispute between the parent and the school system. Parents may file a complaint with the SDE at any time.

B. Mediation is an optional process which may be used by the school system and the parent to reach an agreement concerning an education decision proposed or refused by the school system or the parent, and to which either the school system or parent disagrees. The parties have a right to:

1. a mediation conducted by a mediator who is not an employee of the school system responsible for providing special education and related services to the student;
2. a mediator trained in mediation with a knowledge of special education and special education services to mediate the disagreement;
3. a written copy of the agreement if an agreement is achieved.

C. Any mediation conducted between the school system and the parent does not result in a delay or denial of a parent's right to a due process hearing. Mediation is not required before a request for a due process hearing is made.

### **§507. Impartial Due Process Hearing**

A parent or school system may initiate a hearing on any of the matters described in §504 A.1 and 2 of these regulations. A parent initiates a hearing by sending written notice to the LEA. The LEA initiates a hearing by sending written notice to the parent and the SDE.

A. Any party to a hearing has the right to:

1. have the hearing conducted at a time and place convenient to the parent, student and school system;
2. be accompanied and advised by counsel or by an individual with special knowledge or training with respect to the problems of exceptional students;
3. present evidence and confront, cross-examine, and compel the attendance of witnesses;
4. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five operational days before the hearing; and
5. obtain a written or electronic verbatim record of the hearing;

6. obtain written findings of fact and decisions. The SDE, after deleting any personally identifiable information, shall:

- a. transmit those findings and decisions to the State Advisory Council established under these regulations; and
  - b. make those findings and decisions available to the public;
7. a statement of the qualifications and the hearing record of the proposed hearing officers, upon request from the SDE.

B. A parent involved in a hearing has the right to:

1. have the student who is the subject of the hearing present;
2. open the hearing to the public;
3. be informed, upon request, of any free or low-cost legal and other relevant services when either the parent or school system initiates a due process hearing; and
4. be informed that if the parent prevails in a due process hearing, the parent may be able to recover attorney fees.

C. If the hearing procedure, review, or judicial proceeding involves an application for initial admission to any school system, the student with formal parental approval must be placed in the public school program of the school system responsible for the placement until the completion of all the proceedings.

### **§508. Hearing Officer Appointment and Hearing Procedures**

A. Hearing Officer Appointment

1. Hearing officers must be impartial persons knowledgeable about the legal and educational issues involved in assessing compliance with these regulations.

a. A hearing officer may not be a person who is an employee of a public agency that is involved in the education or care of the student.

b. No person who has a personal or professional interest which would conflict with his or her objectivity may be appointed to serve as hearing officer.

2. The SDE and each school system will maintain a list of qualified hearing officers. The list will include a statement of the qualifications of each of those persons and, to the extent possible, include representation from all regions of the state. The department ensures that these hearing officers have successfully completed an inservice training program approved by the department. Additional inservice training shall be provided whenever warranted by changes in applicable legal standards or educational practices.

3. Appointments will be for a period of three years and may be renewed. The department must annually review the activities of persons on the list and must remove persons from the list if they leave the state, decline to participate actively in the hearing process, cease to be impartial, or do not carry out their responsibilities in a satisfactory fashion.

Comment: A person who otherwise qualifies to conduct a hearing under this Section is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer.

B. Hearing Procedures

1. Hearing Officer Designation

a. The local supervisor must notify the SDE of the need to assign a hearing officer within one day of receipt of a request for a hearing. The hearing officer will be assigned within two operational days by the SDE on a rotational basis from the State Department of Education's approved list. Consideration will be given to the location of the hearing when making the assignment.

b. After a hearing officer has been assigned by the SDE, the local supervisor must, within five operational days, give the parent(s) written notice of the name of the proposed hearing officer.

c. The parent and the school system, upon receiving notice of the assigned hearing officer, may disqualify (available only once) the person assigned. The parent must notify the parish supervisor of such a decision within three operational days after receiving notice. The school system must notify the SDE of their decision or the parents' decision to disqualify the hearing officer within three operational days after receiving notice.

d. If the parent or school system has reasonable doubt regarding the impartiality of a hearing officer, they must submit written information to the SDE within three operational days of receipt of the notice of the assigned hearing officer. The SDE shall review any written challenge and:

(1) provide a written decision and notice to the parent and parish supervisor within five operational days after receipt of the written challenge;

(2) if the SDE determines that doubt exists as to whether the proposed hearing officer is truly impartial, an alternate hearing officer must be immediately assigned from the approved list.

e. Final designation of a hearing officer occurs when a proposed hearing officer is assigned by the SDE and there is no challenge by the parent or school system.

## 2. Conduct of Hearing

a. The school system must notify the parent of the date, time and place of the hearing following the requirements in §504 of these regulations.

b. A hearing shall be conducted in accordance with guidelines developed by the State Department of Education with approval of the Board of Elementary and Secondary Education.

c. The final hearing decision must be reached and a copy of the decision mailed to each party and the department not later than 45 operational days after the receipt of the request for the hearing.

d. A hearing officer may grant specific extensions of time beyond the prescribed time requirements at the request of either party. When an extension is granted, the hearing officer shall reach a decision and mail copies to the parties and the department not later than 10 operational days from the termination of the hearing.

e. A decision made in the hearing is final unless an appeal is taken by either party.

f. At the request of either party, the hearing officer has the right to subpoena persons to appear at the hearing.

## §509. Review of Hearing Decisions

A. Any party aggrieved by the findings and decisions of the hearing may appeal the hearing decision.

B. A written request to review the hearing decision must be sent by certified mail to the SDE within 15 operational days of receipt of the hearing decision. The request must state the basis upon which the review is requested.

C. The SDE must send copies of the request to all parties and notify the State Level Review Panel.

## §510. Appointment of Review Panel

A. The state level review panel is composed of three hearing officers and one alternate trained by the State Department of Education in special education law and issues who are not employed by the school system responsible for the education of the student and who did not participate in the due process hearing being appealed.

B. No person may serve on the panel reviewing an appeal if the person has a personal or professional interest that would conflict with his objectivity. A review officer shall not serve on the panel reviewing an appeal that involves a local school system by which the officer is employed.

## §511. Conduct of Review

A. Upon receiving a formal written request for a review, the SDE shall within 10 operational days notify the Review Panel to evaluate the hearing decisions, the hearing record, and other appropriate information.

B. A review must be conducted at a time and place that is reasonably convenient to the parents, the student and the school system.

C. In conducting the review, the panel shall within 30 operational days from receipt of the request for a review:

Comment: The review panel is allowed to grant specific extensions of time beyond the 30 calendar days at the request of either party.

1. examine the entire hearing record;

2. ensure that procedures were consistent with the requirements of due process;

3. seek additional evidence if necessary;

Comment: If a hearing is held to receive additional evidence, hearing rights stated in §507 (A and B) of these regulations are applicable.

4. afford all parties an opportunity for oral or written, or both, argument by the parties at the discretion of the reviewing panel;

Comment: any written argument(s) shall be submitted to all parties.

5. make a final decision on completion of the review;

6. give or mail a copy of its written findings and decision to all parties;

7. the SDE, after deleting any personally identifiable information, shall:

a. transmit those findings and decisions to the State Advisory Council established under these regulations; and

b. make those findings and decisions available to the public.

D. An agreement by two review officers on the panel constitutes the decision.

E. All parties have the right to continue to be represented by counsel at the state review level, whether or not the reviewing panel determines that a further hearing is necessary.

**§512. Reserved**

**§513. Appeal**

Any party aggrieved by the decision and the finding of the State Level Review Panel has the right to bring a civil action in state or federal court. The civil action must be filed in state court within 30 operational days of the decision. This time line does not apply to federal court.

**§514. Student Status During Proceedings**

A. During the pendency of any administrative hearing or judicial proceeding pursuant to the Section, the student involved must remain in the present educational placement unless the parent and the school system agree otherwise.

Comment: While the placement may not be changed during an administrative or judicial proceeding, unless the school system and parents agree otherwise, this does not preclude the school system from using its normal procedures for dealing with students who are endangering themselves or others.

B. If the hearing involves an application for initial admission to a public school the student with the consent of the parents, must be placed in the public school program of the school district until the completion of all the school proceedings.

**§515. Costs**

A. School systems shall be responsible for paying administrative costs or reasonable expenses related to participation of school system personnel in a hearing or appeal. The necessary expenses of the hearing officers, the review panel, and any stenographic services are paid by the SDE in accordance with department policies and procedures.

B. Each school system shall inform parents that any action or proceeding under Section 615 of IDEA, courts may award parents reasonable attorneys' fees under the circumstance described in Section 615 (E)(4) of IDEA.

**§516. Surrogate Parents**

A. A school system shall ensure that the rights of a child are protected when no parent (as defined in §959) can be identified and shall assign a surrogate parent whenever it determines that one of the following situations exists:

1. that the student is a ward of the state (including a ward of the court or of a state agency);
2. that it is unable to locate a natural parent or legal guardian by calls, visits, and by sending a letter by certified mail (return receipt requested) to the last known address of the natural parent or the legal guardian and allowing 20 operational days for a response of the intention to appoint a surrogate parent.

B. In all cases where the legal custody of the student is undetermined but an individual is raising the student at home; the individual is considered to be a person acting as the parent of the student and has complete authority over all educational decision-making on behalf of that student. In this instance a surrogate parent is not needed. At least three documented reasonable efforts must be made to notify the parents or guardians at their last known address.

C. A surrogate parent shall represent the student in all matters relating to the identification, individual evaluation, and educational placement of the student and the provision of a free appropriate public education including being present at an individual evaluation interpretation meeting,

IEP/Placement meeting and annual review meetings, and at any hearing concerning the student.

D. A method for determining whether a student needs a surrogate parent and for assigning a surrogate parent must be developed and implemented by each school system in a manner which ensures that:

1. a person assigned as a surrogate parent has no interest that conflicts with the interests of the student and is not a present employee of any state or state-supported agency involved in the education or care of the student;
2. the person assigned has knowledge and skills that insure adequate representation of the student;
3. all surrogate parents who cease to carry out the responsibilities or no longer meet the criteria of eligibility specified in B above are removed from eligibility.

E. Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the school system.

F. Any person appointed as a surrogate parent is protected by the "limited liability" of R.S. 17:1958.

G. Disagreement about the choice of a surrogate parent may be the subject of a due process hearing as described in this Part.

**§517. Confidentiality of Information**

The SDE has established policies and procedures for the implementation of the confidentiality requirements under IDEA - B and the regulations for Implementing the Family Educational Rights and Privacy Act (FERPA) of 1974.

A. Definitions. As used in these regulations:

*Destruction*—physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education Records*—the type of records covered under the definition of education records in FERPA.

*Participating Agency*—any school system or agency or state-operated program that collects, maintains, or uses personally identifiable information, or from which information is obtained under these regulations.

B. Notice

1. The SDE shall give notice which is adequate to fully inform parents about the requirements under identification, location and evaluation of exceptional students, including:

- a. a description of the extent to which the notice is given in the native languages of the various population groups in the state;
- b. a description of the students on whom personally identifiable information is maintained, the types of information sought, the method the state intends to use in gathering the information (including the sources from whom information is gathered) and the uses to be made of the information;
- c. a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- d. a description of all of the rights of parents and students regarding this information, including the rights under the Family Education Rights and Privacy Act of 1974.

2. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers, or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

#### C. Access Rights

1. Each school system shall permit parents to inspect and review educational records relating to their students which are collected, maintained or used by the agency under this Part. The school system shall comply with the request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the student, and in no case shall the time exceed 45 calendar days after the request has been made.

2. The right to inspect and review educational records under this Subpart includes the following:

a. the right to a response from the school system to reasonable request for explanations and interpretations of the records;

b. the right to request that the school system provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;

c. the right to have a representative of the parent inspect and review the records when written permission by the parent is presented.

3. The school system may presume that a parent has authority to inspect and review records relating to his or her student unless the school system has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

D. Record of Parties Obtaining Access. Each school system shall keep a record of parties attaining access to education records collected, maintained or used under this Part (except access by parents or authorized parties of the school system), including the name of the party, the date access was given and the purpose for which the party is authorized to use the record.

E. Records on More than One Student. If any education record includes information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

F. List of Types and Locations of Information. Each school system shall provide parents on request a list of the types and locations of education records collected, maintained or used by the school system.

#### G. Fees

1. Each school system may charge a fee for copies of records that are made for parents under this Part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

2. A school system may not charge a fee to search or to retrieve information under this Part.

#### H. Amendments of Records at Parent's Request

1. The parent has a right to have the child's records amended when the parent believes that the information

contained in the records is inaccurate, misleading or otherwise in violation of the parent's and child's privacy or other rights.

2. After the receipt of a request by a parent of a special education student to amend the student's record, the school system must decide whether to amend within a reasonable time.

3. If the school system refuses to amend the records as requested by the parent, the school system must inform the parent of the right to request a hearing as stated below.

#### I. Opportunity for a Hearing

1. The school system shall on request provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student.

2. A hearing held this Part must be conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

#### J. Results of a Hearing

1. If, as a result of a hearing, the school system decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights or other rights of the student, it shall amend the information accordingly and so inform the parents in writing.

2. If, as a result of a hearing, the school system decides that the information is not inaccurate, misleading or otherwise in violation of privacy rights, the parents must be afforded a right to place in the record comments they may have on the records or comments setting forth any reasons for disagreeing with the decision of the agency.

3. Any explanation placed in the record must:

a. be maintained by the school system as part of the records of the student as long as the record or contested portion is maintained by the school system; and

b. if the records of the student or the contested portion is disclosed by the school system to any party, the explanation must also be disclosed to the party.

#### K. Consent

1. Parental consent must be obtained before personally identifiable information is:

a. disclosed to anyone other than officials of the school system collecting or using the information under this Part subject to Number 2 below of this Section; or

b. used for any purpose other than meeting a requirement of the Part.

2. A school system or institution subject to FERPA may not release information from education records to school system without parental consent unless authorized to do so under FERPA.

3. If a parent refuses to provide consent under the Section, the requesting agency may file a written complaint with the SDE. Such a complaint will be investigated by the office according to the Board of Elementary and Secondary Education adopted procedures for the complaint management system required by IDEA

#### L. Safeguards

1. Each school system shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

2. One official at each school system shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

3. Any persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures.

4. Each school system shall maintain for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

#### M. Destruction of Information

1. The school system shall inform parents when personally identifiable information collected, maintained or used is no longer needed to provide educational services to the student.

2. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance records, classes attended, grade level completed and year completed may be maintained without time limitation.

N. Students' Rights. Each school system shall ensure when a student attains the age of 18 years, unless such student has been interdicted or determined to be in continuing minority by a court order of the state of Louisiana, the student is afforded the rights of privacy similar to those afforded to parents, taking into consideration the student's type and severity of disability.

O. Enforcement. The SDE Monitoring Procedures, Bulletin 1922, includes the policies, procedures and sanctions which the state uses to ensure that the requirements of IDEA - Part B and these regulations are met.

