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Executive Orders

EXECUTIVE ORDER EWE-78-16

WHEREAS, the Louisiana Bureau for Women is responsible for planning for the needs and implementing programs to expand opportunities for women of the state; and,

WHEREAS, locally based groups are a valuable resource to the community in planning, coordinating, and implementing programs in accordance with the needs of that community; and

WHEREAS, a number of programs require or actively encourage the participation of areawide districts for purposes of planning, developing, and implementing programs on a regional basis;

NOW, THEREFORE, in order to facilitate the implementation of locally based groups, I hereby designate the Louisiana Bureau for Women as the official state agency to establish commissions on the needs of women in each of the eight state planning districts to provide an effective and comprehensive means of planning, developing, and implementing services responsive to the needs of women at the local level:

AND, to receive and disperse funds for the development and implementation of programs for women including, but not limited to, funds for career development, job training, displaced homemakers, domestic violence, and other programs with demonstrated need.

The commissions on the needs of women shall be composed of representatives of the community who have displayed an interest in or worked in program areas that affect the lives of women.

It shall be the duty of each commission to collect facts and statistics and make special studies of conditions to facilitate the design and implementation of programs.

The commissions shall keep informed of the latest developments in the fields of activity pertinent to women throughout the state and interpret their findings to the community.

Further, the commissions shall provide for a mutual exchange of ideas and information with other local, parish, and state entities to formulate recommendations prior to any implementation of programs designed to impact the quality of life for women.

Representatives from the commissions shall compose the State Commission for Women whose functions and duties in the planning, development, and coordination of women's programs will be carried out under the auspices of the Louisiana Bureau for Women.

IN WITNESS WHEREOF, I have hereunto 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 the 1st day of November, A.D. 1978.

Edwin Edwards
Governor of Louisiana

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture Office of Agricultural and Environmental Sciences

Effective October 25, 1978, the Department of Agriculture, Office of Agricultural and Environmental Sciences, has exercised those powers conferred by the emergency provisions of the Administrative Procedures Act, R.S. 49:953, to adopt the following amendments to the Sweet-potato Weevil Quarantine and Regulations. This action has been taken to prevent spread of sweet-potato weevil from infested areas, to areas not known to sustain infestations of these pests. The insect is considered to be the most destructive pest of sweet potato and its spread an imminent hazard to Louisiana. In connection with this investigation, it has become necessary to promulgate the following emergency rule, amending Section Six of the state Sweet-potato Weevil Quarantine and Regulations to read as follows:

Requirements for Sweet Potato Dealer's Certificate Permit

1. All persons commercially engaged in the handling, sale, offering for sale, and/or movement of sweet potatoes shall not store, clean, grade, pack for sale, process in any manner or move sweet potatoes unless they have a valid sweet potato dealer's permit except: this shall not apply to the movement of sweet potatoes by farmers directly from their farms to market.

2. A sweet potato dealer's certificate permit shall be issued provided:

A. A properly executed affidavit on a form furnished by the Department, setting forth the stipulations to which the applicant must agree, has been filed with the Department.

B. A bond acceptable to the Department in the amount of one thousand dollars for a sweet potato dealer's certificate permit in favor of the Commissioner has been filed with the Department as a guarantee to:

(1) Reimburse any purchaser the purchase price of sweet potatoes that have been confiscated because of sweet-potato weevil infestation or illegal movement.

(2) Agree to the destruction of any load or lot of sweet potatoes moving illegally or infested with the sweet-potato weevil, by an inspector of the Department or law enforcement officer, or return same to point of origin.

Richard Carlton, State Entomologist
Office of Agricultural and
Environmental Sciences

DECLARATION OF EMERGENCY

Department of Agriculture Office of Agricultural and Environmental Sciences

Effective November 2, 1978, the Department of Agriculture, Office of Agricultural and Environmental Sciences, has exercised those powers conferred by the emergency provision of the Administrative Procedures Act, R.S. 49:953B, to adopt amendments to the Sweet-potato Weevil Quarantine and Regulation, which were initially adopted under the provisions of Parts 2 and 3 of Chapter 12 of Title 3 of the Louisiana Revised Statutes of 1950. This action has been taken to prevent spread of sweet-potato

weevil from infested areas to areas not known to sustain infestations of these pests. This insect is considered to be the most destructive pest of sweet potato and its spread presents an imminent hazard to the sweet potato industry of Louisiana. In connection with this infestation, it has become necessary to promulgate the following emergency rule, by amending the Supplement to the Sweet-potato Weevil Quarantine and Regulation, Section III, Quarantined Areas, that portion of paragraph 2A dealing with West Carroll Parish, by adding the following properties:

... that portion consisting of a one mile radius of and including the property of Raymond Byavgeon Farms, O'Neal Brothers, section 8, R11E, T22N; which includes portions of sections 5, 6, 7, 8, 9, 17 and 18; that portion consisting of a one mile radius of and including the property of Richard Lamar Boutwell, section 27, R11E, T23N, which includes portions of sections 21, 22, 23, 26, 27 and 28; that portion consisting of a one mile radius of and including the property of J. M. Welch Farms, Roberson Brothers, section 32, R11E, T22N, which includes portions of sections 29, 30, 31, 32 and 33 and R11E, T22N, which includes portions of sections 4, 5 and 6; that portion consisting of a one mile radius of and including the property of Crowe Farms, W. M. Puckett, section 28, R10E, T21N, which includes a portion consisting of a one mile radius of and including the property of C. E. Reeks Farm, W. M. Puckett, section 1, R9E, T20N; which includes portions of sections 2 and 12, and portions of R10E, T20N sections 6 and 7, which includes portions of R9E, T22N section 31; that portion consisting of a one mile radius of and including the property of LeRoy Adams, sections 19, 20, 28 and 29, R10E, T21N; that portion consisting of a one mile radius of and including the property of E. C. Huff Farm, Roberson Brothers, section 28, T22N, R11E, which includes portions of sections 20, 21, 22, 27, 28 and 29; that portion consisting of a one mile radius of and including the property of McIntosh Farm, Richard Boutwell, section 22, T22N, R11E, which includes portions of sections 15, 16, 21, 22, 23, 26, 27 and 28.

Richard Carlton, State Entomologist
Office of Agricultural and Environmental Sciences

DECLARATION OF EMERGENCY

Department of Corrections Office of the Secretary

The Secretary of the Department of Corrections has adopted the attached rules on an emergency basis under the provisions of R.S. 49:951, et seq.

Adoption of these rules is necessary to timely implement legislative mandated changes in the department's inmate furlough regulations and procedures, particularly insofar as it relates to the exclusion of certain offenders from furlough eligibility.

These rules will be effective October 10, 1978, and remain in effect through December 20, 1978.

Regulation 30-7

Inmate Furloughs and Temporary Releases

1. Purpose. The purpose of this regulation is to establish the inmate furlough and temporary release policy of the Department of Corrections.

2. To whom this regulation applies. This regulation is applicable to wardens and correctional treatment administrators of each adult correctional institution in the Department of Corrections and the Office of Adult Services and to all inmates sentenced to the Department of Corrections, regardless of institution where they are housed.

3. Legal. The granting of inmate furloughs, or temporary releases, to adult inmates is controlled by R.S. 15:811 (C), 15:831 and 15:833.

4. General. Inmate furloughs or temporary releases from any correctional facility of the Department of Corrections may be granted only by the Secretary and shall be approved by him before they begin. The period during which the inmate will be on furlough or temporary release will be clearly indicated in the approval.

5. Definitions.

A. Furlough—A release from incarceration without security supervision for the purpose of maintaining family ties or for needed medical care.

B. Temporary Release—A release from incarceration without security supervision because of death or serious illness of a close family member or for an interview with a prospective employer.

C. Close Family Member—Means the father, mother, wife, husband, and children of the inmate and, when recommended by the warden, the grandparents, legal guardians, brothers or sisters.