#### §520-599. Reserved

### Part 600. Establishment and Operation of Special School District Number 1

#### §601. Establishment of Special School District Number 1

Special school District Number 1 (SSD#1) is an intermediate educational unit administered by the Louisiana Department of Education with the approval of its governing authority.

#### §602. Program Approval

Each educational program operated by SSD#1 shall meet the Standards for Approval of special schools.

#### §603. Purpose

The purpose of SSD#1 is to provide a free appropriate public education for eligible exceptional students, ages 3 through 21 years, who have been admitted to state-operated programs for treatment, habilitation, and care or who have been placed by court order. During this period SSD#1 assumes responsibility for special education on an individual basis for each student and assures that the student receives an uninterrupted program of special education and related services from admission to discharge. As a result the city/parish school system of the domicile of the student is relieved of its direct service responsibilities while the student is enrolled in SSD#1.

#### §604-629. Reserved

#### §630. General Responsibilities

A. Whenever an exceptional student enters the jurisdiction of SSD#1 consistent with the requirements of these regulations, SSD#1 shall be responsible for either providing or causing to be provided, all needed special education and related services to each such exceptional student in full compliance with all provisions of Part 400 of these regulations, including:

1. the necessary certified personnel to ensure the conduct of an Individual Evaluation for each student within its jurisdiction in accordance with all requirements of §430-436 of these regulations;

2. the development and implementation of an IEP for each student within its jurisdiction in accordance with §440-459 of these regulations;

3. adequate personnel to establish and maintain the appropriate relationships with each affected city/parish school system to provide for a smooth transition of educational services for each student discharged from an SSD#1 school;

4. the transmission of all educational records on a student discharged from an SSD#1 school to the city/parish school system in which the exceptional student will be residing to assist in the IEP/Placement meeting;

5. approval of each out-of-district educational placement not covered by an interagency agreement; and

6. the adherence to all procedural safeguards of Part 500.

B. The assumption of this responsibility by SSD#1 shall not relieve in any way an insurer, similar third party, or state or local public agency, e.g., Department of Health and Hospitals (DHH), Department of Public Safety and Corrections (DPS&C), from an otherwise valid obligation to provide or to pay for services to which exceptional students are entitled as clients or beneficiaries of such third parties under state or federal entitlement or laws, or under policies or contracts.

#### §631. Jurisdiction

SSD#1 has jurisdiction over all exceptional students admitted to state-operated residential facilities and each student placed by SSD#1 in another school system. When a student is no longer residing within a state-operated facility, jurisdiction is transferred from SSD#1 to the school system of current residence of the student.

#### §632. Enrollment

A. An exceptional student shall be enrolled in an SSD#1 school after admission to a state-operated residential facility. This enrollment process shall not exceed 30 calendar days.

B. If a student admitted to a state-operated residential facility has not been identified as being exceptional, enrollment in SSD#1 will occur upon completion of an individual evaluation and the development of an IEP in accordance with the requirements and time lines in §430-436 and 440-459 of these regulations.

C. SSD#1 shall develop with each affected agency an interagency agreement for the purpose of implementing the above enrollment requirements which shall include

procedures for the joint development of each IEP, and treatment, care, or habilitation plan.

D. Placement in a state-operated residential facility does not require that all educational services described in the IEP of the student must be provided within the facility.

Wherever possible, consistent with the rules for the least restrictive environment, students enrolled in SSD#1 must participate in educational programs operated by city/parish school systems serving the geographic attendance area in which the facility is located.

**§633. Discharge from Treatment, Care, and Habilitation**

If an exceptional student is being considered for discharge from a state-operated residential facility, SSD#1 shall notify the city/parish school system in which the eligible exceptional student will be residing, of the return of the student. Before the exceptional student is discharged, SSD#1 shall provide educational records to the affected city/parish school system.

**§634. Emergency and Respite Care Program**

The admission of an exceptional student by the state of Louisiana for a temporary program of respite care shall not automatically require enrollment in SSD#1 for purposes of these regulations. The admission of an exceptional student on an emergency basis shall not constitute enrollment in SSD#1. However, if such admission continues on a nonemergency basis after a decision by the legally constituted agency (e.g., DHH or DPS&C) or by court of the state of Louisiana to place the student in a state-operated residential facility, the student must be admitted and enrolled in SSD#1 in accordance with §632 of these regulations.

**§635-649. Reserved**

**§650. Financing**

A. The department shall provide to SSD#1 whatever financial resources are necessary to support the educational programs of SSD#1.

B. Services provided to exceptional students enrolled in SSD#1 from sources other than school systems or the department are presumed to be for related services (including those described in the IEP, if an interagency agreement so provides) and treatment aspects of the total residential care program of the facility in which the education program is conducted.

C. The cost of special education teachers, teacher aides, principals, speech therapists, pupil appraisal personnel, and other instructional support staff for the educational programs operated by SSD#1 shall be included in the operating budget prepared by the department. SSD#1 may from time-to-time enter into contracts for the delivery of educational services with school systems in whose jurisdiction residential facilities are located. School systems must participate in such contractual arrangements unless the state board approves the request by a school system for exemption from this obligation.

**§651-684. Reserved**

**§685. Use of Chapter 1 S.O.P. Funds**

A. If more than one state agency is directly responsible for providing a free appropriate public education to a student with a disability, or early intervention services to an infant or toddler with a disability, the state agency that is primarily responsible for the provision of education to that student or early intervention services to that infant or toddler, as

determined by the state educational agency, is the only state agency that must count that infant, toddler, or student with a disability.

B. A state agency or a local educational agency may use Chapter 1 S.O.P. funds only for programs and projects that are designed to supplement the provision of special education and related services or early intervention services to infants, toddlers, and students with disabilities who are eligible to be served.

C. The application for Chapter 1 S.O.P. funds must be submitted on forms issued by the department and must contain a narrative description of activities, a budget reflecting the use of funds, and procedures and assurances necessary for receipt of such federal funds for the provision of special education and related services.

**§686-689. Reserved**

**§690. Instruction for Child Count**

A student with disabilities who is counted for the purpose of computing a grant under IDEA - Part B Flow-Through funds may not be counted in computing a grant under Chapter 1 S.O.P. funds.

**§691. Individual Evaluation**

Individual evaluations in SSD#1 schools shall be conducted to comply with all requirements of §430-436 of these regulations.

**§692. IEP and Placement Development and Review**

IEP and placement of students enrolled in SSD#1 schools shall be developed and implemented in accordance with §440-446 of these regulations.

**§693. Procedural Safeguards**

Students and parents of exceptional students enrolled in SSD#1 shall be provided the procedural safeguards in accordance with Part 500 of these regulations.

**§694. Reserved**

**§695. Monitoring and Complaint Management**

Special school District Number 1 shall develop an internal monitoring and complaint management system.

**§696-699. Reserved**

**Part 700. Responsibilities of State Board Special Schools**

**§701. Establishment**

The state board special schools (Louisiana School for the Deaf, Louisiana School for the Visually Impaired, and Louisiana Special Education Center) are state-operated schools providing educational programs and services for students with disabilities. These schools are administered by the department.

**§702. School Approval**

Each state board special school shall meet the Standards for School Approval of the state board.

**§703. Purpose**

State board special schools are designated to provide a free appropriate public education for students with low incidence impairments who meet the criteria for admission (e.g., deafness, blindness, orthopedic disabilities) for each such special school and are enrolled in such special school on a residential basis. The quality of education shall be equal to that received by any other similarly student with disabilities in the city/parish school systems of the state of Louisiana.

#### **§704. Administrative Organization**

The state board is the governing board of the state board special schools. The department administers such special schools through the schools' appointed superintendents. The superintendent of each special school shall administer the special school for which he/she is responsible in compliance with approved state board policies and procedures, these regulations, and other applicable Bulletins.

#### **§705. General Responsibilities**

A. Whenever a student with disabilities enters the state board special school in compliance with the requirements of these regulations, the state board special school shall be responsible for either providing, or causing to be provided, a free appropriate public education.

B. State board special schools shall, upon admitting a student with disabilities, assume the responsibility for providing each student a free appropriate public education in full compliance with all provisions of Part 400 of these regulations, including those related to child search, evaluation, IEP development and implementation, and placement of exceptional students; the provision of special education and related services; adherence to procedural safeguards; and certification of staff.

#### **§706. Jurisdiction**

All students with disabilities admitted into and residing in state board special schools shall be under the jurisdiction of the state board special school. Students with disabilities referred by a school system and admitted as full-time students to participate in the academic and nonacademic programs to the extent necessary to meet the individual needs of the student with the exception of residential services because of the proximity of residence of parents and/or other residential arrangements shall also be under the jurisdiction of state board special schools. Each student with disabilities, under the jurisdiction of the state board special school, but placed in an educational program or receiving services in a city/parish school system, remains under the jurisdiction of the state board special school. The school system which retains jurisdiction retains the fiscal responsibility for funds or resources not available to the other system from the state or through an interagency agreement or cooperative program.

#### **§707. Enrollment (Admission and Release)**

##### **A. Admission**

1. Eligible students with disabilities shall be admitted to state board special schools according to admission procedures established by the state board special school, approved by the state board, and in compliance with these regulations.

2. Students with disabilities shall not be admitted to a state board special school unless such students with disabilities are referred by a city/parish school system in compliance with the provisions of §440 and §446.D or in compliance with the provision of §716.

##### **B. Release**

1. Students with disabilities admitted to state board special schools shall be released from enrollment according to procedures established by the state board special school, approved by the state board, in compliance with these regulations.

2. Students with disabilities currently enrolled in state board special schools shall not be referred to a city/parish school system without a review of the current IEP/Placement (in compliance with §452) being conducted by the state board special school.

C. State board special schools may enter into interagency agreements with special school District Number 1 for cooperative supportive efforts in the provision of services, such as child search, evaluation and coordination.

D. Admission to a state board special school does not necessarily mean that all educational services described in the IEP of the student must be provided within such facility. Wherever appropriate, consistent with the rules for a least restrictive environment in §445, students admitted to state board special school programs must participate in educational programs operated by city/parish school systems serving the geographic attendance area in which the facility is located.

E. Admission to a state board special school shall not relieve in any way an insurer, similar third party, or other state or local public agency (e.g., DHH, DPS&C, DSS) from an otherwise valid obligation either to provide or to pay for services to which students with disabilities are entitled as clients or beneficiaries of such third parties under state or federal entitlement or laws, or under policies or contracts.

#### **§708. Financing**

State board special schools apply for state funds by submitting annual budgets approved by the state board to the Louisiana Legislature. Such budgets indicate federal and state sources of revenue. Each state board special school has its own schedule number in the annual appropriation bill.

#### **§709. Child Search Activities**

State board special schools shall cooperate with each school system in which the parents of a student with a disability enrolled in the state board special school are domiciled to permit the school system to carry out its ongoing responsibility with respect to student search when a student is in a state board special school.

#### **§710. Use of Chapter 1 S.O.P. Funds**

A. If more than one state agency is directly responsible for providing a free appropriate public education to a student with a disability, or early intervention services to an infant or toddler with a disability, the state agency that is primarily responsible for the provision of education to that student or early intervention services to that infant or toddler, as determined by the state educational agency, is the only state agency that must count that infant, toddler, or student with a disability.

B. A state agency or a local educational agency may use Chapter 1 S.O.P. funds only for programs and projects that are designed to supplement the provision of special education and related services or early intervention services to infants, toddlers, and students with disabilities who are eligible to be served.

C. The application for Chapter 1 S.O.P. funds must be submitted on forms issued by the department and must contain a narrative description of activities, a budget reflecting the use of funds, and procedures and assurances necessary for receipt of such federal funds for the provision of special education and related services.

### **§711. Instructions for Child Count**

A. A student with disabilities who is counted for the purpose of computing a grant under IDEA - Part B Flow-Through funds may not be counted in computing a grant under Chapter 1 S.O.P.

B. A student with disabilities who is counted in computing a grant under Chapter 1 S.O.P. funds shall not be counted for the purpose of computing a grant under IDEA - Part B.

### **§712. Individual Evaluation**

Individual evaluations in state board special schools shall be conducted in compliance with all requirements of §430-436 of these regulations.

### **§713. IEP/Placement**

IEP/Placement of students enrolled in a state boards special school shall be reviewed or revised and implemented in accordance with §440-459 of these regulations.

### **§714. Procedural Safeguards**

Students with disabilities and parents of students with disabilities enrolled in a state board special school shall be afforded all the procedural safeguards provided by Part 500 of these regulations.

### **§715. Monitoring and Complaint Management**

The state board special schools shall develop an internal monitoring and complaint management system.

### **§716. Louisiana School for the Deaf Alternative Placement**

A. In compliance with Acts 433 and 911 of the 1992 Regular Session of the Louisiana Legislature, the Louisiana School for the Deaf (LSD) shall:

1. determine, not later than the second Monday in September of each year, the number of additional students who may be admitted under this placement option;

2. base the determination on the availability of all necessary resources required to provide a free appropriate public education.

B. Upon receipt from a parent (as defined in Part 900 of this Bulletin) of an application for admission of their child, LSD shall:

1. require, at a minimum, an individual evaluation which meets the requirements in Bulletin 1508 for classification as hearing impaired (deaf/hard of hearing) as a part of the application;

2. notify the school system of parent/student domicile that application has been made, in order to fulfill the provisions established in §709 of this Bulletin.

C. Within 45 operational days, LSD shall: process the application; make a determination of eligibility for admission; and develop an Individualized Education Program (IEP). In the development of the IEP, the parent shall be informed of all placement options available to meet the student's educational needs.

D. LSD shall notify the school system of parent/student domicile that a student has been admitted or rejected under the provisions of this Subsection.

E. The applicable procedural safeguards established in Part 500 of this Bulletin shall be followed.

### **§717-799. Reserved**

## **Part 800. Interagency Agreements**

### **§801. General Statement**

The BESE has authorized the SDE, Office of Special Educational Services under R.S. 17:1941-1958 et seq., to

enter into any agreement developed with another public or private agency, or agencies, where such an agreement is consistent with the regulations; is essential to the achievement of full compliance with the regulations; is designed to achieve or accelerate the achievement of the full educational goal for all exceptional students; and is necessary to provide maximum benefits appropriate in service, quality, and cost to meet the full educational opportunity goal in the state. Each school system and the SDE shall enter into all interagency agreements specified in the regulations by following all the requirements in this Part and Guide for Developing Interagency Agreements, Bulletin 1930.

As used in this part, "interagency agreement" means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed.

### **§802-809. Reserved**

### **§810. Relationship Between School Systems and the Department**

The relationship between the department and the school systems is defined by these regulations in regard to providing a free appropriate public education to exceptional students. Interagency agreements are not necessary to define such relationships.

### **§811-819. Reserved**

### **§820. Purpose of Interagency Agreements**

A. The purpose of interagency agreements is to assure that the standards established by BESE to ensure a free appropriate, public education for exceptional students are upheld when they are implemented by an approved public or nonpublic agency not within the governance of the BESE.

B. The agreements are mandated to provide maximum use of both human and fiscal resources in the delivery of special education and related services, and to coordinate and clarify "first dollar" responsibilities.

C. Agreements may be entered into with parties both inside and outside the state of Louisiana with special consideration being given to abide by the rules for least restrictive environment. Nothing in any agreement may be construed to reduce assistance available or to alter eligibility.

### **§821-829. Reserved**

### **§830. Types of Interagency Agreements**

SDE and SSD#1 shall have agreements with the subdivisions and the Department of Health and Hospitals (DHH), Social Services (DSS), and the Department of Public Safety and Corrections (DPS&C). Local Educational Agencies shall have those agreements whenever necessary for the provision of a free appropriate public education with mental health centers, public health units, maternal and child health and Handicapped Children Services, Early Periodic Screening, Diagnosis, and Treatment programs, SSD#1, intermediate and long-term care facilities, approved nonpublic agencies, other local educational agencies, and Title XX providers. State Special School for the Deaf, State School for the Visually Impaired and the State Special Education Center now under the auspices of SSD#1 shall have interagency agreements with:

1. the LEA in whose geographic area they are located;
2. each LEA that places a student in the day programs of that facility;

3. regional state agencies;
4. approved and licensed nonpublic education; and
5. habilitation agency(ies) with whom they share students.

**§831-839. Reserved**

**§840. Mandatory Content of Interagency Agreements**

- A. Each agreement shall contain in writing:
1. a statement describing the disparate governances being dealt with by the parties of the agreement;
  2. the reason for writing the agreement;
  3. the responsibilities of each party of the agreement for providing FAPE, including the funding and the methods for accomplishing those responsibilities;
  4. all applicable state and federal standards that will apply to the agreement being developed;
  5. the data to be exchanged and the methods for exchanging it;
  6. statements with respect to Child Search and Confidentiality;
  7. the monitoring schedule and the procedures for same;
  8. the duration of the agreement;
  9. the process for amending the agreement, to include the statement to the effect that the contract may be terminated upon 30 days written notice and the disposition of data/materials collected to that point;
  10. any information specific to an agency which is necessary for approval of the agreement by SDE; and
  11. the titles and signatures of individuals authorized to enter into such agreements.

B. In addition, the agreements must contain the following three statements for conformance to Division of Administration requirements:

1. The contractor shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the state, provided however, that claims for money due or to become due to the contractor from the state may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the state.

2. The contractor hereby agrees to abide by all of the provisions of Louisiana Revised Statutes 43:31 in regard to printing of public documents. Contractor hereby agrees that prior to the final publication of any reports, documents, or publications of whatever nature for delivery to or used by the state, that the final proofs will be proofread by personnel of the SDE and that no final printing will occur until the contractor has been advised by the SDE in writing that the text of materials to be printed has been proofread and approved.

3. It is hereby agreed that the Legislative Auditor of the state of Louisiana and/or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of contractor which relate to this contract.

Comment: Interagency agreements must be reviewed annually. It is not necessary to write a new agreement if there is documentation between parties that the existing signed agreement is still agreeable to all parties.

**§841-859. Reserved**

**§860. Resolving Interagency Disputes**

The steps to be followed to resolve interagency disputes, to include funding, in an expeditious manner are:

A. For agency disputes between educational agencies over which BESE has control, regular complaint procedures will be followed.

B. For agency disputes at the local level, the first step will be recourse to the Section for Complaint Management in the SDE. Upon receipt of a complaint, the complaint manager will log the dispute and attempt to mediate/resolve the dispute at the local level. If the dispute cannot be resolved, the steps for a dispute at the state agency level will be followed, to include securing reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

C. For disputes at the state level, the first step will be review by a Committee on Dispute Resolution established for that purpose by SDE, OSES. The committee will be comprised of two classified employees appointed by their division/agency head from each involved agency and will be mediated/chaired by a trained mediator. Minutes will be kept of the proceedings, including the suggested resolution(s) of the issue. The Dispute Resolution Committee is not empowered to impose binding decisions, but serves to avoid litigation where possible. Division heads approve resolutions of dispute.

D. If a dispute continues beyond these interventions, either party of the dispute may seek resolution from a court of competent authority.

**§861-899. Reserved**

**Part 900. Definitions**

**§901. General**

The terms defined in §902-999 of this Part are used throughout these regulations. Unless expressly provided to the contrary, each term used in these regulations shall have the meaning established by this Part.

**§902. Abbreviations/Acronyms used in these Regulations**

A. *BESE*—State Board of Elementary and Secondary Education.

B. *Chapter 1 S.O.P. - P.L. 89-313*—Section 121 of Title I of the Elementary and Secondary Education Act of 1965 which provides for financial assistance for state-operated and state-supported programs for students with disabilities.

C. *DHH*—Department of Health and Hospitals.

D. *DPS&C*—Department of Public Safety and Corrections.

E. *FAPE*—Free Appropriate Public Education.

F. *IDEA*—Part B of the Individuals with Disabilities Education Act amends the Education for All Handicapped Children Act of 1975 formerly known as EHA (P.L. 94-142).

G. *IEP*—The Individualized Education Program required by §440 of these regulations.

H. *LEA*—Local Education Agency.

I. *LRE*—Least Restrictive Environment.

J. *OSSES*—Office of Special Educational Services.

K. *SDE*—State Department of Education.

L. *Section 504*—Section 504 of the Rehabilitation Act of 1973, 29 USC 706 and the regulation issued by the U.S. Department of Education at 45 CFR 84.

M. *SSD#1*—Special School District Number One

### §903. Abbreviated Terms

*The Act*—Sections 1941 through 1958 of Chapter 8 of Title 17 of Louisiana Statutes of 1950, as amended.

*The Department*—the Louisiana Department of Education

*The Office*—the Office of Special Educational Services of the Louisiana Department of Education.

*The State*—the state of Louisiana.

*The State Board*—the State Board of Elementary and Secondary Education.

*The State Board Special Schools*—the Louisiana Special Education Center; The Louisiana School for the Deaf; The Louisiana School for the Visually Impaired.

*The Superintendent*—the Superintendent of Public Elementary and Secondary Education of the state of Louisiana.

### §904. Adapted Physical Education

*Adapted Physical Education* is alternative physical education for students with disabilities who may not safely or successfully engage in unrestricted participation in the vigorous activities of the regular physical education program on a full-time basis and for students with disabilities ages 3 through 5, who meet the criteria specified in Bulletin 1508. The delivery of adapted physical education required by an IEP must meet the following conditions:

1. evaluation and instruction is provided by a certified adapted physical education teacher;
2. only students with disabilities whose need is documented in accordance with criteria for eligibility as identified in Bulletin 1508 are enrolled;
3. enrollment is in accordance with the pupil/teacher ratios listed in Appendix I, Part B.

### §905. Affected School Personnel

*Affected School Personnel* means individuals who are involved in the delivery of services relevant to the specific disagreement(s) which are the subject of the hearing. Such individuals may be called by parties to the hearing, the hearing officer, or they may exercise their rights under §511.E.

### §906. Assistive Technology Device

*Assistive Technology Device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

### §907. Assistive Technology Service

*Assistive Technology Service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes:

1. the evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

4. coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and

6. training or technical assistance for professional (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

### §908. Audiological Services

*Audiological Services* means:

1. the identification of students with hearing loss;
2. the determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
3. the provision of habilitative activities such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
4. the creation and administration of programs for prevention of hearing loss;
5. the counseling and guidance of pupils, parents, and teachers regarding hearing loss;
6. the determination of the student's needs for group and individual amplification, monitoring hearing aids and auditory training units, and evaluation of the effectiveness of amplification.

### §909. Autism

*Autism* is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has a serious emotional disturbance.

### §910. Calendar Days

*Calendar Days* means all days of the week, including weekends and holidays.

### §911. Certificate of Achievement

*Certificate of Achievement* is an exit document issued to an exceptional student who has achieved certain competencies and meeting specified conditions as listed below:

1. the student is exceptional under the criteria in Bulletin 1508;
2. the student has been enrolled in an Alternative to Regular Education Program as documented in the IEP;
3. the student has completed at least 12 years of school or has reached the age of 22 (not to include students younger than 16);
4. the student has met attendance requirements according to Bulletin 741;
5. the student has addressed a state-approved alternative curriculum as reflected on the IEP as goals and objectives;

6. the student has successfully completed his/her alternative program with at least 70 percent completion of annual goals listed on the IEP;

7. transition planning has been completed and documented;

8. the program is provided by personnel certified in appropriate areas.

#### **§912. Certified IEP Time Unit**

*Certified IEP Time Unit* means that specific period of time set aside for special education and related services under an approved individualized education program.

#### **§913. Child Search Coordinator**

*Child Search Coordinator* means the school system employee meeting the certification requirements who is responsible for the child search and child identification activities including that of locating the student.

#### **§914. Reserved**

#### **§915. Combination Self-contained and Resource Classroom**

*Combination Self-contained and Resource Classroom* is an alternative education setting in which the same teacher provides special education instruction for students receiving self-contained services (more than three hours per day) and for students receiving resource services (three hours or less per day).

1. Instruction must be provided by a teacher certified in accordance with Bulletin 746 and/or other department policy interpretation regarding certification.

2. The pupil/teacher ratio is bound by the ratios specified in Appendix I, Part B.

3. Instruction is provided for not more than 12 students whose exceptionalities are not severe or low incidence impairments for any one hour of certified IEP time units.

#### **§916. Community-Based Instruction**

*Community Based Instruction* is teaching and learning functional skills and activities in the community setting in which these activities would typically occur.

#### **§917. Community-Based Vocational Training**

*Community Based Vocational Training* is job training for high school students conducted in real work sites/local businesses, without pay, with training/support/supervision and/or follow along provided by trained personnel from the school system.

#### **§918. Consent**

*Consent* means that:

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

2. the parent understands and agrees in writing to carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. the parent understands that granting of consent is voluntary on the part of the parent and may be revoked at any time.

#### **§919. Counseling Services**

*Counseling Services* means services provided by qualified social workers, psychologists, guidance counselors, or otherwise qualified personnel.

#### **§920. Deaf-blindness**

*Deaf-blindness* is concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that such students require specific special education services to meet the needs resulting from both impairments.

#### **§921. Education Records**

*Education Records* means those records that are directly related to a student and are maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include those educational records listed in 45 CFR 99.3. of IDEA. The definition at 99.3 of IDEA has an extensive list of what is not included in educational records. The reader is referred to 45 CFR 99.3 for the full text.

#### **§922. Educational Assessment Services**

*Educational Assessment Services* include:

1. identifying special needs of students by providing: consultation and collaboration with teachers, school administrators, students and parents, classroom, observations and academic support services;

2. preventing educational problems through early identification of at risk students;

3. consulting with teachers and other school staff members in planning, implementing and evaluating school programs and strategies to meet the educational needs of individuals and groups of students;

4. designing interventions which address academic needs of specific students which will increase success in the academic setting;

5. administering, analyzing and interpreting informal and formal tests which will assist in identifying educational strengths and/or weaknesses in students who may need special services;

6. working as part of a multidisciplinary team to assess the educational, psychological, social and medical needs of individual students;

7. when necessary, providing supervision to new educational assessment teachers. Specific requirements must be met to be eligible as a supervisor.

#### **§923. Educationally Handicapped**

*Educationally Handicapped* is a rate of acquisition and/or degree of retention of information or educational skills significantly slower than the rate expected for students of the same age. This definition applies only to those students classified as educationally handicapped/slow learner prior to July 28, 1983.

#### **§924. Emotional/Behavioral Disorder**

*Emotional/Behavioral Disorder* means a disability characterized by behavioral or emotional responses so different from appropriate age, cultural, or ethnic norms that they adversely affect performance. Performance includes academic, social, vocational or personal skills. Such a disability is more than a temporary, expected response to stressful events in the environment; is consistently exhibited in two different settings; and persists despite individualized intervention within general education and other settings. Emotional and behavioral disorders can co-exist with other disorders.

### §925. Evaluation

*Evaluation* means procedures used in accordance with Bulletin 1508, The Pupil Appraisal Handbook to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs. The term means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

### §926. Evaluation Coordinator

*Evaluation Coordinator* is the pupil appraisal person who, in addition to serving as an examiner in the individual evaluation, is assigned the responsibilities described in §433 for a particular student.

### §927. Exceptional Student

*Exceptional Student* is a student who is evaluated in accordance with §430-436 of these regulations and is determined according to Bulletin 1508 to have an exceptionality which significantly affects educational performance to the extent that special education is needed. This definition also includes an infant or toddler with disabilities birth to 3 years of age who is evaluated in accordance with Bulletin 1508.

### §928. Exceptionality

*Exceptionality* is any one of the characteristic impairments or conditions, as defined in Bulletin 1508, which significantly affect the student's educational performance to the extent that the student needs special education.

### §929. Extended School Year Programming (ESYP)

*Extended School Year Programming (ESYP)* is the provision of educational and related services to students with disabilities in excess of the 180-day school year. All students, ages 3-21 by the ESYP screening date, classified as disabled according to Bulletin 1508, with a current evaluation and IEP, are to be screened annually to determine eligibility for ESYP.

### §930. Free Appropriate Public Education (FAPE)

*Free Appropriate Public Education (FAPE)* means special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the SEA; (c) include preschool, elementary school, or secondary school education in the state involved; and (d) are provided in conformity with an IEP.

### §931. Generic Class

*Generic Class* is an instructional setting (self-contained/resource) in which:

1. in accordance with the level of support needed, students with disabilities may be placed as follows:
  - a. mild/moderate class;
  - b. severe/profound class;
2. the instruction is provided by a special education teacher with appropriate certification as specified in Bulletin 746;
3. the pupil/teacher ratios established in Appendix I, Part B, A or B are used;
4. the generic class meets the other requirements of the categorical self-contained, resource, or itinerant class.

### §932. Gifted

*Gifted* is demonstrated abilities that give evidence of high performance in academic and intellectual aptitudes.

### §933. Hearing Impairment

*Hearing Impairment* is a hearing loss that significantly interferes with educational performance. It includes students who are deaf or hard of hearing or who have unilateral hearing loss or high frequency hearing loss.

### §934. Homebound or Hospital Instruction (Settings)

*Homebound or Hospital Instruction (Settings)* are alternative education settings for the provision of special education according to an IEP by a certified teacher in the student's home environment or in a hospital in which both of the following conditions exist: 1) the student must be enrolled in special education, and 2) the student is not able to be moved from the hospital or home environment as a result of physical illness, accident or emotional crisis or the treatment thereof, or as a result of disciplinary action taken consistent with §459.

### §935. Hospital/Homebound

*Hospital/Homebound* is an exceptionality for a student enrolled in regular education who, as a result of physical illness, accident, emotional crisis or the treatment thereof, is not able to be moved from the hospital or home environment for the provision of regular educational services for at least 15 operational days.

### §936. Include

*Include* means that the items named are not all of the possible items that are covered, whether like or unlike the one named.