D. Furlough Violation—Includes the commission of new offenses as well as any misconduct resulting in any disciplinary action while on furlough or temporary release.

6. Procedures.

A. Furlough and temporary release requests should be reviewed by the head of the unit to which the inmate is assigned to determine that the application is justified and is not in contravention of this regulation.

B. Necessary verification of furlough plans, transportation, coordination with family or medical facility are the responsibility of the warden recommending the furlough or temporary release.

C. Requests are to be forwarded to the Office of Adult Services where it shall be determined whether they are in compliance with this regulation and whether the sheriff, and if specifically requested, the district attorney and/or the chief of police of the locality where the inmate is going objects. The Office of Adult Services will notify the Warden at the originating institution of the Secretary's decision regarding the furlough.

D. When a request is received from a sheriff or warden of a nondepartmental facility, the Office of Adult Services shall certify to the Secretary that the inmate meets the same eligibility standards as those required of inmates in the custody of the Department.

E. Furlough requests for inmates in work release or maintenance status may be processed and approved for up to six months at a time.

F. All incidents of furlough violations by participating inmates shall be reported to the Office of Adult Services which shall compile a yearly report on or before April 1 of each year indicating the nature of the incident, age of offender, original offense, length of sentence, prior criminal record, and any other characteristics found to be predictive of success or failure. The Office of Adult Services will include in the report any suggested changes in eligibility standards dictated by the experiences of the previous year.

7. Eligibility. Inmates must meet the following criteria in order to be eligible for a furlough.

A. Must have been in custody for a period of not less than one year for the current offense and at least three months of the year must have been in a Department of Corrections facility, or have been approved by the sheriff, if in the sheriff's custody.

B. Must not be serving a sentence for any of the following crimes:

1. First or second degree murder or attempted murder.
2. Aggravated or attempted aggravated rape.
3. Forcible rape.
4. Aggravated kidnapping.
5. Aggravated arson.

6. Armed robbery.

7. Attempted armed robbery.

8. Producing, manufacturing, distributing or dispensing or possession with intent to produce, manufacture, distribute, or dispense a controlled dangerous substance classified in Schedule I or Schedule II or R. S. 40:964.

9. Sentenced as a habitual offender under R.S. 15:529.

Note: Subsection B does not apply to inmates within the last six months of their term of incarceration (earliest release date) or to inmates assigned to the Governor's mansion crew.

C. Must be free of detainers except those for court costs or misdemeanors.

D. Must not have been found guilty by a court or Department of Corrections disciplinary board of escape or attempted escape during the preceding three years.

E. Must be of minimum security status and have exhibited exemplary behavior.

F. Must submit a furlough or temporary release plan, stating the purpose of the furlough, the destination and the name of the person with whom the inmate will stay. A responsible member of the inmate's family or some other previously approved person must sign a statement agreeing to be responsible for the inmate and shall insure that transportation is provided for the inmate. A copy of the plan must be forwarded with the request to the Office of Adult Services.

8. Length and frequency of furloughs.

A. Furloughs and temporary releases will be approved for a definite period, not to exceed five days, except medical furloughs which shall be for such period as deemed necessary by the Secretary and appropriate medical personnel.

B. Inmates in work release or maintenance status may be recommended by the appropriate warden for monthly furloughs, not to exceed forty-eight hours in duration.

C. In lieu of a regular monthly furlough, inmates in work release or maintenance status may be granted two special holiday furloughs of up to five days coinciding with Christmas, Easter, or Independence Day (July 4); the exact dates to be determined each year by the Secretary.

D. Inmates other than those in work release or maintenance status may not be granted more than two furloughs (normally at Christmas, Easter, or Independence Day) each calendar year. There is no limit on the number of temporary releases which may be granted.

9. Administrative requirements.

A. Requests for furloughs should be submitted at least thirty days prior to the beginning date of the requested furlough or thirty days prior to the period in which the furloughs for work release and maintenance inmates are to be granted.

B. Furloughs should not be requested for inmates even though they might meet criteria established herein when it is known to the warden or responsible official that the inmate might present a danger to himself or to the public should the inmate be released from direct custody.

C. Furloughs may be approved by teletyped communication should the appropriate warden feel that the situation is of such an emergency nature that this procedure is justified.

C. Paul Phelps, Secretary
Department of Corrections

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries

Effective October 25, 1978, the Louisiana Wildlife and Fisheries Commission, exercised the power granted by the provisions of the

Administrative Procedures Act R.S. 49:953B, to suspend the enforcement of the steel shot regulations contained in the digest of the hunting regulations governing the taking of waterfowl in Louisiana during the 1978-79 hunting season and permit the taking of waterfowl in season in Louisiana with lead shot.

This action was taken after receipt of a telegram from the U. S. Fish and Wildlife Service stating that as a result of Congressional action in the Department of Interior's appropriation bill the Fish and Wildlife Service will not be allowed to further implement or enforce use of steel shot in designated areas without approval from regulatory agencies in each state affected.

Because the Louisiana waterfowl season opens November 4, it was necessary for the Commission to immediately act on this request. A public hearing was scheduled in Lafayette, Louisiana on October 23 and the Commission heard six hours of testimony from interested persons, organizations, and conservation agencies.

A special meeting was held in Baton Rouge on October 25, and after review of the testimony and comments, the Commission took the above action.

J. Burton Angelle, Secretary
Department of Wildlife and Fisheries

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries

The Louisiana Wildlife and Fisheries Commission on October 10, 1978, exercised the power granted by the provisions of the Administrative Procedures Act, and after approval by the State Department of Health, adopted the following rules and regulations, via resolution, for the Calcasieu Lake oyster season for 1978-79.

Calcasieu Lake Oyster Season

Whereas, the Department biologists and the Chief of the Seafood Division have recommended the fishing of the oysters in Calcasieu Lake with the exception of the Calcasieu River and Ship Channel, East Fork, West Fork and Oyster Bayou, and

Whereas, the State Department of Health will examine the growing oysters of this aforementioned area and approve the waters for fishing oysters if the health standards are met.

Now, therefore, be it resolved by the Louisiana Wildlife and Fisheries Commission that the Calcasieu Lake oyster season for 1978-79 be set in accordance with the following rules and regulations:

1. That the oyster season in Calcasieu Lake be fixed to extend from one half hour before sunrise on Wednesday, November 1, 1978, through one half hour after sunset on Saturday, March 31, 1979, with the right being reserved to extend said season or close it sooner if biologically justifiable.

2. That oyster fishing be limited only to the use of tongs and to daylight hours.

3. The open areas shall be confined to the area of Calcasieu Lake, with the exception of Calcasieu River and Ship Channel, East Fork, West Fork and Oyster Bayou which shall be closed.

4. The three-inch culling law shall be observed by all fishermen fishing the area and the culls shall be returned to the fishing area reefs to provide for future harvesting.

5. All oysters shall be put into sacks before leaving the oyster fishing area in Calcasieu Lake. Oysters not in sacks leaving the fishing area in Calcasieu Lake shall be confiscated and the violator subject to penalty set forth in Title 56, Section 115.

6. The taking of oysters for commercial purposes shall be limited to fifteen sacks per boat per day.

7. The taking of oysters for home consumption shall be limited to three bushels (two sacks per boat per day).

8. All commercial fishing of oysters shall be done only with proper licenses, and the sacks of oysters be properly tagged before leaving the fishing vessel.

Be it further resolved, that the Secretary be and is hereby authorized and empowered to extend or close said season, and increase or decrease limit, when biologically justified.

J. Burton Angelle, Secretary
Department of Wildlife and Fisheries

Rules

RULES

Department of Agriculture Office of Agricultural and Environmental Sciences

Supplement to the Sweet-potato Weevil Quarantine and Regulation

III. Quarantined areas.

1. In the United States.

a. The areas hereby quarantined on account of the sweet-potato weevil shall be the portions of all states in which sweet-potato weevil infestations are known to occur, and so officially designated as quarantined or regulated areas, by the sweet potato quarantines of the states of Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and South Carolina.