### §937. Inclusive Education

*Inclusive Education* is the education of all students in regular education and community settings to ensure full and valued membership in society. Special education and related services needed by exceptional students are provided in the most integrated environment appropriate.

### §938. Independent Educational Evaluation

*Independent Educational Evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

### §939. Individualized Education Program

*Individualized Education Program* means a written statement for each student with an exceptionality developed at a meeting by a representative of the local educational agency or an intermediate educational unit who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with exceptionalities, the teacher, the parents or guardian of such student, and, whenever appropriate, such student, which shall include:

1. a statement of the present levels of educational performance of such student;
2. a statement of annual goals, including short-term instructional objectives;
3. a statement of the specific educational services to be provided to such student, and the extent to which such student will be able to participate in regular educational programs;

4. a statement of the needed transition services for students with disabilities beginning no later than age 16 and annually thereafter (and, when determined appropriate for the individual, beginning at age 14 or younger), including, when appropriate, a statement of the interagency responsibilities or linkages (or both) before the student leaves the school setting;

5. the projected date for initiation and anticipated duration of such services; and

6. appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

In the case where a participating agency, other than the educational agency, fails to provide agreed upon services, the educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives.

#### **§940. Individual Transition Plan (ITP)**

*Individual Transition Plan (ITP)* is a written plan which lists the action steps that a person will need to have accomplished in order to live, work, and recreate as an adult as normally and independently as possible. It must be written by age 16, or earlier if appropriate, and revised annually until the student exits the school system.

#### **§941. Infants and Toddlers with Disabilities**

*Infants and Toddlers with Disabilities* are students between the ages of birth and 3 years of age who have been determined eligible for early intervention services according to Bulletin 1508.

#### **§942. Instruction in Regular Class**

*Instruction in Regular Class* is an alternative education setting for eligible exceptional students in which instruction is provided in the regular classroom including:

1. supplemental aides and services to exceptional students, and/or

2. special education instruction to exceptional students which is provided by a special education teacher certified generically or in the area of exceptionality for which special education is provided.

3. The pupil/teacher ratios established in Appendix I, Part B, are used.

#### **§943. Interagency Agreement**

*Interagency Agreement* means an operational statement between two or more parties or agencies that describes a course of action to which the agencies are committed. The statement is drawn up to be consistent with the mandatory provision of Part 800 of these regulations.

#### **§944. Interpreter Services**

*Interpreter Services* means the facilitation of communication within an instructional environment via an enhanced visual and/or tactile mode between and among hearing impaired and hearing individuals in situations in which those individuals are unable to communicate with one another using a speech and hearing mode.

#### **§945. Itinerant Resource Room Program**

*Itinerant Resource Room Program* is a type of alternative education setting for the provision of special education and related services for no less than two and one-half hours per week, not less frequently than twice a week, in which all of the following exist:

1. special education and related services are provided at more than one approved preschool, elementary, or secondary school. One school must be designated as the homebase school for the teacher;

2. the pupil/teacher ratios established in Appendix I, Part B, are used;

3. instruction is provided for not more than 12 students whose exceptionalities are not severe or low incidence impairments for any one hour of certified IEP time units;

4. special education is provided by a special education teacher certified generically or in the area of exceptionality for which special education is provided.

#### **§946. Learning Disabilities**

*Learning Disabilities* are severe and unique learning problems as a result of significant difficulties in the acquisition, organization, or expression of specific academic skills or concepts. These learning problems are typically manifested in school functioning as significantly poor performance in such areas as reading, writing, spelling, arithmetic reasoning or calculation, oral expression or comprehension, or the acquisition of basic concepts. The term includes such conditions as attention deficit, perceptual handicaps or process disorders, minimal brain dysfunction, dyslexia, developmental aphasia, or sensorimotor dysfunction, when consistent with these criteria. The term does not include students who have learning problems which are primarily the result of visual, hearing, or motor impairments; of mental disabilities; of a behavior disorder; or of environmental, cultural, educational, or economic disadvantage.

#### **§947. Least Restrictive Environment**

*Least Restrictive Environment* means the educational placement of an exceptional student in a manner consistent with the *Least Restrictive Environment* rules in §445.

#### **§948. Mental Disabilities**

*Mental Disabilities* is significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

#### **§949. Multiple Disabilities**

*Multiple Disabilities* is concomitant impairments (such as mental disabilities-blind; mental disabilities-orthopedic impairment), the combination of which causes such severe educational problems that these pupils cannot be accommodated in special education programs solely for one of the impairments. The term does not include students with deaf-blindness nor may noncategorical preschool be used as one of the two impairments to classify for multiple disabilities.

#### **§950. Native Language When Used with Reference to a Person of Limited English-Speaking Ability**

*Native Language When Used with Reference to a Person of Limited English-Speaking Ability* means the language normally used by that person, or in the case of a student, the language normally used by parents of the student.

#### **§951. Noncategorical Preschool**

*Noncategorical Preschool* is an exceptionality in which students 3 years through age 5, but not enrolled in a state-approved kindergarten, are identified as having a disabling condition which is described, according to functional or

developmental levels. Students with disabilities who will turn three during the school year may also be identified as *noncategorical preschool*.

*Comment:* Students who exhibit a severe sensorial impairment, severe physical impairment, speech impairment, severe language disorder, or who are suspected of having autism, or being gifted or talented shall be identified categorically.

#### **§952. Occupational Therapy as a Related Service**

*Occupational Therapy as a Related Service* means:

1. improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. improving ability to perform tasks for independent functioning when functions are impaired or lost;
3. preventing, through early intervention, initial or further impairment or loss of function.

#### **§953. Operational Day**

*Operational Day* means any day on which the Louisiana Department of Education is open for the conduct of public business. However, if the central office of the school system is officially closed and the department is open, that day does not count in the calculation of the timelines for that particular school system as mandated in these regulations. Operational days as used in Bulletin 1508 are identified by the LANSER calendar, which is distributed annually.

#### **§954. Orientation and Mobility Training**

*Orientation and Mobility Training* means a program for students with a visual impairment for the purpose of using the senses in determining position in relationship to surroundings and moving from a fixed position to a desired position within the environment.

#### **§955. Other Health Impairment**

*Other Health Impairment* means limited strength, vitality, or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, ventilator assistance, traumatic head injury or attention deficit disorder.

#### **§956. Orthopedic Impairment**

*Orthopedic Impairment* is a severe orthopedic impairment which adversely affects a student's educational performance. The term includes disabilities caused by congenital anomaly (i.e., clubfoot, absence of some member); impairments caused by disease (e.g., poliomyelitis, bone tuberculosis); and disabilities from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

#### **§957. Paraprofessional**

*Paraprofessional* is a person who assists in the delivery of special educational services under the supervision of a special education teacher or other professional who has the responsibility for the delivery of special education services to exceptional students and who has all of the following qualifications of a teacher aide: 1) is at least 20 years of age; 2) possesses a high school diploma or its equivalent; and 3) has taken a nationally validated achievement test and scored such as to demonstrate a level of achievement equivalent to the normal achievement level of a tenth grade student.

#### **§958. Paraprofessional Training Unit**

*Paraprofessional Training Unit* is a setting that may be used for the self-help training (toilet training, dressing skills,

grooming skills, feeding skills, and pre-academic readiness activities) students with severe or low incidence disabilities or preschool students. A school-aged unit may be made up of no more than six paraprofessionals. A preschool unit may be made up of no more than four paraprofessionals. All units must be supervised directly by a certified special education teacher.

#### **§959. Parent**

*Parent* means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 CFR §300.514. The term does not include the state if the student is a ward of the state. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a student lives, as well as persons who are legally responsible for a student's welfare. Louisiana Law requires that the rights and responsibilities of a parent established by these regulations shall be exercised by the exceptional student who attains the age of 18 years unless such student has been interdicted or determined to be in continuing minority by a court order of the state of Louisiana and taking into consideration the student's type and severity of disability.

#### **§960. Parent Counseling and Training**

*Parent Counseling and Training* means assisting parents in understanding the special needs of their child and providing parents with information about child development.

#### **§961. Participating Agency for Transition Purposes**

*Participating Agency for Transition Purposes* is a state or local agency (school system), other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

#### **§962. Personally Identifiable**

*Personally Identifiable* means that information includes (1) the name of the student, the student's parent, or other family member; (2) the address of the student; (3) a personal identifier, such as the student's social security number or student number; or (4) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

#### **§963. Physical Education**

*Physical Education* means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual or group games or sports. The term physical education includes regular physical education, modification in the regular program to accommodate the LRE needs and adapted physical education for students with disabilities identified as being in need of such according to Bulletin 1508. Physical education other than adapted physical education shall be provided by a special education teacher, a regular education teacher, or a physical education teacher, consistent with the school system policy for providing physical education to nonexceptional students.

#### **§964. Physical Therapy**

*Physical Therapy* as a related service includes:

1. evaluating students with disabilities by performing and interpreting tests and measurements of neuromuscular, musculoskeletal, cardiovascular, respiratory, and sensorimotor functions;

2. planning and implementing treatment strategies for students based on evaluation findings;

3. maintaining the motor functions of a student to enable him to function in his educational environment; and

4. administering and supervising therapeutic management of students with disabilities and providing inservice education to parents and educational personnel.

#### **§965. Psychological Services**

*Psychological Services* means:

1. administering psychological and educational tests and other assessment procedures;

2. interpreting assessment results;

3. obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

4. consulting with other staff members in planning school programs to meet the special needs of students as indicated by psychological tests, interviews, and behavioral evaluations; and

5. planning and managing a program of psychological services, including psychological counseling for students and parents.

#### **§966. Public Agency**

*Public Agency* includes the SEA, LEAs, IEUs, and any other political subdivisions of the state that are responsible for providing education to students with disabilities.

#### **§967. Pupil Appraisal Personnel**

*Pupil Appraisal Personnel* means professional personnel who meet the certification requirements for school personnel for such positions and who are responsible for delivery of pupil appraisal services included in §410-436 in these regulations.

#### **§968. Reasonable**

*Reasonable* when used in regard to time, means a period not to exceed 30 to 45 operational days unless specifically indicated otherwise in these regulations.

#### **§969. Rehabilitation Counselor**

*Rehabilitation Counselor* is an individual who provides services in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. It also includes vocational rehabilitation services.

#### **§970. Related Services**

*Related Services* means transportation and such developmental, corrective, and other supportive services as are required to assist an exceptional student to benefit from special education. Related services include speech/hearing/language services and audiological services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in students, counseling services including rehabilitation counseling, interpreter services, orientation and mobility training, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training. For infants and toddlers with disabilities, all services are considered direct services with the exception of health services which are considered a related service.

#### **§971. Resource Center for Gifted or Talented**

*Resource Center for Gifted or Talented* is a type of instructional setting, designed or located at one school, that provides instructional services to students who are gifted or talented from two or more schools and in which:

1. special education is provided by an individual certified in accordance with Bulletin 746;

2. the pupil/teacher ratios established in Appendix I, Part B, are used; and

3. instructional time is not less than two and one-half hours per week.

#### **§972. Resource Room**

*Resource Room* is a type of alternative education setting for special education and related services designed or adapted as a location where exceptional students may receive all or a part of the special education required by their IEP, and in which all of the following exist:

1. the pupil/teacher ratios established in Appendix I, Part B, are used;

2. no student who is not an exceptional student is enrolled;

3. instruction is provided for not more than 12 students whose exceptionalities are not severe or low incidence impairments for any one hour of certified IEP time units;

4. special education is provided by a teacher certified generically or in the area of exceptionality for which special education is provided;

5. no student shall be enrolled for more than 180 minutes of certified IEP time units per day.

#### **§973. School Building Level Committee**

*School Building Level Committee* is a committee of at least three school level staff members which may be identified as an SBLC, SAT, STAT, etc. at the discretion of the LEA. The committee must be comprised of at least the principal/designee, a classroom teacher, and the referring teacher. It is suggested that other persons be included, such as the guidance counselor, reading specialist, master teacher, nurse, parents, etc. This committee is a problem solving, decision making group who meet on a scheduled basis to receive referrals from teachers, parents, or other professionals on individual students who are experiencing difficulty in school due to academic and/or behavior problems. In most instances, for enrolled students, it is only through the SBLC that a referral can be made to pupil appraisal for an individual evaluation.

#### **§974. School Health Services**

*School Health Services* means services provided by a qualified school nurse or other qualified person including:

1. identification of students with health impairments through:

a. health screening and health assessments;

b. the review and interpretation of medical records and medical diagnoses;

2. determination and provision of the nursing diagnoses, treatments and interventions of real or potential health problems;

3. referral and follow-up for medical or other professional attention for the habilitation of health problems;

4. provision of medically prescribed, and nursing procedures;

5. health education, counseling and guidance of parents, students, teachers, and other school personnel to promote, maintain or restore the health of a student.

#### **§975. School System**

*School System* means:

1. city/parish school system;
2. SSD#1;
3. a state board special school.

#### **§976. Self-Contained Departmentalized**

*Self-Contained Departmentalized* is a special education class which meets the definition of self-contained with the exclusion of the single teacher requirement. The total number of exceptional students for whom a teacher provides instruction is limited to five times the midpoint of the range for that exceptionality and is not to exceed the maximum for that exceptionality at any given period.

#### **§977. Self-Contained Special Education Class**

*Self-Contained Special Education Class* is a type of alternative education setting in which the same teacher provides special education instruction for an approved group (the size of which must be consistent with the pupil/teacher ratio listed in Part B of these regulations:

1. in which instruction is provided for each exceptional student for more than 180 minutes per day when the balance of the school day is in regular class placement;
2. a student may be released during the school day to receive related services, adapted physical education, or speech therapy consistent with the student's IEP; and
3. special education is provided by a teacher certified generically or in the area of exceptionality served.

#### **§978. Severe Language Disorder**

*Severe Language Disorder* is a type of communication impairment resulting from any physical or psychological condition which seriously interferes with the development, formation, and expression of language and which adversely affects the educational performance of the student. This category does not include students whose communication impairment is primarily due to mental disability, autism, or a hearing impairment.

#### **§979. Severe or Low Incidence Impairments**

*Severe or Low Incidence Impairments* may include moderate, severe and profound mental disabilities, multiple disabilities, autism, blindness, deafness, deaf/blindness, emotional/behavioral disorders, severe language disorders, orthopedic impairments, and traumatic brain injury dependent upon the intensity of the student's individual needs.

#### **§980. Social Work Services in Schools**

*Social Work Services in Schools* means preparing a social or developmental history on an exceptional student; group and individual counseling with the student and family; working with those problems in a student's living situation (home, school, and community) that affect the student's adjustment in school; and mobilizing school and community resources to enable the student to learn as effectively as possible in his or her educational program.

#### **§981. Special Education**

*Special Education* shall be any program of instruction within the preschool, elementary, and secondary school structure of the state, specifically designed by providing for

different learning styles of exceptional students. This instruction shall be in alternative educational settings (§445) which meet the standards of the state board, are approved by the department, and implemented according to an individualized education program.

#### **§982. Speech/Hearing/Language Services**

*Speech/Hearing/Language Services* means identification of students with speech or language disorders; diagnosis and appraisal of specific speech or language disorders; referral for medical or other professional attention necessary for the habilitation of speech or language disorders; provisions of speech and language services for the habilitation of communication or prevention of communication disorders; and counseling and guidance of parents, students, and teachers regarding speech and language disorders.

#### **§983. Speech Impairment**

*Speech Impairment* is a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment which adversely affects a student's educational performance.

#### **§984. Speech Therapy Program**

*Speech Therapy Program* is a service delivery pattern in which exceptional students receive speech/hearing/language intervention services as specified on the IEP when the speech disorder is identified according to Bulletin 1508.

#### **§985. Student Specific Aide**

*Student Specific Aide* criteria are:

1. The need for a student specific special education teacher aide must be based on educational need, such that the student could not receive FAPE without the specific individual assistance of an aide.
2. The student must be medically fragile or otherwise seriously physically involved.
3. The requirement for the student specific aide must be documented in the student's IEP.
4. The school system must certify that it is unable through other adaptations, such as scheduling or reorganization, to provide the required services in any manner.
5. IEP goals must address progress towards student independence.
6. Under these criteria, an aide is required for more than one student in the system.

#### **§986. Student with Disabilities**

*Student with Disabilities* means an exceptional student whose only exceptionality is not gifted or talented.

#### **§987. Supervisor**

*Supervisor* means the supervisor/director of special education employed by every city/parish school system as required by §481 of these regulations. In addition, it includes the superintendent of a state board school and the superintendent of SSD#1.

#### **§988. Support Services**

*Support Services* are those services that are provided to regular education students who are experiencing difficulty in their educational performance. These services may be as follows:

1. *Direct Support Services*—those services provided directly to a regular education student which may include but

are not limited to, individualized interventions, curriculum-based assessment, task analysis, etc.

2. *Indirect Support Services*—those services provided to the classroom teacher, a student's family, or to a whole class. These services could include but are not limited to home/school behavior modification program, discipline techniques, teaching strategies, etc.

#### **§989. Talented**

*Talented* is possession of measurable abilities that give evidence of unique talent in visual or performing arts, or both.

#### **§990. Transition**

*Transition* is a period of time, initiated by age 16, earlier if appropriate, which includes planning for the future and is accompanied by steps to assist in securing an independent and typical adult life. It includes vocational training, formal planning for the future, and identification of meaningful future options. Transition is a bridge between the adolescent school years and young adult life and is characterized by transition services. The objective of transition is to arrange for those opportunities and services that will promote successful adult living and prevent interruption of needed services.

#### **§991. Transition Services**

*Transition Services* are a coordinated set of activities for a student, designed within an outcome oriented process, which promotes movement from school to post school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

#### **§992. Transitional Assessment**

*Transitional Assessment* consists of gathering information, both formally and informally, which provides programming information in the targeted areas for transition planning as follows: post secondary education; employment; living arrangements; homemaking needs; financial/income needs; community resources; recreation and leisure; transportation needs; medical needs; relationships; advocacy/legal needs; and any other information pertinent to lifestyle planning.

#### **§993. Transportation**

*Transportation* is all travel necessary to implement each service written in the IEP of an exceptional student and includes:

1. travel to and from school; between schools and sites;
2. travel in and around school buildings; and
3. specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a student with disabilities.

#### **§994. Traumatic Brain Injury**

*Traumatic Brain Injury* is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational

performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition, language, memory, attention, reasoning, abstract thinking, judgement, problem solving, sensory, perceptual, or motor abilities, information processing and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

#### **§995. Visual Impairment**

*Visual Impairment* is an impairment which, even with correction, adversely affects a student's educational performance. The term visual impairment includes students who have blindness and partial seeing.

#### **§996. Vocational Education**

*Vocational Education* means organized educational programs directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

#### **§997. Voluntarily Enrolled Nonpublic School Student**

*Voluntarily Enrolled Nonpublic School Student* means an exceptional student, or a student suspected of being an exceptional student, who is enrolled in a participating nonpublic school program at the choice of his or her parent(s) after the parent(s) have been provided full and effective notice by a school board of its obligation and willingness to provide a free appropriate public education.

#### **§998-999. Reserved**

##### **Part A. State Funding and Program Rules for Special Education**

##### **1. Cost of Regular Education Personnel**

a. In administering the State Program for Public Education, the department shall permit the inclusion of an exceptional student in the population used to determine the number of regular classroom teachers pursuant to pupil/teacher ratios established by the department if the exceptional student is receiving not less than one hour per day of instruction in the regular classroom as indicated on the IEP.

b. Inclusion of an exceptional student in the regular classroom membership as described in A above shall not limit the ability of a city/parish school system also to include the same student in the population used to calculate the costs of special education personnel providing special education services to the student.

##### **2. Cost of Special Education Personnel**

a. In administering the State Program for Public Education, the department, in accordance with Louisiana Teacher's Minimum Salary Schedule for teachers and therapists, salary schedules for pupil appraisal personnel, and per individual amounts for special education personnel such as teacher aides or bus attendants, shall only include in the cost program of a city/parish school system requesting funds under the program of:

i. the salary of a certified special education teacher, speech therapist, or teacher aide who is engaged exclusively in the teaching of exceptional students in eligible membership (as defined in Subpart 3 of this Part) consistent with the bona fide multiple enrollment requirements of Subpart 4 of this Part or in a program approved by the State Board of Elementary and Secondary Education;

ii. the salary of certified pupil appraisal personnel who are engaged exclusively in pupil appraisal activities pursuant to Part 400 of these regulations;

iii. the salary of a bus attendant.

b. Reserved.

c. Use of Pupil/Teacher Ratio

i. The number of positions A and B of this Subpart shall be determined on the basis of pupil/teacher, pupil/teacher aide, and pupil/therapist ratios (Part B of the Appendix establishes such ratios). For pupil appraisal personnel the number of positions allotted and employed under A and B of this Subpart shall be determined on the basis of the approved allotment schedules for assessment teachers and pupil appraisal personnel.

ii. In calculating the pupil enrollment for pupil/speech therapist ratios the weighted caseload approach set forth in Part B herein shall be used.

iii. When there are fewer than the minimal number of pupils per teacher, therapist, or aide specified by the ratios set forth in Part B of this Appendix, the state pupil/teacher ratio allotment for the approved teacher, therapist, or aide shall be reduced one-tenth for each pupil less than the specified minimum. The amount due after the reduced state allotment shall be paid to the teacher, therapist, or aide from the school system's funds, if the personnel are employed. This reduction shall not be the cause or excuse for not providing a free appropriate public education.

d. The total number of students used by city/parish school systems for purposes of calculating the number of salaries to be claimed in Subsection C of this Subpart shall not exceed 17 percent of the total school aged (e.g., 3 through 21 years) population of the city/parish school system as determined by the department.

3. Eligible Membership. Subject to the limitation of Subpart 4 of this Part, an exceptional student enrolled in any of the following programs may be counted within each program as part of the pupil population used under 2.c of this Part to calculate the number of certified special education teachers, therapists, and teacher aides employed under the program.

a. a self-contained special education class as defined in §976 of these regulations;

b. a resource room as defined in §972 of these regulations;

c. an itinerant resource room program as defined in §945 of these regulation;

d. an instruction in regular class program as defined in §942 of these regulations;

e. a paraprofessional training unit as defined in §958 of these regulations;

f. a speech therapy program as defined in §984 of these regulations;

g. an approved program of hospital or homebound instruction as defined in §934 of these regulations;

h. an approved program of adapted physical education instruction as defined in §904 of these regulations.

4. Bona Fide Multiple Enrollments

a. An exceptional student must be enrolled in a school program that consists of a regular classroom enrollment and

eligible special education membership(s) as defined in Subpart 3 and not prohibited by b below or in a combination of eligible special education membership(s) as defined in Subpart 3 and not prohibited in b below.

b. For the purposes of Subparts 2 and 3 of this Part, exceptional students may not be included concurrently in the pupil population of any combination listed below:

i. a self-contained special education class of either type and a resource room;

ii. a self-contained special education class of either type and an itinerant special education program;

iii. a resource room program and an itinerant special education program.

5. Use of Special Education Personnel

a. The certified special education teacher, speech therapist, teacher's aide, and special education supervisor whose salaries are included in the costs under Subpart 2 of this Part shall be used to provide services only to those exceptional students needing special education and related services for whose benefit the state authorization was made or in a program approved by the State Board of Elementary and Secondary Education.

b. The certified pupil appraisal personnel whose salaries are included in the cost under Subpart 2 of this Part shall be used only for the purpose of providing pupil appraisal services provided in accordance with Part 400 of these regulations.

6. Certification Requirements

a. Staff or school systems who provide special education and related services to exceptional students must currently meet all applicable Louisiana Standards for State Certification of School Personnel (Bulletin 746).

b. Teacher aides meeting qualifications shall be assigned only to special teachers or regular education teachers providing special education services to exceptional students according to the IEPs of the students.

7. Travel and Preparation Time

a. Each teacher providing instruction in an itinerant special education program shall be afforded adequate travel time and one instructional period per day for preparation and consultation with the student's regular teacher and other applicable school personnel.

b. Each teacher providing instruction in a resource room shall be afforded one instructional period per day for preparation and consultation with the student's regular teacher and other applicable school personnel.

**Part B. Pupil/Teacher, Pupil/Speech Therapist, Teacher/Teacher Aide, and Pupil Appraisal Ratios for Public Education**

I. Numbers of pupils enrolled in an eligible membership which justify the inclusion of the salary of a teacher providing instructional services.

A. Self-contained Classroom

	Pre-School	Elem.	Sec.
1. Autism	2-4	2-4	2-4
2. Behavioral Disorders		4-9	4-9

3. Blindness	4-7	4-9	4-9
4. Deafness	4-7	4-9	4-9
5. Deaf-Blindness	2-4	2-4	2-4
6. Educationally Handicapped/Slow Learner		12-25	12-25
7. Emotional Disorders		4-7	4-7
8. Gifted a. Full day b. Half day	10-19 12-23	12-25	12-27
9. Hard-of-Hearing	6-11	8-15	8-17
10. Learning Disabilities		7-13	8-15
11. Mental Disabilities a. Mild b. Moderate c. Severe d. Profound		8-17 6-11 4-9 4-9	8-17 8-17 4-9 4-9
12. Mild/Moderate (Generic)		7-16	7-16
13. Multiple Disabilities	4-7	4-9	4-9
14. Noncategorical Preschool a. Mild/Moderate Functioning 1. Full day 2. Half day b. Severe/Profound Functioning 1. Full day 2. Half day	6-11 8-16 4-7 8-14		
15. Other Health Impairments		8-17	8-17
16. Orthopedic Impairments	4-7	6-11	7-13
17. Partial Seeing	6-11	8-15	8-17
18. Severe Language Disorders	4-7	4-9	4-9
19. Severe/Profound (Generic)		4-9	4-9
20. Talented		12-25	12-27
21. Traumatic Brain Injury	4-7	4-9	4-9
* Half-day Categorical Preschool Class: The pupil/teacher ratio for all half-day categorical preschool classes, excluding gifted, is 8-16.			

#### B. Paraprofessional Training Units

**Preschool-Aged Students:** One teacher and two paraprofessionals for the initial six preschool students. For students functioning within the severe/profound range, there shall be one additional paraprofessional for any additional group of three not to exceed two additional groups of such students (maximum of four paraprofessionals per unit). For students functioning within the mild/moderate range, the additional paraprofessionals shall be added for each additional group of four. The maximum number of students may not exceed 12.

**School-Aged Students:** One teacher and two paraprofessionals for the initial six students with severe/profound or low incidence disabilities, provided that after the initial six there shall be one additional paraprofessional for any additional group of three, not to

exceed four additional groups of such students (maximum of six paraprofessionals per unit).

C. Resource Room (Generic or Categorical) and Itinerant Instruction Programs (per teacher)

1. Students with severe or low incidence impairments/disabilities 5-10
2. All other students with disabilities 12-27
3. Gifted or talented pupils 12-30

Comment: Because of the travel requirements of the program, this range may be reduced by the school system to 10-19 when instruction is provided to "all other students with disabilities" and "gifted or talented pupils" in at least two different schools.

D. Combination Self-contained and Resource Classrooms

1. Students with severe/low incidence impairments/disabilities 4-12
2. All other students with disabilities 8-20
3. Gifted 12-22

E. Gifted or Talented Resource Center 24-55

F. Hospital/Homebound Instruction (per teacher)

1. Itinerant 5-10
2. One Site 8-17

G. Preschool Intervention Settings (Parent/Child Training)

1. Intervention in the Home 5-15
2. Intervention in a School or Center 10-19

H. Adapted Physical Education Instruction (per teacher) 10-60

1. In cases of caseloads exceeding 35 students, the total number of students identified as having a severe motor deficit shall not exceed 17.

2. Itinerant Instruction (two or more schools) 10-40

I. Instruction in Regular Classes

1. Students with severe or low incidence impairments/disabilities 5-10
2. All other students with disabilities 12-27

Comment: Because of the travel requirements of the program, this range may be reduced by the school system to 10-19 when instruction is provided to "all other students with disabilities" in at least two different schools.

II. Teacher Aides

A. One teacher aide may be hired for each teacher hired under I-A above.

B. One teacher aide may be hired for each teacher hired under I-D.1 and 2 above, provided there is a minimum of eight students receiving self-contained services in D.2 above in the combination class or a minimum of four students receiving self-contained services in D.1 above in the combination class.

C. One teacher aide may be hired providing all criteria for a special education student specific aide in §985 is met.

III. Speech therapists in school systems shall be employed at the rate of one for each 30 (or major fraction thereof) students receiving speech therapy. In determining the number of pupils that justify the salary of a speech therapist for Public Education, the criteria specified in Bulletin 1508 shall be used.

Each student shall receive speech therapy as specified in §988.

Each speech therapist shall be assigned a minimum of one student in speech therapy and shall not be assigned more than 79 points.

Each hour per week of pupil appraisal assessment services and/or supervision of speech therapists who hold restricted license shall equal one point for the purpose of determining the caseload. Assignment of these activities shall be made by the parish supervisor.

The caseload shall be determined according to the following:

Service Type	Number of points Determining Caseload
Each hour of assessment	1
Each hour of supervision	1
Each hour of consultation	1
Each student receiving speech therapy	1

IV. Pupil appraisal members shall be employed by school systems at the following rate:

	Public School	Nonpublic School
Educational Diagnosticians	Ratios based on teachers 1:160 or major fraction thereof	Based on membership 1:3500 or major fraction thereof
School Psychologists	1:160 or major fraction thereof	1:3500 or major fraction thereof
Social Workers	1:210 or major fraction thereof	1:4500 or major fraction thereof

Pupil appraisal operating expenses are \$7,500 plus \$2.50 times the prior year's student membership. These funds are to be used exclusively for the support of the operation of the pupil appraisal program which may include such expenditures as clerical, materials and supplies, test equipment and travel for pupil appraisal staff. It is not for the hiring of personnel other than pupil appraisal clerical staff.