2. In Louisiana.

a. Quarantined areas in Louisiana are hereby declared to be the entire parishes of Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, Rapides, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, West Baton Rouge, West Feliciana, and those parts hereinafter listed.

Bienville Parish—that portion of T17N located in R4W and 5W in Lincoln and Bienville Parishes;

Bossier Parish—that portion of R11 and 12W north of Interstate 20 located in T18 and 19N in Bossier Parish;

Caddo Parish—all of Wards 6 and 7;

Caldwell Parish—that portion consisting of a one mile radius of and including the property of Ed Hilburn, Section 28, R3N, T14N and that portion consisting of a one mile radius of and including the property of Clifton Hilburn, Section 28, R3N, T14N;

Jackson Parish—that portion of R3 and 4W in T15N and that portion consisting of a one mile radius of and including the property of Mrs. J. A. Hughes, Section 1, R4W, T14N;

Lincoln Parish—that portion consisting of a one mile radius of and including the property of James Kay, Section 13, R3W, T17N;

Natchitoches Parish—that portion west and southwest of the Red River;

Red River Parish—that portion of R10W lying north of T12N;

West Carroll Parish—Ward 4; that portion consisting of a one mile radius of and including the property of Leon Hill, Section 28, R23N, T23N; that portion consisting of a one mile radius of and including the property of Lonnie Reese, Section

21, R11E, T21N; that portion consisting of a one mile radius of and including the property of Aaron Freeman, Section 21, R11E, T21N; that portion consisting of a one mile radius of and including the property of Christina Blackman, Section 21, R11E, T21N; that portion consisting of a one mile radius of and including the property of S. L. Bush, Section 7, R12E, T23N; that portion consisting of a one mile radius of and including the property of W.W. Head, Section 22, R10E, T20N; that portion consisting of a one mile radius of and including the property of S. L. Bush, Section 35, R10E, T20N; that portion consisting of a one mile radius of and including the property of Oak Grove Gun Club, Section 6, R11E, T21N; that portion consisting of a one mile radius of and including the property of S. L. Bush, Section 1, R10E, T21N; and that portion consisting of a one mile radius of and including the property of M. Stanford, Section 21, R11E, T22N; and/or such other area or areas as may hereafter be designated as quarantined areas by notice in the Register and Journal of the State of Louisiana by the State Entomologist, with the approval of the Commissioner.

b. Non-sweet potato areas shall be: infested properties in the area north of Avoyelles and Rapides Parishes, east and northeast of the Red River line at Grant Parish, northeast of the Red River in Natchitoches Parish, north of the Natchitoches Parish line, west of the Red River and north of the Sabine Parish line, and such other area or areas as may hereafter be declared non-sweet potato areas by publication in the Official Journal and the Louisiana Register by the State Entomologist, with the approval of the Commissioner.

Richard Carlton, State Entomologist
Office of Agricultural and
Environmental Sciences

RULES

Department of Agriculture Dairy Stabilization Board

General Provisions

LAC 2-17:1 Definitions

§1.1 The definitions of the following terms contained in R.S. 40:931.2 are adopted as the definitions of these terms for the purpose of these regulations: person, distributor, processor, retailer, supplier and milk.

§1.2 The following definitions shall be applicable throughout these regulations:

“Act” means all of Subpart C of Part VII of Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950, sometimes referred to as the Dairy Stabilization Law.

“Adjudication” or “adjudicatory proceeding” means Board process for the formulation of a decision or order.

“Agent” means an employee or other person authorized by and acting on behalf of the Board.

“Board” means the Louisiana Dairy Stabilization Board.

“Centralization billing” is the procedure whereby processors and/or distributors contract with wholesale grocers or wholesale grocery cooperatives providing for billing services and/or guarantee of payment or other services to be performed by said wholesale grocers or wholesale grocery cooperatives whether for compensation or not and regardless of the method of delivery of said dairy products utilized.

“Charitable institution” means any facility operated by a non-profit organization, donations to which are deductible pursuant to federal statutes and regulations relating to income taxation.

"Cost" as used herein shall be defined as it is defined in R.S. 51:421 (F).

"Dairy product" means any of the products listed or referred to in R.S. 40:931.2 (10).

"Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Board, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for Board hearing.

"Dock pickup delivery method" means that delivery method where title and possession to dairy products passes from the seller to the buyer or the buyer's agent at the seller's dock.

"Drop delivery method" means that delivery method where title and possession to dairy products passes from the seller to the buyer or the buyer's agent at the back door or refrigerated storage cooler of the buyer.

"Frozen dessert" means ice cream, fruit ice cream, nut ice cream, ice milk, malt ice milk, malt ice cream, French ice cream, milk sherbets, mellorine, olarine, sherine, and the mix from which any such product is made.

"Full service delivery method" means that delivery method where the dairy products are delivered by the seller to the buyer or the buyer's agent at the point of ultimate sale.

"Hospital" means any facility licensed by the Department of Health and Human Resources as a hospital or nursing home.

"Institution" means the State of Louisiana, any of its political subdivisions, any religious or charitable institution, any hospital and any school.

"Licensee" means any person licensed by the Board in accordance with the provisions of the Act and with these regulations.

"Milk case" means the wood, metal, or plastic container essential for transporting or delivering cartons, bottles, jugs, or other packages of dairy products.

"Nonprocessing retailer" means a person whose processing activities are only incidental to what is primarily a retail operation.

"Parish or city school board" means any school board or other governing authority of any elementary or secondary school in this state.

"Plant dock" means a licensed processing plant where milk is regularly processed or a branch operation that has a fixed constructed facility for dairy products cold storage, an office, and where trucks are regularly loaded. All existing and new "docks" must be approved by the Board.

"Rule" means each Board statement of general applicability and future effect that implements, interprets, or prescribes substantive law or policy or prescribes the procedure or practice requirements of the agency. A rule may be of general applicability even though it may not apply to the entire state, provided the form is general and others who may qualify in the future will fall within its provisions. The term includes the amendment or repeal of a prior rule but does not include: (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; (b) declaratory rulings or order; or (c) intra-agency memoranda.

"Rulemaking" means the process employed by the Board for the formulation of a rule. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in a Board decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the Board so as to be required to be issued and filed as provided in the Administrative Procedures Act.

"Volume discount year" is hereby defined to be the period of twelve months commencing on the first day of April and ending on the last day of March in the year which immediately follows.

Procedural Provisions

LAC 2-17:2 Investigative Hearings Purpose, Powers of the Board

§2.1 Investigative hearings shall be for the purpose of investigating conditions of the dairy industry and compliance by the industry with the Act, and regulations, including monopoly practices, disruptive trade practices, price wars, and unfair methods of competition.

§2.2 Investigative hearings may be held upon the call of the Board. Such hearings may be held in any part of the state.

§2.3 The Chairman, the Vice-Chairman, a member designated by the Chairman, or a hearing officer designated by the Board who need not be a member of the Board, shall preside at investigative hearings. All witnesses shall be sworn or shall make affirmation.

§2.4 Investigative hearings conducted by the Board shall be open to the public.

§2.5 If the Board determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall afford such person, upon request, an opportunity to appear as a witness; receive and dispose of requests from such persons to subpoena additional witnesses; and afford such person, or his attorney, upon request the opportunity to examine or cross-examine witnesses.

§2.6 The Director, upon approval of the Chairman or Vice-Chairman, is authorized to sign and issue subpoenas which require the attendance and giving of testimony by persons who may possess any knowledge concerning any offense under investigation at an investigative hearing or for investigative purposes. The subpoena shall set forth reasonable grounds therefor, and shall order the person to appear at a designated time and place. The Director may also order the issuance of a subpoena duces tecum as described above.

§2.7 Whenever any person summoned under this regulation neglects or refuses to obey such summons or to produce books, papers, records or other data, or to give testimony as required, the Board may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.