Comment: School systems may substitute one pupil appraisal discipline for another provided that all pupil appraisal services are provided in accordance with these regulations and Bulletin 1508; and that there is documentation on file that the appropriate discipline can not be employed.

Weegie Peabody  
Executive Director

9706#036

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Bulletin 1868—Personnel Manual (LAC 28:I.922)

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an

emergency rule, Revised Bulletin 1868, BESE Personnel Manual. Revisions to the manual were developed as a result of federal and state mandates, board action, or reworded for clarification as a result of using the manual. Bulletin 1868 is being readopted as an emergency rule, effective June 20, 1997, in order to continue the policies until finalized as a Rule.

Copies of this bulletin have been provided to all entities under the jurisdiction of the Board of Elementary and Secondary Education and listed below:

1. each technical institute;
2. BESE's special schools - Louisiana School for the Deaf, Louisiana School for the Visually Impaired, Louisiana Special Education Center;
3. each site operated by Special School District Number 1;
4. Louisiana Association of Educators and Louisiana Federation of Teachers.

Bulletin 1868, BESE Personnel Manual, may be seen in its entirety in the Office of the State Register located on the Fifth Floor of the Capitol Annex; in the Office of the State Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge; or in the Office of Vocational Education or the Office of Special School District Number 1, both located in the State Department of Education.

Bulletin 1868 is referenced in LAC 28:I.922 and amended as stated below:

## Title 28 EDUCATION

### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §922. Personnel Policies

#### A. Bulletin 1868

1. Revised Bulletin 1868, Personnel Manual of the State Board of Elementary and Secondary Education, is adopted by the Board. Policies in this bulletin apply to personnel under the jurisdiction of the state board in the Board Special Schools; in the entities comprising Special School District Number 1; and in entities in the vocational-technical system, exclusive of the assistant superintendent for Vocational Education and related state department staff.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6, R.S. 17:7(10), R.S. 17:81.4, R.S. 17:1941-1956; R.S. 17:1993.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 16:297 (April 1990), amended LR 16:957 (November 1990), LR 23:

*(It should be noted that the clause "exclusive of the central office staff" which appeared after Special School District Number 1 has been eliminated from the bulletin. The salary schedule for technical institutes has been deleted from the bulletin.)*

Weegie Peabody  
Executive Director

9706#035

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Solid and Hazardous Waste Solid Waste Division

Waste Tire Remediation Agreements  
(LAC 33:VII.10536)(SW023E2)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary in order to facilitate the clean-up of promiscuous/unauthorized tire piles in parishes where the local government has not actively pursued any agreements with the Department.

Waste tires that are not processed in accordance with LAC 33:VII.Chapter 105 create environmental and health-related problems and pose a significant threat to the safety of the community should a fire occur. The elimination of breeding areas for mosquitoes caused by waste tire piles will reduce the exposure to these insects and the serious health problems associated therewith.

The DEQ will propose a rule which reflects the provisions of this emergency rule. This emergency rule is effective on June 15, 1997 and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. This is a renewal of emergency rule SW023E1 published in the *Louisiana Register* on February 20, 1997. The text is unchanged. For more information concerning SW023E2, contact DEQ's Investigations and Regulations Development Division at (504) 765-0399.

### Title 33

## ENVIRONMENTAL QUALITY

### Part VII. Solid Waste

#### Subpart 2. Recycling

#### Chapter 105. Waste Tires

#### §10536. Cleanup of Promiscuous Unauthorized Tire Piles

\* \* \*

[See Prior Text in A-F]

G. The department may enter into agreements with processors holding either a standard waste tire processing permit or a mobile processor authorization certificate for the remediation of promiscuous/unauthorized waste tire sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), LR 23:

J. Dale Givens  
Secretary

9706#044

## DECLARATION OF EMERGENCY

### Department of Environmental Quality Office of Water Resources

Produced Water Discharge Extension  
(LAC 33:IX.708) (WP023E-B1)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality (department) to use emergency procedures to establish rules, and of R.S. 30:2011 and R.S. 30:2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department made a finding that imminent peril to the public welfare exists. The department adopts Emergency Rule WP023E-B1 effective June 26, 1997, for 120 days, or until promulgation of the final rule, whichever occurs first.

This is a renewal of Emergency Rule WP023E-B published in the *Louisiana Register* on March 20, 1997. The rule text is unchanged.

This declaration of emergency provides the reasons for the secretary's finding and includes specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public welfare.

#### Regulatory History of Produced Water

The secretary hereby finds the following to be the history of produced water and its regulation in the state of Louisiana:

1. Discharges of produced water have existed since the 1940's.
2. A 1953 rule allowed produced water discharges to any stream not used for drinking water purposes.
3. By 1968, discharge to most freshwater areas was banned.
4. Many LWDPs permits have prohibited discharges of produced water beginning in 1988.
5. In March of 1991, state regulations were promulgated concerning produced water. DEQ's 1991 regulations required a phase-out of coastal produced water discharges by 1997.
  - a. Continued produced water discharges to major deltaic passes of the Mississippi and Atchafalaya Rivers could be authorized in a valid LWDPs permit.
  - b. DEQ regulations provided for extensions of time to discharge produced water in coastal regions up to January 1, 1997.
  - c. All discharges of produced water (except for those to Mississippi and Atchafalaya River areas) had to cease by January 1, 1997.
6. EPA Region 6 issued NPDES general permits effective February 1995.
  - a. The general permits prohibit discharge of produced water to Louisiana and Texas coastal waters.
  - b. Although the general permits absolutely prohibit any discharge of produced water of coastal origin, exceptions to

that prohibition are found in an EPA administrative order, effective February 1995. That order allowed extensions of time to comply with the prohibition until January 1997.

c. The general permit effective in Louisiana did not cover discharges of produced water from the offshore subcategory to the Mississippi River and the Atchafalaya River (below Morgan City).

7. EPA guidelines and standards for coastal waters were promulgated in December 1996 and effective on January 14, 1997 (the guidelines).

a. The guidelines banned *all* discharges to the coastal area.

b. The guidelines required all remaining Mississippi and Atchafalaya River discharges to cease.

c. The federal guidelines note at page 66122-23 the following:

"EPA received numerous comments from operators in the Gulf of Mexico coastal region claiming that they would need additional time to comply with the rule's zero discharge requirement for produced water. EPA recognizes that it may take some time for operators to determine the best and most cost effective mechanism of compliance and to implement that mechanism. EPA also recognizes that the NPDES permit issuing authority has discretion to use administrative orders to provide the requisite additional time to meet zero discharge."

d. The department's Office of Water Resources became the NPDES permit issuing authority for the state of Louisiana on August 27, 1996.

e. Consistent with the guidelines, EPA has recognized the need to allow additional time for facilities to come into compliance with the ban.

f. EPA issued administrative orders in the state of Texas that document continued produced water discharges after the January 14, 1997 deadline and which set forth compliance schedules for the termination of such discharges over a period of two years.

8. On December 30, 1996, the department issued Emergency Rule WP023E to prevent imminent peril to the public welfare, specifically to prevent the loss of employment, taxes, and royalties that would result if all remaining produced water discharges were eliminated on January 1, 1997.

a. The emergency rule allowed additional time for a limited number of facilities to cease produced water discharges.

b. Emergency Rule WP023E-A was issued on January 6, 1997, to correct an omission in the original emergency rule.

c. Emergency Rule WP023E-B, which repealed and replaced Emergency Rules WP023E and WP023E-A, was issued on February 26, 1997.

d. These same provisions have been addressed in Proposed Rule WP023, which was published as a notice of intent in the *Louisiana Register* on March 20, 1997. A public hearing was held on April 24, 1997. Public comments are currently being reviewed.

### **Additional Findings**

The secretary also finds the following:

1. Facilities were still discharging produced water on January 1, 1997.

2. Facilities still discharging produced water after January 1, 1997 are subject to enforcement action by both DEQ and EPA.

3. Produced water is a commonly produced byproduct of oil and gas production.

4. To continue operating, an oil and gas production facility for which produced water is a natural byproduct must either discharge the produced water or inject it into an injection well approved by the Department of Natural Resources.

5. For various reasons, certain facilities would not be able to cease all discharges by January 1, 1997:

a. The Department of Natural Resources experienced a personnel shortage, which prevented it from processing before January 1, 1997, all of the applications for injection wells on file in December 1996.

b. Some Mississippi and Atchafalaya River dischargers had valid state permits allowing continued discharge (in conflict with the December 1996 federal guidelines and standards).

c. Some bay dischargers had relied on Department of Energy study results to allow continued discharge by state permit.

6. The federal guidelines at page 66087 note the reliance of bay dischargers on the DOE study:

"The United States Department of Energy (DOE) has provided the State of Louisiana with comments and analyses suggesting a change to the Louisiana state law requiring zero discharge of produced waters to open bays by January 1997. Promulgation of [these December 16, 1996 federal guidelines] would generally preclude issuance of permits allowing discharges."

7. The department accepted information that was part of the DOE study referenced in LAC 33:IX.708.C.2.b.iv.(e), as documented at 61 Federal Regulation 66087.

8. The DOE study results focus on minimal water quality impact to urge discharges be allowed.

9. The EPA guidelines use Best Available Technology (BAT) to require all discharges to cease.

### **Findings and Considerations Regarding Environmental and Economic Costs and Benefits**

The secretary is the primary public trustee of the environment. He has a duty to provide environmental protection insofar as possible and consistent with the health, safety, and welfare of the people of the state of Louisiana. In fulfillment of that duty, the secretary finds that the adverse environmental impacts resulting from issuance of Emergency Rule WP023E-B1 have been minimized or avoided as much as possible consistent with the public welfare, as detailed below.

### **Environmental Costs and Benefits**

Environmental costs and benefits were considered. During the 1953 to 1997 time frame, produced water discharges to

areas of greatest environmental impact were limited or eliminated. Of the coastal area discharges which now remain, the majority of discharges are to major passes of the Mississippi River or to bay areas. These areas have less potential for environmental damage than locations such as dead end canals, due to greater water circulation.

As part of the development and consideration for the March 1991 regulations that prohibited produced water discharges, DEQ, in cooperation with the Louisiana State University Institute for Environmental Studies, performed a comprehensive study resulting in a report entitled "An Assessment of Produced Water Impacts to Low-Energy, Brackish Water Systems in Southeast Louisiana." This study details environmental impacts associated with the discharge of produced water in low energy systems.

Later studies conducted for the U.S. Department of Energy (DOE studies) also document environmental impact of produced water discharges, but show that areas impacted by the discharge of produced water in coastal waters can begin to show recovery and can recover within six months of the termination of the discharge. Additionally, the DOE studies show minimal risk to human health from bay discharges.

It is found that discharges of produced water have occurred for over 50 years in various locations in the coastal zone in Louisiana. In its March 1991 rule, the department allowed up to almost six additional years for such discharges to continue. That allowance was based upon the department's earlier finding that there was no acute or imminent threat to the environment, and more specifically that there was no acute or imminent threat to water quality, from the continuation of produced water discharges for a limited period of time.

This emergency rule allows a maximum extension of time of only 24 to 36 months to discharge produced water. This additional time, compared to the total time produced water discharges have existed since the 1940s, represents an incremental increase of approximately 4 percent, and the number of discharges is now significantly lower than in previous years. A condition of any approval to extend the discharge period for a produced water discharge will be that water quality standards will not be violated.

Accordingly, it is found that any potential harm to the environment or to water quality from issuance of this emergency rule would be minimal.

#### **Economic Costs and Benefits**

Economic costs and benefits were considered. It was found in December 1996 that the economic costs resulting from a failure to issue the original emergency rule included the loss of jobs, taxes, revenues, and shut in of oil reserves. Specifically, losses for failure to adopt the original emergency rule were projected as follows:

1. 309 jobs in the oil and gas production industry would be lost;
2. \$13 million in state and local taxes, revenues, and royalties would be lost;
3. \$178 million in oil and gas reserves would be lost.

These losses were projected by the LSU Center for Energy Studies in July 1996.

Subsequent to issuance of the original emergency rule in December 1996, and based upon information supplied to the department in accordance with the original emergency rule, the projections were adjusted as follows:

1. 189 jobs in the oil and gas production industry would be lost;
2. \$7.5 million in state and local taxes, revenues, and royalties would be lost;
3. \$109 million in oil and gas reserves would be lost.

Conversely, the economic benefits resulting from issuance of the emergency rule are the savings represented by averting the projected losses.

After consideration of the environmental and economic costs and benefits, it has been determined that the short-term and long-term economic benefits outweigh the minimal short-term environmental costs.

#### **Consultations with the United States Environmental Protection Agency (EPA)**

The secretary conferred with the director of the Water Quality Management Division, the director of the Compliance Assurance Division, a staff attorney, and the state NPDES program coordinator, all at EPA Region 6, in December 1996 prior to the issuance of the original emergency rule.

In October 1996, the secretary met with the assistant administrator for the Office of Water and the director of the Effluent Guidelines Division, both with EPA headquarters in Washington, D.C.

Dialog and correspondence with EPA Region 6 subsequent to issuance of the original emergency rule, resulted in changes incorporated in Emergency Rule WP023E-B; EPA's concerns were satisfied as of February 26, 1997.

#### **Additional Information Considered before Issuance of this Emergency Rule**

The DEQ secretary was present for the House and Senate committee hearings on the original emergency rule. He heard and considered the testimony of those in support and those in opposition to the rule prior to adoption of Emergency Rule WP023E-B.

#### **Conclusion**

Based on the findings recited herein, the secretary hereby concludes that the failure to implement this emergency rule will result in economic losses which constitute imminent peril to the public welfare. The loss of employment, taxes, and royalties that would otherwise result in imminent peril to the public welfare if this emergency rule is not implemented, can be avoided by allowing, on a case-by-case basis, a limited amount of additional time for certain operators to arrange for the injection of their produced water. This extension of time shall not extend the produced water discharge beyond January 1, 1999, except that an additional one-year extension may be granted to those facilities that discharge produced water generated in outer continental shelf waters into a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City. In no instance shall the department approve a produced water discharge that would extend beyond January 1, 2000.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality Regulations**  
**Chapter 7. Effluent Standards**  
**§708. Exploration for and Production of Oil and**  
**Natural Gas**

\* \* \*

[See Prior Text in A-C.2.a.iii]

iv. There shall be no discharge of produced water to freshwater swamp or freshwater marsh areas or to natural or manmade water bodies bounded by freshwater swamp or freshwater marsh vegetation unless the discharge has been specifically identified in an approved schedule for discharge termination, and the discharge complies with all applicable portions of Subsection C.2.e of this Section.

\* \* \*

[See Prior Text in C.2.a.v]

b. Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas

i. All produced water discharges must be specifically identified in a valid individual or general permit or order and must comply with all applicable portions of Subsection C.2.f of this Section.