§2.8 The Chairman, Vice-Chairman or Director may determine who shall be present during the examination and may order all persons excluded, except counsel for the person subpoenaed.

§2.9 A subpoena may be served by any person authorized by law to serve civil process, or by any agent of the Board, and the return made in writing by any such person shall be accepted as proof of service.

§2.10 The Board is the sole judge of the pertinency of testimony and evidence adduced at such hearings.

§2.11 The attorney for the Board and that of any public agency which may be participating in the investigation shall have the right to be present at all hearings and shall have the right to examine or cross-examine any witness.

§2.12 Witnesses at investigative hearings may be accompanied by their own counsel.

§2.13 A copy of this regulation shall be made available to any witness and a copy shall be delivered at the time of making service, to each person upon whom a subpoena is served; in addition thereto each person upon whom a subpoena is served shall be informed in writing that the Board suggests that he consult his attorney and that his attorney should attend the hearing to advise him.

§2.14 The Board may, in its discretion, issue a report upon the conclusion of any such investigative hearing.

§2.15 As a result of such investigations, the Board may initiate adjudicatory proceedings against licensees, may refer matters to other public agencies and may take any other appropriate action.

§2.16 Investigative hearings may be conducted jointly with other interested public agencies.

§2.17 It shall not be necessary to publish any advance notice of any investigative hearing and it shall be necessary that subpoenas disclose the general nature of the investigation.

§2.18 At all investigative hearings the testimony shall be recorded stenographically or otherwise. Upon payment of the costs thereof, and when authorized by the Board, a witness may obtain a transcript copy of his testimony given at a public session.

LAC 2-17:3 Rulemaking Proceedings Powers of the Board

§3.1 Any person may petition the Board requesting the promulgation, amendment, or repeal of a rule or a regulation. Such petitions shall be by letter and may be submitted at any time. Each such petition shall be considered by the Board within ninety days after its submission. In the event the petition is denied, the petitioner shall be notified in writing and the reasons for the denial shall be stated in writing.

§3.2 Prior to the adoption, amendment or repeal of any rule, the Board shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the Legislature to which the proposed rule change has been referred under the provisions of the Administrative Procedures Act. The Board shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Board, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption.

§3.3 Whenever the Board authorizes the commencement of a rulemaking proceeding the Director shall give or cause to be given notice of hearing in the following manner:

§3.3.1 By publication of the notice of hearing in the *Louisiana Register* (also see requirements of Administrative Procedures Act, R.S. 49:951 et seq.)

§3.3.2 By mailing a copy of the notice of hearing to all persons who have made timely requests to the agency in writing for advance notice of its rulemaking proceedings.

§3.4 The notice of a rulemaking hearing shall be published at least twenty days prior to the date on which such hearing is scheduled. Such notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon.

§3.5 Objections to the notice of hearing are waived unless filed in writing immediately following the opening of the hearing.

§3.6 At all rulemaking hearings, the Chairman shall preside, or, in his absence, the Vice-Chairman. If both the Chairman and the Vice-Chairman are absent, the Chairman shall designate some other member of the Board to preside. The Board may designate a hearing officer, who need not be a member of the Board, to preside at any rulemaking hearing.

§3.7 At least three members of the Board shall be present at all rulemaking hearings. However, no action may be taken on matters considered at such hearings until a quorum of the Board is present and participates in such action.

§3.8 At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard at any hearing shall, before proceeding to

testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such counsel or such representative shall, before proceeding to testify or otherwise participate in the hearing, state for the record the authority to act as such counsel or representative, and the name and address of the person represented. Any such person or such counsel or representative shall give such other information respecting his appearance as the presiding officer may request.

§3.9 The presiding officer shall, at the opening of the hearing and prior to the taking of testimony, have noted as part of the record the notice of hearing as published and the certificate of the Director relative to the giving of notice of the hearing through means other than publication.

§3.10 The Board shall permit the presentation of oral arguments during the hearing but may not hear oral arguments on any proposal after the conclusion of the hearing unless notice is given in the same manner as the original notice of the hearing.

§3.11 Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

§3.12 All written statements, charts, tabulations, or similar data offered as part of the record of the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the presiding officer shall exercise his discretion as to whether said exhibits, shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the presiding officer.

§3.13 If a party objects to the admission or rejection of any offering or to any other ruling of the presiding officer during the hearing, he shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the presiding officer. The ruling of the presiding officer on any objection shall be a part of the record. Only objections made before the presiding officer may subsequently be relied upon in the proceeding.

§3.14 Portions of the record of prior hearings held by the Board may be incorporated by reference.

§3.15 The Board shall not be bound by rules of order, evidence, or procedure in rulemaking hearings except those contained in these regulations, those which it may establish, and those which may be specifically prescribed by statute.

§3.16 If any interested person fails to appear at the hearing he shall be deemed to have waived the right to be heard in the proceeding.

§3.17 The Board may act without permitting the filing of briefs and exceptions or it may elect to do one or both of the following things prior to taking final action:

§3.17.1 Permit the filing of briefs by interested persons.

§3.17.2 Notify interested parties of the action which the Board proposes to take and permit the filing of exceptions.

§3.18 If the Board elects to permit the filing of briefs, the presiding officer shall announce at a hearing the deadline for filing such briefs with the Board or mailing such briefs to the Board. Such briefs may contain proposed findings and conclusions and written arguments.

§3.19 If the Board elects to permit the filing of exceptions, notification of the Board's proposed action shall be given in the same manner as the notice of hearing. The said notice shall set forth the deadline for the filing of exceptions by interested parties. Such exceptions shall be in writing and may suggest appropriate changes in the Board's proposed action.

LAC 2-17:4 Adjudicatory Proceedings Complaints, Hearings, Powers of the Board

§4.1 Whenever the Director has reason to believe that a licensee has violated the Act or any regulation, he shall mail to the licensee a written notice in compliance with R.S. 49:955.

§4.2 Within eight days after the date on which the licensee receives such a written complaint, such licensee shall mail to the Director a written statement in response to the said complaint. In such written statement, the licensee shall plead "guilty," "nolo contendere" or "not guilty" to each violation charged in the complaint. The Chairman may extend the period during which such licensee may submit a plea in response to such a complaint whenever good cause for such an extension is shown.

§4.3 If the licensee fails to respond to the complaint within the period prescribed in Section 4.2 hereinabove, the Board may suspend or revoke the license of such person without holding a hearing or complying with other formalities. Whenever a licensee submits a plea of "not guilty" in response to a complaint, the Director shall mail to such licensee a notice of the time, date and place of the hearing at which the Board will consider evidence presented by the Board staff in support of the charges made in the said complaint and evidence presented by or on behalf of the licensee in his defense. Such notice shall contain a statement that the Board may either suspend or revoke the licensee's license upon a finding of "guilty." The date on which the hearing is held shall be at least twelve days after the date on which such notice is mailed to the licensee.

§4.4 In those cases where the Director has reason to believe that the violation is continuing beyond the date on which the licensee received the complaint, he may notify the licensee of the date, time and place of a hearing at which the Board will consider only the suspension of the licensee's license for a period of ten days or less. Such hearings may be scheduled for the third day following the date on which the licensee actually receives such notice, or for any subsequent date.

§4.5 The Chairman, the Vice-Chairman and the Director are each authorized to sign and issue subpoenas in the name of the Board, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall issue until the party requesting it first deposits with the Board the fees and expenses required by R.S. 13:3661 and R.S. 13:3671. A subpoena may be served by any person authorized by law to serve civil process or by any agent of the Board, and the return made in writing by any such person shall be accepted as proof of service.

§4.6 The Chairman, some member designated by the Chairman, or a hearing officer designated by the Board, who need not be a member of the Board, shall preside. All witnesses shall be sworn by the presiding officer. The licensee, his representative, or his attorney, may cross-examine witnesses testifying against the licensee. Likewise, the Board's counsel may cross-examine witnesses testifying for defense. All exhibits introduced at such hearings shall be in duplicate.

§4.7 At all such hearings the testimony shall be recorded stenographically or otherwise. At the request of any party or person, and upon payment of the cost thereof by such party or person, the Board shall cause a full transcript of the proceedings to be prepared and shall furnish a copy thereof to such party or person. In cases where no request for a full transcript is made, the Board shall prepare a resume of the evidence.

§4.8 Whenever the Board enters a finding of guilty and orders the suspension of a license or whenever the Board accepts a plea of "guilty" or "nolo contendere" and orders a suspension of a license, it may include in the order a provision making it possible for the licensee to pay a penalty in lieu of the suspension. In addition, the Board may authorize the Director to advise any

licensee desiring to enter a plea of "guilty" or "nolo contendere" of the amount of the penalty which such licensee would be permitted to pay in lieu of suspension of his license. The Board shall be bound by written statements by the Director relating to the amount of the penalty, but may set a lesser amount than that specified by such officer.

§4.9 In fixing the amount of a penalty, the Board shall take into consideration the following factors: the severity of the offense, the extent to which the guilty party attempted to conceal the offense, and the damage to competitors which resulted from the offense.

§4.10 No suspension or revocation shall be ordered in those cases where the Board concludes that a person having average intelligence and having read the Act, and these rules and regulations, would not have known that the act committed was a violation of the Act, and these rules and regulations.

LAC 2-17:5 Declaratory Orders and Rulings Petitioning the Board

§5.1 Any person desiring a ruling by the Board concerning the applicability of the Act or these rules and regulations, or of any order issued by the Board may obtain such a declaratory ruling or order by filing with the Board a petition which must be typewritten, must be on legal size paper, and must be in quadruplicate. Each such petition shall set forth the name and address of the petitioner, shall state fully, clearly and concisely the statutory provision, the regulation, or the order involved or affected, shall state the facts which give rise to the need for the requested ruling or order, and shall be signed by the petitioner.

§5.2 Each such petition shall be considered by the Board within fifty days after receipt and the petitioner shall be notified in writing of the Board's ruling or order within five days after the Board meeting at which such petition is considered by the Board. The petitioner shall be notified at least five days prior to such Board meeting and shall be given an opportunity to be present in person or through counsel and to present such evidence and arguments as are appropriate under all the circumstances.

§5.3 The Board may refuse to entertain any such petition if it determines that good cause exists for such refusal.

LAC 2-17:6-10 Reserved

Substantive Provisions

LAC 2-17:11 Volume Discounts

§11.1 The volume discounts herein established shall remain in effect, unless modified, amended or repealed by the Board.

Fluid Milk Products

§11.2 Licensed processors and licensed distributors are authorized to give discounts to licensed nonprocessing retailers in accordance with the volume discount eligibility certificate for fluid milk products issued to each eligible nonprocessing retailer by the Board.

Volume discount eligibility certificates for fluid milk products shall be issued annually, shall become effective on the first day of April, and shall not be effective beyond the last day of March of the following year. Nonprocessing retailers who desire to receive such volume discounts from suppliers shall file an application for a volume discount eligibility certificate for fluid milk products on an application form to be supplied by the Board. Such applicants shall supply the Board with the information requested by the Board on such application forms including specifically the total value of purchases of fluid milk products by the applicant from each supplier during the months of August, September, and October of the year preceding the year during which the certificate becomes effective.

§11.3 The application submitted by a nonprocessing retailer for the volume discount year during which such retailer commences business shall include the total value of purchases of fluid milk

products from each supplier during any calendar month of that volume discount year selected by the nonprocessing retailer.

§11.4 The calendar month selected by such nonprocessing retailer shall be the base period for the volume discount year during which such nonprocessing retailer commences business and, if the nonprocessing retailer commences business subsequent to the first day of August of that volume discount year, the calendar month selected shall also be the base period for the succeeding volume discount year. However, the volume discount eligibility certificate issued by the Board for the volume discount year during which such nonprocessing retailer commences business shall list the effective date of such certificate as the first day of the calendar month selected by such nonprocessing retailer; provided, that if the calendar month selected by such nonprocessing retailer is the calendar month that immediately follows the month during which such nonprocessing retailer commences business, and if the nonprocessing retailer commenced business subsequent to the first day of the month, the effective date of such certificate shall be the date on which business was commenced.

§11.5 No discounts may be given on sales to nonprocessing retailers which take place prior to the effective date shown on the nonprocessing retailer's volume discount eligibility certificate for fluid milk products. The effective date to be shown on such certificates shall be (a) the first day of the volume discount year (except as set forth in the preceding paragraph) or (b) any date authorized by the Board's rules and regulations.

§11.6 In the event of a change of ownership in the retail establishment to which any such certificate is issued, the said certificate shall be automatically suspended until such time as the Director, in response to an application from the new owner, authorizes the transfer of the certificate from the previous owner to the new owner.

§11.7 The Board shall issue a volume discount eligibility certificate for fluid milk products to each nonprocessing retailer whose purchases of fluid milk products from all suppliers fall into one of the categories set forth hereinafter. Such certificates shall authorize the nonprocessing retailer to receive, and processors and distributors to give, volume discounts at not more than the following rate:

| Average Monthly Purchases of Fluid Milk Products from all Suppliers During the Base Period | Discount Rate |
|---------------------------------------------------------------------------------------------------|----------------------|
| \$1,000.00 to \$1,500.00 | 3% |
| \$1,500.01 to \$2,500.00 | 4% |
| \$2,500.01 to \$3,500.00 | 5% |
| \$3,500.01 to \$4,500.00 | 6% |
| \$4,500.01 and over | 7% |

§11.8 Volume discount eligibility certificates for fluid milk products shall remain in effect throughout the volume discount year for which issued regardless of changes in volume purchased.

Frozen Desserts

§11.9 Licensed processors and licensed distributors are authorized to give discounts on frozen desserts to nonprocessing retailers in accordance with the volume discount eligibility certificate for frozen desserts issued to each eligible nonprocessing retailer by the Dairy Stabilization Board.

§11.10 Nonprocessing retailers who desire to receive such discounts from suppliers shall file an application for a volume discount eligibility certificate for frozen desserts on an application form to be supplied by the Board. Each such applicant shall supply the Board with the information requested by the Board on such application forms including specifically the total value of purchases of frozen desserts by the applicant from each supplier during the twelve-month period which ends on the 30th day of September which

immediately precedes the calendar year during which the volume discount eligibility certificate for frozen desserts is in effect.

§11.11 Any applicant who commences business less than fifteen months prior to the beginning of the volume discount year for which such certificate is sought shall supply the Board with information showing the total purchases of frozen desserts by such applicant from each supplier during the twelve calendar months commencing with the first day of the first full month during which such applicant is in business. This twelve-month base period shall be the base period for such applicant for both the calendar year during which such applicant commences business and for the following calendar year.

§11.12 In the event of a change of ownership in the retail establishment to which any such certificate is issued, the said certificate shall be automatically suspended until such time as the Director, in response to an application from the new owner, authorizes the transfer of the certificate from the previous owner to the new owner.

§11.13 The Board shall issue a volume discount eligibility certificate for frozen desserts to each nonprocessing retailer whose purchases of frozen desserts from all suppliers fall into one of the categories set forth below. Such certificate shall authorize the nonprocessing retailer to receive, and processors and distributors to give, volume discounts at not more than the rate shown below:

| Annual Purchases of Frozen Desserts from all Suppliers During Base Period | Discount Rate |
|----------------------------------------------------------------------------------|----------------------|
| \$4,000.00-\$6,000.00 | 3% |
| \$6,000.01-\$8,000.00 | 4% |
| \$8,000.01-\$11,000.00 | 5% |
| \$11,000.01-\$15,000.00 | 6% |
| \$15,000.01 and over | 7% |

Volume discount eligibility certificates for frozen desserts will remain in effect throughout the year for which issued regardless of changes in volume purchased.