\* \* \*

[See Prior Text in C.2.b.ii-d]

e. Discharge of Produced Water into Freshwater Areas after January 1, 1997

i. In light of LPDES general permit LAG290000 and the "Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category," published December 16, 1996, and effective January 14, 1997 (the federal guidelines), facilities that discharge produced water as authorized in a valid LWDPs permit as of July 1, 1996, shall cease the discharge of produced water by July 1, 1997, unless the continued discharge is specifically identified in an order.

ii. Each facility desiring to continue to discharge produced water after July 1, 1997, shall submit to the department, no later than May 1, 1997, a schedule to:

(a). accomplish re-injection of the produced water as expeditiously as possible, or

(b). return their produced water which originated seaward of the coastal areas identified in Subsection C.2.e.iv.(a) of this Section to those areas of origin.

iii. In addition to the schedule required in Subsection C.2.e.ii of this Section, the submittal shall include, at a minimum, a certification by the facility operator of all of the following:

(a). surface discharge of produced water is the only immediately available alternative;

(b). the produced water discharge elimination schedule is limited in term to the period necessary to provide an alternate waste-handling method;

(c). the discharge of produced water has not been eliminated pending the installation of injection systems or returning it to its area of origin (seaward of the coastal areas identified in Subsection C.2.e.iv.(a) of this Section);

(d). the discharge will not cause a violation of water quality standards in the receiving waters; and

(e). the discharge was previously permitted.

iv. Discharges of produced water pursuant to this rule shall not extend beyond the date upon which the produced water discharge can reasonably be eliminated. In no event shall a discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, continue:

(a). beyond January 1, 1999, for produced water generated in coastal areas as defined in 40 CFR part 435.41(e);

(b). beyond January 1, 2000, for produced water generated seaward of coastal areas identified in Subsection C.2.e.iv.(a) of this Section; or

(c). beyond January 1, 2000, for facilities that discharge produced water generated in any combination of areas described in Subsection C.2.e.iv.(a) and (b) of this Section.

v. There shall be no discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City, after January 1, 2000.

f. Discharge of Produced Water into Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas after January 1, 1997

i. Notwithstanding the absolute deadline of Subsection C.2.b.v.(b) of this Section and in light of the federal guidelines, facilities previously authorized by valid LWDPs permits as of July 1, 1996, to discharge produced water under Subsection C.2.b.iv of this Section, pursuant to an approved compliance schedule shall:

(a). cease the discharge of produced water by February 14, 1997; or

(b). submit a revised schedule to accomplish injection of the produced water as expeditiously as possible. This schedule shall be received by the department on or before February 14, 1997. Submission of a schedule is not a defense to an enforcement action for a facility's failure to adhere to the terms and conditions of its permit or prior compliance schedule. In addition to the schedule submission, a certification must be submitted by the facility operator which includes the requirements of Subsection C.2.e.iii of this Section. No compliance schedules in an enforcement order shall extend beyond the minimum time demonstrated necessary for elimination of the discharge and in no case beyond January 1, 1999.

ii. All terms, conditions, limitations, and requirements of the most recent LPDES permit or compliance schedule or order identifying a produced water discharge shall continue in full force and effect unless the department provides otherwise in writing. A schedule to discharge produced water after July 1, 1997 is solely within the department's enforcement discretion and shall be granted only through a compliance order.

iii. There shall be no discharge of produced water to natural or man-made water bodies located in intermediate, brackish, or saline marsh areas after January 1, 1999.

\* \* \*

[See Prior Text in C.3-5.f]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:261 (April 1989), amended LR 17:263 (March 1991), LR 23:

J. Dale Givens  
Secretary

9706#043

## DECLARATION OF EMERGENCY

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Case Management Services Reimbursement  
Infants and Toddlers with Special Needs

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in accordance with the Administrative Procedure Act, R.S. 49:953(B) et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides reimbursement for optional targeted case management services to infants and toddlers who are categorized as developmentally disabled under the ChildNet Program.

An emergency rule was adopted on September 24, 1996, limiting case management services to those infants and toddlers who either receive services under the MR/DD waiver or who receive two or more specified Medicaid services (*Louisiana Register*, Volume 22, Number 9). The department subsequently repealed the September 24, 1996 emergency rule and reduced the reimbursement rate for these services, effective December 1, 1996, in a subsequent emergency rule (*Louisiana Register*, Volume 22, Number 11).

After consultation with the Department of Education regarding ChildNet Services, the bureau has now determined it is necessary to increase the reimbursement for case management services for infants and toddlers. This action is necessary to maintain the health and welfare of these children by assuring continued access to case management services to assist their families in obtaining necessary medical, social and educational services. A previous emergency rule established these current provisions, effective March 13, 1997 (*Louisiana Register*, Volume 23, Number 3).

### Emergency Rule

Effective for dates of service on or after July 11, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases reimbursement for case management services for infants and toddlers with special needs to \$115.

Bobby P. Jindal  
Secretary

9706#047

## DECLARATION OF EMERGENCY

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

Disproportionate Share Hospital Payment Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq. and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the Administrative Procedure Act R.S. 49:953(B) et seq.

Hospital Disproportionate Share (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) which amended Section 1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal regulation and to avoid a budget deficit in the medical assistance programs, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under that methodology, public state-operated hospitals receive DSH payments equal to 100 percent of the hospital's net uncompensated costs, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

In order to assure continued fiscal viability of community hospitals, Act Number 17 (House Bill Number 1) of the 1996 Legislative Session provides for separate treatment of disproportionate share funds for uncompensated costs in small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals. To accommodate this proviso, this emergency rule provides that all hospitals other than public state-operated hospitals are separated into two groups: the first is composed of small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals, and the second contains all other hospitals. The latter group is composed of two pools, acute care hospitals and psychiatric hospitals. Previous provisions concerning DSH methodology for public state-operated hospitals continues unchanged. There is no increase or decrease in DSH funds as the result of this emergency rule, therefore there is no fiscal impact to the state or federal government.

Failure to adopt this emergency rule on an emergency basis could result in unavailability of local hospital services for Medicaid recipients in areas served by these hospitals, and would cause imminent peril to the public health, safety, or welfare of affected Medicaid recipients. Effective March 20, 1997, a previous emergency rule governing disproportionate share hospital payments (*Louisiana Register*, Volume 23, Number 3) was adopted.

### Emergency Rule

Effective for dates of service July 18, 1997 and after, the Department of Health and Hospitals, Office of the Secretary,

Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies excluding disproportionate share qualification criteria and establishes the following regulations to govern the disproportionate share hospital payment methodologies for public state-operated, private hospitals and public nonstate hospitals.

## **I. General Provisions**

A. Reimbursement will no longer be provided for indigent care as a separate payment in hospitals qualifying for disproportionate share payments.

B. Disproportionate share payments cumulative for all DSH payments under all DSH payment methodologies shall not exceed the federal disproportionate share state allotment for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospitals' disproportionate share payments to remain within the federal disproportionate share allotment or the state disproportionate share appropriated amount.

C. Appropriate action shall be taken to recover any overpayments resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

D. DSH payments to a hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's latest year-end cost report for the year ended during the period July 1 through June 30 of the previous year. Only hospitals that return DSH qualification documentation timely will be considered for disproportionate share payments. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

F. Hospitals/units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

G. Net Uncompensated Cost—cost of furnishing inpatient and outpatient hospital services net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payor payments, and all other inpatient and outpatient payments received from patients. It is mandatory that qualifying hospitals seek all third-party payments including Medicare, Medicaid, and other third-party carriers. Hospitals not in compliance with free care criteria will be subject to recoupment.

H. Disapproval of any one of these payment methodology(ies) by the Health Care Financing Administration does not invalidate the remaining methodology(ies).

## **II. Reimbursement Methodologies**

### **A. Public State-Operated Hospitals**

#### **1. Definitions:**

*Public State Operated Hospital*—a hospital that is owned or operated by the State of Louisiana.

2. Payment Methodology. DSH payments to individual public state-owned or operated hospitals are equal to 100 percent of the hospital's net uncompensated costs subject to

the adjustment provision in II.A.3 below. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

3. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment each year or the state DSH appropriated amount, the department shall calculate a pro rata decrease for each public (state) hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH appropriated amount.

### **B. Small Nonstate-Operated Local Government Hospitals and Small Private Rural Hospitals**

1. Criteria for hospitals to be included in this group are as follows:

Qualifying hospitals must be 1) small and 2) either a nonstate public-owned and operated or a private rural hospital as defined below. Hospitals/beds located outside the service district area or rural area may not be included in this pool, but will be included in the all other hospitals pools. Beds located outside the service district will be used by DHH to determine qualification, but costs associated with these beds will not be used to determine reimbursement. Free-Standing psychiatric hospitals are not included.

#### **2. Definitions**

*Public Local Government Acute Hospitals*—local government-owned acute care general, rehabilitation, and long-term care hospitals including distinct part psychiatric units are qualified for this designation. Only uncompensated costs attributable to beds/units located within the service district area qualify for inclusion.

*Private Rural Hospitals*—privately owned acute care general, rehabilitation and long-term care hospitals designated as rural hospitals by Medicare, including distinct part psychiatric units are qualified for this designation. Only uncompensated cost attributable to beds/units located within the rural area qualify for inclusion.

*Small*—having 60 or less licensed beds as of July 1 of the state fiscal year to which the payment is applicable. The number of beds includes distinct part psychiatric beds, and excludes nursery and skilled nursing beds.

*Rural*—rural area as it applies to small private rural hospitals is considered rural areas of the parish in which the facility is domiciled.

3. Payment is based on each qualifying hospital's pro rata share of uncompensated cost for the previous state fiscal year for all hospitals meeting these criteria multiplied by the amount set for these facilities.

4. A pro rata decrease necessitated by conditions specified in I.B above for nonstate hospitals described in this Section will be calculated based on the ratio determined by dividing the hospitals' uncompensated costs by the uncompensated costs for all qualifying nonstate hospitals in this Section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH apportioned amount.

C. All Other Hospitals (Private Rural Hospitals over 60 Beds, All Private Urban Hospitals, Public Nonstate Hospitals over 60 Beds, and All Free-Standing Psychiatric Hospitals Exclusive of State Hospitals)

1. Annualization of days for the purposes of the Medicaid days pools is not permitted. Payment is based on actual paid Medicaid days for a six-month period ending on the last day of the latest month at least 30 days preceding the date of payment which will be obtained by DHH from a report of paid Medicaid days by service date.

2. Payment is based on Medicaid days provided by hospitals in the following two pools:

a. Acute Care Hospital—acute care, rehabilitation, and long-term care hospitals not described in II above (excluding distinct part psychiatric units) are qualified for this designation. Acute care, rehabilitation, and long-term care hospitals/beds of small nonstate-operated local government hospitals (defined in II above) located outside the service district area are included in this pool. Acute care, rehabilitation, and long-term care hospitals/beds of small private rural hospitals (defined in II above) located outside the rural area are included in this pool.

b. Psychiatric Hospital—Free-Standing psychiatric hospitals and distinct part psychiatric units not included in II above are qualified for this designation. Psychiatric hospitals/beds of small nonstate-operated local government hospitals (defined in II above) located outside the service district area are included in this pool. Psychiatric hospitals/beds of small private rural hospitals (defined in II above) located outside the rural area are included in this pool.

3. Disproportionate share payments for each pool shall be calculated based on the product of the ratio determined by dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) total Medicaid inpatient days obtained from the same report of all qualified hospitals in the pool, and multiplying by an amount of funds for each respective pool to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days. Pool amounts shall be allocated based on the consideration of the volume of days in each pool or the average cost per day for hospitals in each pool.

4. No additional payments shall be made if an increase in days is determined after audit. Recoupment of overpayment from reductions in pool days originally reported shall be redistributed to the hospital that has the largest number of inpatient days attributable to individuals entitled to benefits under the State Plan of any hospitals in the state for the year in which the recoupment is applicable.

5. A pro rata decrease necessitated by conditions specified in I.B above for hospitals described in this Section will be calculated based on the ratio determined by dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this Section, then multiplying by the amount of disproportionate share payments calculated in

excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

Bobby P. Jindal  
Secretary

9706#046

## DECLARATION OF EMERGENCY

Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing

### Nursing Homes—Emergency Preparedness Plan

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

The department maintains minimum licensing requirements for the operation of all nursing homes in the state (*Louisiana Register*, Volume 13, Number 4). The purpose of the nursing home licensing law and requirements is to provide for the development, establishment, and enforcement of standards of care for individuals in nursing homes and for the construction, maintenance, and operation of nursing homes which will promote safe and adequate treatment of nursing home residents. The department has now determined that it is necessary to amend the minimum licensure standards to require nursing homes to maintain a written emergency preparedness plan that describes the procedures to be followed in the event of an emergency such as a hurricane or flood. The emergency preparedness plan shall include the following procedures for:

- (1) the evacuation of residents to a safe place either within the nursing home or to another location;
- (2) the delivery of essential care and services whether residents are housed off-site or when additional residents are brought into a nursing home during an emergency;
- (3) the provisions for the management of staff, including distribution and assignment of responsibilities and functions either within the nursing home or at another location;
- (4) a plan for coordinating transportation services required for evacuating residents to another location; and
- (5) assurance that the resident's family or sponsor is notified if the resident is evacuated to another location.

The plan shall be developed in coordination with the local/parish Office of Emergency Preparedness utilizing community-wide resources.

This action is necessary to protect Louisiana nursing home residents from imminent peril to their health and welfare that would result if a natural disaster or other emergency occurs that either disrupts the nursing home's ability to provide care

and treatment or threatens the lives or safety of the nursing home residents.

#### **Emergency Rule**

Effective June 9, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations to require all licensed nursing homes to have a written emergency preparedness plan designed to manage the consequences of a natural disaster or other emergency that disrupts the home's ability to provide care and treatment or threatens the lives or safety of the residents. The nursing home's emergency preparedness plan must conform to the Office of Emergency Preparedness' Model Plan.

#### **Emergency Preparedness Plan**

A. As a minimum, written emergency preparedness plan shall address the following:

1. the evacuation of residents to a safe place either within the nursing home or to another location;
2. the delivery of essential care and services to when either residents are evacuated off-site or additional residents are evacuated to the nursing home during an emergency;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing home or at another location;
4. a plan for coordinating transportation services required for evacuating residents to another location; and
5. a method to assure that the resident's family or sponsor is notified if the resident is evacuated to another location.

B. The nursing home's plan shall be implemented at least annually, either in response to an emergency or in a planned drill. The nursing home's performance during implementations of the plan shall be evaluated, documented, and the plan changed where indicated.

C. The nursing home's plan shall be developed in coordination with the local/parish office of emergency preparedness, utilizing community-wide resources.