LAC 2-17:12 Licensing, Assessments and Records Issuance of Licenses

§12.1 Before applying for a license from the Board, each applicant shall obtain the necessary permit(s) from the Louisiana Department of Health and Human Resources, Office of Health Services and Environmental Quality.

§12.2 Each application for license must be on a form approved by the Board.

§12.3 When issued, each license shall continue to be effective without renewal until suspended or revoked or until the licensee discontinues operating the business for which the license was obtained.

The license of any licensee who fails to comply with the provisions of the Act or rules and regulations issued by the Board may be suspended or revoked.

§12.4 Whenever the Director has reason to believe that an applicant for a license is ineligible for that license because of noncompliance with the Act, the regulations, or for any other reason, the Director shall mail to such applicant a notice of the time, date and place of a hearing at which the Board will consider evidence presented by the Board staff and by or on behalf of the applicant relative to the eligibility of the applicant for the license sought. All such hearings shall be conducted in accordance with the provisions of general regulations and the Administrative Procedures Act.

§12.5 A new license is required whenever there is a change of ownership, a change of location, or a change in the name or trade name of the licensee.

Obligations of Licensees Delinquent Accounts

§12.6 Each processor and each distributor shall report to the Board on or before the 25th of each month, the names and addresses of all nonprocessing retailers who, on the 20th day of that month, were delinquent in the payment of their accounts to such processor or distributor. (Cross Reference: Section 13.1.18)

§12.7 Each processor shall report to the Board on or before the 25th day of each month, the names and addresses of all distributors who, on the 20th day of that month were delinquent in the payment of their accounts to such processor.

§12.8 An account is delinquent on the date specified by the seller, but the date specified by the seller may not be later than the 15th day of the month following the close of the month during which delivery of the fluid milk products or the frozen desserts takes place. In the event the seller fails to specify the due date, the account shall be due on the 15th day of the month following the close of the month during which delivery of the fluid milk products or the frozen desserts takes place. An account will not be considered delinquent if the purchaser is billed once each week and if payment is received by the seller within thirty days of the last day of the week for which the statement was rendered.

Assessments

§12.9 Each processor shall pay his assessment when due under the Act. Processors who are delinquent in the payment of their assessment shall add to the amount due a sum equal to one percent of the amount due for each day of delinquency. In computing the amount of the assessment, frozen desserts shall be converted to milk equivalents as follows: Total milk solids non-fat times 5.79 plus total pounds of fat times 12.5. In the case of dairy products processed by one processor and transferred to a second processor for resale, the assessment due in connection with Class II items is to be paid by the transferor and the assessment due in connection with Class I items is to be paid by the transferee. No processor shall be required to pay assessments on products sold outside of this state. Processors whose total annual assessments amount to less than twenty-five dollars shall be permitted to pay their assessments annually.

Purchasing of Stock

§12.10 Any licensee shall notify the Board thirty days prior to the acquisition of all or a part interest in any other licensee or entity holding a license from this Board.

Books and Records

§12.11 Each licensee shall maintain such books and records as are customary in the industry and as are necessary for a determination by the Board or its staff as to whether the licensee has complied with the Act, rules and regulations.

§12.12 All records required by these regulations to be kept by licensees shall be kept on file by the licensees for at least twenty-four months. All such records shall be so organized and located as to facilitate examination by representatives of the Board.

§12.13 All records of transactions relating to dairy products sold to licensed nonprocessing retailers or to residents of the State of Louisiana shall be maintained in an office located within the State of Louisiana; provided, that the Director may authorize a licensee to keep such records in an office located outside the State of Louisiana if such licensee demonstrates that the keeping of such records inside the State of Louisiana would cause an unnecessary hardship on such licensee and that the auditing activities of the Board staff would not be made substantially more difficult or expensive as a result of the arrangement proposed.

LAC 2-17:13 Sales Practices

Disruptive Trade Practices

§13.1 "Unfair methods of competition, unfair or deceptive acts or practices and disruptive trade practices are hereby declared unlawful with respect to the sale of milk and milk products." (R.S.

40:931.8A) The following trade practices are hereby declared to be disruptive trade practices:

Pricing of Dairy Products

§13.1.1 The selling or offering to sell by a retailer of any dairy products at a price which is so different from the price charged by such retailer for other competing dairy products of the same type, quality or grade that the result is to substantially lessen competition or tend to create a monopoly unless such price differential is equal to the difference in the prices paid by the retailer for the products in question.

Discrimination

§13.1.2 It shall be prohibited for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the State of Louisiana and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered. Provided, that nothing herein contained shall prevent price changes from time to time where in response to changed conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

§13.1.3 It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

§13.1.4 It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products or commodities manufactured, sold or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

§13.1.5 It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchases of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

§13.1.6 It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or

receive a discrimination in price which is prohibited by this Section.

§13.1.7 Upon proof being made, at any hearing on a complaint that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made shall be upon the person charged with a violation of this Section. Provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

§13.1.8 It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of Louisiana at prices lower than those exacted by said person elsewhere in Louisiana for the purpose of destroying competition, or eliminating a competitor in such part of Louisiana or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

§13.1.9 Nothing in this rule shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

Sales at Less Than Cost

§13.1.10 Any advertising, offer to sell, or sale of any merchandise, either by retailer or wholesalers, at less than cost plus any state, county or municipal sales tax that is then payable under any existing law or ordinance, with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or impairing fair competition and thus injuring public welfare, is unfair competition and contrary to and violative of public policy as expressed in Louisiana law, where the result of such advertising, offer or sale is to tend to deceive any purchaser or prospective purchaser, or to substantially lessen competition, or to unreasonably restrain trade, or to tend to create monopoly in any line of commerce.

Discounts, Gifts, Loans, Etc.

§13.1.11 No processor, distributor or any agent thereof shall give or offer to give directly or indirectly and no processor, distributor, or retailer or any agent thereof shall receive or offer to receive directly or indirectly anything of apparent present or prospective value with the intent or the effect of influencing the recipient in his business relationship with the donor or offeror.

§13.1.12 Upon proof being made at any hearing on a complaint of the giving or offering to give directly or indirectly, or receiving or offering to receive directly or indirectly anything of apparent present or prospective value, the burden of rebutting the prima facie case thus made shall be upon the person charged with a violation of this regulation.

Equipment

§13.1.13 No equipment furnished to a retailer by a frozen dessert processor or distributor shall be used for the storage or display of frozen desserts other than those sold to such retailer by such frozen dessert processors or distributors. The storage or display of products other than frozen desserts received from such processors or distributors, in such storage or display cabinet by a nonprocessing retailer shall constitute prima facie evidence of the violation of this regulation.

Signs

§13.1.14 No processor or distributor shall furnish, give, lend, sell or rent and no retailer shall accept, receive, buy or rent any signs and display materials except those advertising only the supplier's own products. Such signs and display materials shall not contain the name or product of any retailer.

Miscellaneous

§13.1.15 The selling or buying of any fluid milk product or frozen dessert by a processor, distributor or retailer in commerce to or from any person who is unlicensed or whose license has been suspended or revoked by the Board.

§13.1.16 The advertising by a processor or a distributor in a publication owned or published exclusively by one or more retailers or published exclusively for one or more retailers.

§13.1.17 Submitting false information to the Board.

§13.1.18 Extending any credit to a retailer by any processor where the retailer is more than thirty days delinquent in the payment of any account with any processor after written notice by the Board.

§13.1.19 The using, shipping, lending, borrowing or in any way the possessing of milk cases by a processor or distributor of milk cases belonging to any other processor or distributor.

§13.1.20 The giving away, throwing away, donating or the disposing in any way by a retailer of milk cases belonging to and other processor or distributor.

Permissible Practices

§13.2 The following trade practices are hereby declared not to be disruptive trade practices.

Advertising Novelties

§13.2.1 No person shall be deemed to be in violation of the Act or of these regulations on account of giving to any other person advertising novelties unless the nature and value of the advertising novelty is such as to justify the belief that the giver intended to use such gift to induce a nonprocessing retailer to divert business from a competitor to the giver.

Entertainment

§13.2.2 Nothing contained in either the Act or these regulations is to be interpreted as prohibiting the normal social activities of any person or the entertainment by any processor or distributor (or any processor's or distributor's officers and employees) of any customer unless the expenditure involved in such entertainment is excessive or unreasonable.

Donations

§13.2.3 Processors and distributors may make gifts of cash or equipment to hospitals, schools, and charitable institutions if, prior to the making of such gift, the donor makes written application to the Board for permission to make such a gift and obtains the written approval of the Board. A gift of cash to an institution in the amount of ten dollars or less may be made once in each calendar year without the necessity for compliance with this Section.

Samples

§13.2.4 Processors and distributors may give samples of dairy products to consumers if the following requirements are observed:

A. In the case of fluid milk products, the quantity must be limited to three fluid ounces.

B. In the case of frozen desserts, the quantity must be limited to one fluid ounce.

C. The retailer on whose premises such sampling activity takes place must have been in operation at that location for at least sixty days prior to the date on which such activity takes place.

D. Prior to engaging in sampling activities on the premises of a retailer, the processor or distributor shall notify the Board of the planned sampling activity. If such notification is by mail, it shall be given at least ten days prior to the date of the

planned sampling activity; and if such notification is by telephone, it shall be given at least three days prior to such activity.

E. Notwithstanding the above provisions, processors may give homogenized milk, low fat milk, skim milk, or chocolate milk in half-pint containers or a frozen dessert sample weighing no more than three fluid ounces to persons participating in plant tours, if such products are consumed on the premises where given.

F. The giving of such samples by a processor or distributor shall not extend over a period of more than two consecutive days for each retailer and shall not occur more frequently than once per calendar quarter; provided that the giving of such samples during the month of December shall not be considered in determining whether there has been compliance with the provisions of this Subsection limiting frequency of demonstrations to one per calendar quarter.

Milk Dispensers

§13.2.5 A processor or a distributor may furnish a milk dispenser to a retailer provided the following requirements are observed:

A. The processor or distributor must have been engaged in selling dispenser milk to the retailer for at least sixty days prior to the date on which the dispenser is furnished.

B. The period during which the dispenser is furnished must not exceed thirty days.

C. The processor or distributor must report to the Board within ten days after the date on which the dispenser is furnished to the retailer the make and serial number of the dispenser, the name and address of the retailer and the date on which the dispenser was installed.

Distribution Systems: Drop, Dock Pickup and Full Service Methods

§13.2.6 There shall be only three authorized methods of delivery in Louisiana for dairy products and they are the drop delivery method, dock pickup delivery method, and the full service delivery method (for definition of delivery methods see Section 1.2). In addition to the regulations contained in this Section, the drop delivery method, the dock pickup delivery method and the full service delivery method are subject to all other rules and regulations of this Act.

Drop Delivery Method

§13.2.7 Delivery by the processor shall be limited to the back door or refrigerated storage cooler of each retailer licensee.

§13.2.8 The retailer licensee shall assume all responsibility for servicing the dairy case and rotating the stock and no in-store service shall be allowed by the processor or independent wholesale distributor. The retailer must do his own price stamping as well as all other in-store services.

§13.2.9 The retailer licensee shall assume all responsibility for product losses. No returns shall be allowed except in the case of off-flavored milk and manufacturing defects. Authority for such replacement must be obtained from the Dairy Stabilization Board by the processor or wholesale distributor within twenty-four hours of delivery.

Dock Pickup Delivery Method

§13.2.10 Retailer licensees shall not receive credit for any returns brought back to the plant for milk picked up at the platform except in the case of off-flavored milk and manufacturing defects. Authority for such replacement must be obtained from the Dairy Stabilization Board by the processor or wholesale distributor within twenty-four hours of delivery.

§13.2.11 The retailer licensee shall receive no in-store service from the processor or wholesale distributor for milk picked up at the "dock."

Miscellaneous

§13.2.12 In the case of frozen desserts nothing contained in this Section shall prevent a processor or distributor from providing to a retailer storage cabinets and display cabinets with restriction for the storage and display of only such processor's or distributor's products, and nothing herein shall be construed to prohibit the operation of a retail outlet by a processor, or to prohibit the use by such processor, in such retail outlet of any equipment or advertising or miscellaneous property owned by such processor when such retail outlet is under the direct ownership, control and management of such processor.

§13.2.13 No person shall be deemed to be in violation of these regulations when fluid milk products are sold upon final liquidation of any business; such items are sold by an officer acting under the direction of any court; or in the case of a processor or distributor who sells or disposes of frozen desserts to a retailer who owns and provides his own refrigerated equipment for the display or storage of the products of such processor, or distributor, a differential from the list prices of such frozen desserts to such retailer is allowed, provided that in no case shall such differential exceed five percent of the applicable list price for such frozen desserts. The price(s) of similar or comparable products are made in good faith to meet competition.

LAC 2-17:14 Board Action on Contracts and Transactions Centralization Billing Prohibited

§14.1 Processors and distributors are prohibited from entering into contracts with wholesale grocers relating to centralized billing, guaranteeing payment of accounts, advertising, and other services to be performed by the wholesale grocery for the processor or distributor unless the processor or distributor has made written application to the Board for approval of such contract and has obtained the written approval of the Board.

§14.2 Upon receipt of an application for approval of such a contract, the Board may hold a hearing for the purpose of receiving evidence concerning the purpose and effect of the proposed contract. The Board shall approve the proposed contract if it finds that the contract does not violate the Act or any regulation.

C. James Gelpi, Director-Attorney
Dairy Stabilization Board

RULE

Board of Elementary and Secondary Education

Rule 1.00.30D

Board appointed advisory councils shall elect officers annually, unless specified otherwise by law and the councils shall report election results to the Board.

Rule 3.01.51o

Amendment to page 22, Bulletin 741, *Handbook for School Administrators*, Vocational Agriculture Section, to read as follows: After completing Agriculture I, students will be permitted to participate in the Cooperative Agriculture Education (CAE) program (1) if they attend high schools in which vocational agriculture is offered only in the tenth, eleventh, and twelfth grades, or (2) if they attended junior high schools in which vocational agriculture is not offered and provided they are in the eleventh grade. This amendment was approved in lieu of both Agriculture I and II being prerequisites to the Cooperative Agriculture Education Program.

Rule 3.01.70u(9)

Certification Requirements for Second Language Specialists and Bilingual Specialists—"Second Language Specialist" (French, Spanish, et al.) or "Bilingual Specialist" may be added to the certificate of any certified elementary teacher who has successfully completed the pre-stage and the twenty-four hour in-service

program of study as approved by the State Board of Elementary and Secondary Education. "Second Language Specialist" may be added to the certificate of any certified secondary foreign language teacher who has successfully completed the program. The twenty-four hour in-service program will consist of:

A. Proficiency in the second language—Pre-stage and fifteen semester hours (six undergraduate, nine graduate) to include:

Oral-aural skills: The sound system, structures, and vocabulary; (phonology, morphology, and syntax); fluency in conversational topics.

Reading and writing skills: Those skills geared to the needs of teaching a second language at the elementary level (grades 1-8).

B. Professional preparation—six semester hours—graduate level.

1. Second Language Specialist.

a. Analysis of the linguistic and cultural content of the materials available for the instructional program at the elementary level. Practical training with these materials. Three semester hours.

b. Children's literature in the second language—study of the cultural heritage of Louisiana in stories, songs, rhymes, games, etc. Three semester hours.

2. Bilingual Specialist

a. Bilingual Methods I—practical training in the teaching of language arts and social studies in a bilingual-bicultural setting.

b. Bilingual Methods II—practical training in the teaching of science and math in a bilingual-bicultural setting.

C. Culture and civilization—three semester hours, graduate level. Extensive contact with the culture and civilization of the second language in both North America and the country of origin. The introduction of culture and civilization in second language classes at the elementary level.