D. The plan shall be available to representatives of the Office of State Fire Marshal as well as DHH personnel.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

Bobby P. Jindal  
Secretary

9706#048

#### **DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Office of the Secretary  
Bureau of Health Services Financing**

**Portable X-Ray Crossover Claims**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the

following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Bureau of Health Services Financing provides reimbursement to providers enrolled in the Medicaid and the Medicare Part B Programs for professional services furnished to dually eligible Medicare/Medicaid recipients. Our reimbursement methodology for professional services has been revised effective July 1, 1997 to reimburse the full co-insurance and deductible on Medicare Part B crossover claims for services rendered to Medicare/Medicaid recipients. The department has determined that it is necessary to revise the reimbursement methodology for portable x-ray services to also pay full co-insurance and deductible in order to be consistent with our reimbursement methodology for other professional services. This action is necessary to assure the health and welfare of these recipients by assuring continued access to portable x-ray services. It is estimated that this emergency rule will increase expenditures by approximately \$261,216 for state fiscal year 1997-98.

#### **Emergency Rule**

Effective for dates of service on or after July 1, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall reimburse the full co-insurance and deductible on Medicare Part B Portable X-Ray crossover claims for services rendered to dually eligible Medicare/Medicaid recipients.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

Bobby P. Jindal  
Secretary

9706#049

#### **DECLARATION OF EMERGENCY**

**Department of Natural Resources  
Office of the Secretary**

**State Lands—Reclamation  
(LAC 43:XXVII.Chapters 23 and 24)**

In accordance with the emergency provisions of R.S. 49:953(B), R.S. 39:1598, the Administrative Procedure Act, and under the authority of R.S. 49:214.4, the Secretary of the Department of Natural Resources hereby declares that the conservation and restoration efforts authorized in accordance with R.S. 49:213.6 for the Isles Dernieres and Timbalier Barrier Islands shall proceed on an emergency basis.

In conjunction with this, pursuant to R.S. 41:1702, which allows reclamation of lands lost through erosion, compaction, subsidence, or sea level rise and further provides for wetlands

conservation and restoration projects, regulations governing same are hereby adopted on an emergency basis.

These regulations are made effective June 20, 1997 and expire October 18, 1997.

This determination is made in view of the fact the land mass of these islands has eroded to such a critically small and fragile extent that additional losses stemming from further delays may render their currently mandated conservation projects ineffective. In addition, reclamation efforts by owners of land contiguous to and abutting navigable waters, bays, arms of the sea, the Gulf of Mexico and navigable lakes are hindered by the lack of regulations governing these efforts. Finally, this emergency rule is necessary because the Office of the Secretary is awaiting final approval of the Fiscal and Economic Impact Statement in order to proceed with the notice of intent of final rulemaking. Therefore, these emergency rules must be adopted and the proposed work must be expedited to the extent provided by law in order to prevent an imminent and irretrievable destruction of property. These projects have been deemed to provide extensive public benefits and enhancement of the public welfare.

#### **Title 43**

### **NATURAL RESOURCES**

#### **Part XXVII. State Lands**

### **Chapter 23. Reclamation Projects**

#### **§2301. Definitions**

As used in these regulations, unless the context requires otherwise, the terms set forth below shall have the following meanings:

*Emergent Land*—land that emerges from a public waterbottom to an elevation sufficient to support emergent vegetation except that in the case of the seaward side of a barrier island the minimum elevation required shall be the lowest elevation sufficient to support emergent vegetation on the landward side of such island. No land which lies below the elevation of ordinary low water shall be considered emergent land.

*Owner*—an owner or owners of land contiguous to and abutting navigable waters, bays, arms of the sea, Gulf of Mexico, and navigable lakes belonging to the state.

*Secretary*—the secretary of the Department of Natural Resources.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 41:1702.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

#### **§2303. Implementation by Owner**

**A. Right to Reclaim.** An owner shall have the right to reclaim land lost through erosion, compaction, subsidence, or sea level rise occurring on and after July 1, 1921, in the manner hereinafter provided.

##### **B. Processing of Application for Work Permit**

1. An application for a work permit for the reclamation or recovery of land lost through erosion, compaction, subsidence, or sea level rise may be made by the owner to the secretary on forms provided by the Department of Natural Resources and accompanied by the following:

a. a certified map or plat of survey prepared by a professional land surveyor qualified and currently registered by the State Board of Registration for Professional Engineers

and Land Surveyors in accordance with R.S. 37:681 et seq, showing the following:

i. the land-water boundary between land belonging to the state and those of applicant;

ii. the exact extent of land claimed to be lost through erosion, compaction, subsidence, or sea level rise on and after July 1, 1921 (and prior to July 1, 1921, if applicable);

iii. location of the activity site including section, township, and range;

iv. Louisiana grid coordinates of all corners and angle points;

v. name of waterway;

vi. all applicable political (parish, town, city, etc.) boundary lines;

vii. name of and distance of local town, community or other identifying location;

viii. names of all roads in the vicinity of the site;

ix. graphic scale;

x. north arrow;

b. a written title opinion prepared in accordance with the title standards of the Department of Natural Resources, signed by an attorney licensed to practice law in the State of Louisiana, showing ownership by applicant of the riparian lands in question, together with documentary or other evidence supporting the claimed extent of land lost through erosion, compaction, subsidence, or sea level rise.

2. The application shall be accompanied by a refundable administrative and processing fee of \$500, payable to the Department of Natural Resources.

3. Applicant and the secretary shall endeavor to agree in writing on a delineation of the area subject to reclamation by applicant. If agreement cannot be reached, differences in question shall be submitted to commissioners for resolution in accordance with the procedures established in Chapter 8 of Title 41 of the Louisiana Revised Statutes.

4. Upon delineation of the area subject to reclamation by applicant, either by agreement or findings of the commission, the secretary shall prescribe the height to which the surface of the theretofore submerged land is to be raised through filling or other physical works to be conducted by applicant at his sole risk and expense. Such height shall be adopted to insure reasonably permanent existence of the reclaimed lands, and shall be presumed to exceed the level of ordinary low water in the case of rivers or streams and exceed the level of ordinary high water in the case of bodies of water other than rivers and streams.

5. Within one year after the action of the secretary, applicant may submit to the secretary for approval plans and specifications for the work necessary to implement the recovery of the land lost. The secretary shall submit such plans or specifications for review and comment to the following:

a. the governing authority of the parish in which the proposed project is located;

b. the Attorney General;

c. the Department of Transportation and Development;

d. the Department of Wildlife and Fisheries;

- e. Office of Mineral Resources; and
- f. State Land Office.

C. **Work Permit.** Not less than 60 days following such submission for the review and comment the secretary may approve or modify the plans and specifications and may issue a permit for the carrying out of the work necessary to implement the recovery of the land lost.

D. **Other Permits.** Prior to commencing work, applicant shall obtain all other permits required by law.

E. **Boundary Map.** Within 60 days of the completion of the reclamation project, the applicant shall submit to the secretary a map or plat certified as aforesaid delineating the extent of the land area actually reclaimed, and upon approval of such map by the secretary, the boundary between lands belonging to the state and those of applicant shall become fixed and definitive.

F. **Special Work.** In the event special work in the field on the part of the Department of Natural Resources is required in order to properly evaluate applicant's submissions, the cost of such special work shall be fixed by the secretary based on his estimate of the cost of such work to the state, and shall be paid in advance by applicant.

G. **Effective period of work permit.** Permits issued as hereinabove provided shall be effective for a period not to exceed two years from the date of issuance and shall thereupon expire. All work remaining or additional work may be completed only by application in the manner provided hereinabove.

H. **Substantial Compliance.** Any reclamation not in substantial compliance with the procedure described above shall be an absolute nullity and no private rights of ownership shall vest or be acquired by prescription.

I. **Limitation on Reclamation.** Reclamation by an owner shall not be permitted if in the determination of the secretary or the Attorney General such activity would unreasonably obstruct or hinder the navigability of any waters of the state or impose undue or unreasonable restraints on the state rights which have vested in such areas pursuant to Louisiana law, and to that extent the land area sought to be reclaimed may be limited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

**Chapter 24. Reclamation—Coastal Restoration Projects**

**§2401. Implementation by Coastal Restoration Projects**

A. **Establishment of Existing Coast or Shoreline.** To facilitate the development, design, and implementation of coastal restoration projects pursuant to R.S. 49:214.1 et seq., the secretary may enter into agreements with an owner to establish in such owner the perpetual transferable ownership of all subsurface mineral rights to the then existing coast or shoreline.

B. **Provision for Emergent Lands.** Such agreements may also provide for a limited or perpetual alienation or transfer, in whole or in part, to such owner of subsurface mineral rights owned by the state relating to the emergent lands that emerge from waterbottoms that are subject to such owner's right of reclamation in exchange for the owner's compromise of his

ownership and reclamation rights within such area and for such time as the secretary deems appropriate and in further exchange for the owner's agreement to allow his existing property to be utilized in connection with the project to the extent deemed necessary by the secretary.

C. **Application.** An owner seeking to establish ownership of such mineral rights shall file an application with the secretary on a form to be provided, accompanied by a map, title opinion and other evidence as hereinabove provided in § 2303.

D. **Barrier Islands.** In addition to the provisions of Subsections A and B of this Section, in the case of a project involving a barrier island, the secretary may also require the owner to transfer title to all or a portion of the island in exchange for any subsurface mineral rights acquired by said owner.

E. **Servitude.** An owner granted a perpetual, transferrable ownership of subsurface mineral rights as a result of an agreement entered into pursuant to the provisions of this Section shall have a perpetual transferrable servitude to use the surface of any such land for the purposes of locating, accessing, extracting and transporting those subsurface minerals with the same freedom, and subject to the same restrictions, as an owner of the surface.

F. **Approval and Publication.** When the secretary proposes to execute an agreement by which an election pursuant to this Section is effected, the secretary shall first submit the agreement for review and approval to the House and the Senate committees on natural resources, after publishing the agreement as provided in the Administrative Procedure Act.

G. **Recordable Evidence.** The secretary shall provide an owner granted subsurface mineral rights pursuant to this Section, recordable evidence of the rights transferred, which documents shall include an adequate legal description of the area subject to such owners' rights and a plat thereof. The owner shall be responsible for filing any such document in the conveyance records of the parish in which such property is located, which filing shall be public notice thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

**§2403. Bulkheading and Flood Protection**

A. **Bulkheading.** Permits may be granted by the secretary for bulkheads generally parallel to the shore which do not interfere with navigation on any inland navigable water body whether or not the area to be bulkheaded eroded before July 1, 1921, if on the basis of evidence furnished the secretary, such bulkheading will aid in reclaiming submerged land or preventing erosion, compaction, or subsidence, provided, however, that such permits shall not vest any title in any private owner other than as to lands eroded after July 1, 1921.

B. **Procedure.** An owner seeking reclamation of lands by bulkheading shall submit an application to the secretary on a form provided by the Department of Natural Resources, accompanied by a map, title opinion and other evidence as hereinabove provided in §2303. In addition to other information, the map shall show the location of the proposed

bulkhead and related fill, and specifications for the constructions thereof shall be submitted with the application. Upon approval of the application by the secretary, a permit for construction may be issued, and upon completion of the work by applicant and approval by the secretary, a boundary shall be fixed and determined in the same manner as hereinabove provided in §2303.

C. Flood Protection. In like manner, permits may be granted by the secretary to provide adequate foundation of flood protection for presently existing structures in proximity to the eroded banks.

D. Permit Fee. An application for a permit under this Section shall be accompanied by a refundable administrative and processing fee of \$200, payable to the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

#### **§2405. Miscellaneous**

A. Hold Harmless. All permits approved and issued hereunder shall be conditioned upon applicant's agreement to hold the State of Louisiana and her agencies and subdivisions harmless for any damages resulting from applicant's acts or omissions in reclaiming and maintaining lands and constructing or maintaining any structures and bulkheads, though the permit for the same subsequently expires or is revoked.

B. Encumbrances. A permit will be issued subject to and encumbered with any right-of-way or servitude, or any mineral, geothermal, geopressure, or any other lease acquired or granted by the state for a lawful purpose prior to the reclamation of such lands. Nothing in these regulations shall prevent the leasing of state lands or waterbottoms for minerals or other purposes.

C. Vested Rights. No permit shall be construed to vest any proprietary rights or title in any private owner except as to lands actually reclaimed and maintained, pursuant to Act 55 of 1996.

D. Reclamation to Coastline. Eroded lands contiguous to the coast of the Gulf of Mexico as defined in the Decree of the United States Supreme Court dated July 16, 1975, in *United States vs. Louisiana*, Number 9 Original, may be reclaimed under reclamation permits, out to the coastline.

E. Judicial Review. Any person aggrieved either by a substantive agency decision made pursuant to the provisions of this Section, including interlocutory decisions relating to boundaries and determinations of areas reclaimed, or by a failure of the agency to render such decisions be instituted by filing a petition in the Nineteenth Judicial District Court within 30 days after mailing of notice of the final decision by the secretary. Any party may request and be granted a trial de novo.

AUTHORITY NOTE: Promulgated in accordance with R.S. 41:1702.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 23:

Jack C. Caldwell  
Secretary

9706#079

## **DECLARATION OF EMERGENCY**

### **Department of Public Safety and Corrections Office of Motor Vehicles**

#### **Vehicle Registration License Tax (LAC 55:III.351-363)**

In accordance with R.S. 47:463(A)(2), the Department of Public Safety and Corrections, Office of Motor Vehicles, is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B), to adopt an emergency rule pertaining to the implementation of the annual registration license tax for motor vehicles. This emergency rule is effective June 3, 1997 and shall remain in effect for 120 days.

Currently, every vehicle registered in this state that is intended to be operated on the public highways is required to be registered and is subject to the vehicle registration license tax. The emergency adoption of these rules is required to avoid the interruption of the collection of these taxes and to avoid the adverse impact on the state and its citizens that would result from the loss of this revenue. In the fiscal year 1995-1996, the state collected \$32,069,240 as a result of the vehicle registration license tax. During the current fiscal year, the state has collected \$26,815,913. The loss of this revenue would have a dramatic adverse impact on the state fiscal condition and as a result would adversely affect the services rendered to the citizens of this state.

Any unnecessary delay in the promulgation of these rules would interrupt the collection of these taxes, and thereby postpone the collection of revenue for the state.

As a result of the above finding, the Department of Public Safety and Corrections, Office of Motor Vehicles, hereby adopts the following emergency rule.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part III. Motor Vehicles**

#### **Chapter 3. License Plates**

#### **Subchapter B. Vehicle Registration License Tax**

#### **§351. Definitions**

As used in this Subchapter, the following terms have the meanings described below:

*Acquired*—any transfer of full ownership from one juridical person to another including but not limited to sales, donations, exchanges, or inheritances.

*Assistant Secretary*—the assistant secretary of the Department of Public Safety and Corrections, Office of Motor Vehicles.

*Department*—the Department of Public Safety and Corrections.

*Motor Vehicle*—each passenger-carrying automobile, van, or other motor vehicle carrying only passengers and their personal effects exclusively, not meeting the requirements of R.S. 47:463.5 or using or operating on rails or upon permanent tracks and operated only for personal use.

*N.A.D.A. Official Older Used Car Guide*—periodical published by the National Appraisal Guide, Inc., which contains value projections of used motor vehicles for years not