Additional Requirements: 1. Each teacher must present a statement from the institution granting the twenty-four semester hours that he or she is competent in both the use and the teaching of the second language. 2. Inactive Second Language Specialist teachers, i.e., those teachers who are not teaching the second language part-time, full-time, or in a bilingual program, will be required, after five years to re-pass the Level III Proficiency Test in order to maintain their Second Language Specialist certification. 3. Secondary foreign language teachers certified as Second Language Specialists may teach the second language only as either language arts or as enrichment subjects in the elementary grades.

Bilingual Specialist Certification—A person seeking this certification must have met all the requirements for the Bilingual Specialist. Certified Second Language Specialists may also receive Bilingual Specialist certification after having successfully completed the additional six hours in Bilingual Methods I and II. Elementary teachers certified as Second Language Specialists may teach the content areas in the second language in the elementary grades until such time as certified Bilingual Specialist teachers are available.

Rule 4.00.73 (Addition to present policy)

Revision to page 29, Bulletin 1213, *Minimum Standards for School Buses in Louisiana*, to read as follows: Waive Standard 1-b, Special Equipment for Vehicles Transporting Handicapped Children, to allow the installation of lifts with single panel doors on special education buses. This revision was approved because the lift is more economical to purchase and install than the two panel door lift and is just as safe, and because installation by a dealer does not affect the structural design of the bus.

James V. Soileau, Executive Director
Board of Elementary and Secondary Education

RULES

Board of Elementary and Secondary Education

(Editor's Note: These rules became effective September 20, 1978.)

Rule 4.00.04

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

§101 General Authority. The Louisiana State Board of Elementary and Secondary Education (the State Board) exercises supervision and control over public elementary and secondary schools including Special School District Number 1, vocational-technical, and post-secondary vocational-technical schools and programs (except in colleges and universities), and special schools placed under its jurisdiction.

§102 Issuance of regulations.

A. The State Board has the authority to adopt, amend or repeal rules, regulations and policies necessary or proper for the conduct of the business of the Board.

B. The State Board has the responsibility to approve regulations developed by the Department pursuant to Section 1944 of the Act.

C. The State Board has the responsibility to comply 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 of the Constitution and laws, and the authority to take all action necessary to achieve compliance.

§103-104 Reserved.

§105 Approval of annual state program plan. The State Board will review and approve the annual state program plan described in Subpart 330 of this Regulation before its submission to the U. S. Commissioner of Education.

§106-119 Reserved.

§120 Review of hearing decisions.

A. Any party to a hearing conducted pursuant to Subpart 476-477 of this Regulation may, within thirty calendar days after receipt of the hearing decision, request a formal review of the decision by the State Board.

B. A written request for review must be sent by the party seeking review by certified mail to the State Board. A copy of the request must also be sent to all other parties and the hearing officer.

C. The written request must state the grounds, if any, on which the State Board is requested to overturn the hearing decision.

D. The State Board may on its own authority initiate a review of any hearing decision. In such instance, it must provide full and effective notice to parent(s), the affected school board or special school district, and the hearing officer.

§121 Appointment of review panel.

A. Upon receiving a formal written request for a review, the State Board shall within ten operational days designate a review panel to evaluate the hearing decisions, the hearing record and other appropriate information.

B. The review panel will include at least three persons. One or more of the persons designated as the review panel will be a current member of the State Board and all panel members will be knowledgeable about the educational and legal issues involved.

§122 Conduct of review.

A. The review will be completed within twenty operational days from the date a review panel is designated by the State Board at which time the panel will recommend to the State

Board whether to affirm the hearing decision; overrule the hearing decision and enter its own decision; or order a new hearing.

B. The review panel will file with the State Board within five operational days after completion of the review, a written report and recommendation for formal State Board action.

C. The review must include a careful examination of the hearing record and the review panel, at its discretion, may permit the presentation of additional evidence by either or both parties consistent with the rules governing the presentation of evidence during the hearing issued by the State Board.

D. All parties must be afforded a reasonable opportunity to present written argument to the review panel which, at its discretion, may also provide an opportunity for all parties to present oral argument.

E. The review panel may direct that a child be provided a medical assessment or be entered in an initial screening process as part of the review. Formal parental approval must be given for the medical assessment.

§123 Review decision.

A. On or before the date of the next regular meeting following receipt of the written report and recommendation, the State Board will issue a formal written review decision which either affirms the decision, overrules the hearing decision and substitutes a decision approved by the State Board or orders the initiation of a new hearing.

B. The review decision by the State Board will be a final decision unless appealed by either party to a court having jurisdiction, within the time prescribed by state or federal law.

§124-129 Reserved.

§130 Function of State Advisory Panel. The State Advisory Panel appointed by the Governor of the State of Louisiana pursuant to the requirements of 45 CFR 121a. 650-651 shall:

A. Advise the State Board and the State Superintendent of unmet needs within the state in the education of exceptional children;

B. Comment publicly on the state annual program plan and rules and regulations proposed for issuance by the State Board regarding the education of exceptional children and the procedure for distributing EHA funds;

C. Submit a report of its activities to the State Board and the State Superintendent by July 1 of each year together with suggestions for improvement in the provision of services to exceptional children; and

D. Assist the State Board and the State Superintendent in developing and reporting information and evaluation.

§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 State Superintendent) and the State Department of Education (the Department) shall execute and implement those educational policies and programs which are under the supervision and control of the State Board. Responsibilities of the State Superintendent and the Department include:

A. Approving each school program in accordance with minimum standards approved by the State Board;

B. Implementing the policies and programs of the State Board and the laws affecting schools under its jurisdiction by, among other things, serving subject to State Board oversight, as the state education agency with respect to federal funds for those programs under the jurisdiction of the Department and under the jurisdiction of, and approved by, the State Board;

C. Receiving, administering, supervising and directing distribution of federal funds, except those received directly by local school boards;

D. Preparing or obtaining all reports required by the State Board;

E. Reporting to the State Board any apparent irregularity on the part of a school board, of any parish or city superintendent of schools, or of any affected agency.

F. Providing, upon request, advice, explanations, instructions, or information to members of school boards, parish or city superintendents of schools and citizens concerning: (1) the public school law; (2) the duties of public school officers; (3) the rights and duties of parents, guardians, pupils and all others; (4) the management of public schools; and (5) any other matter relevant to improved public education;

G. Developing and implementing a program for educational accountability; and

H. Generally administering the Act at the state level, with the approval of the State Board.

§202-204 Reserved.

§205 Preparation of annual budget. The Department shall prepare and submit to the State Board for review and approval on or before a date fixed by the State Board budget for the next fiscal year which at a minimum proposes the appropriation by the Louisiana Legislature of whatever state funds are needed over-and-above its receipt of federal funds (with due regard to federal maintenance of effort, nonsupplanting, comparability and excess cost requirements) by the Department, Special School District Number 1 and school boards to comply fully with all of the requirements established by this Regulation.

§206-209 Reserved.

§210 Approval of nonpublic schools and facilities.

A. The State Superintendent must approve all nonpublic school programs within the state before the placement of any exceptional child may be made therein by a school board, Special School District Number 1, or by any other public agency of the State of Louisiana.

B. An exceptional child who is of an age at which school attendance is compulsory under the law of the state and who is not enrolled in a public school operated under the jurisdiction of the Department or an approved nonpublic school program must be regarded as truant.

C. Nonpublic schools and residential facilities must seek approval in the manner set forth in bulletins and circulars issued by the Department.

D. The standards upon which approval of decisions will be based must be established through the issuance of appropriate bulletins and circulars by the Department.

§211-219 Reserved.

§220 Certification of personnel.

A. The Department must develop and issue, subject to approval by the State Board, requirements for all public school staff and all approved nonpublic school program staff who provide instructional and instructional support services to exceptional children within the state.

B. No public school program or approved nonpublic school program may employ, for the purpose of, or with the effect of, providing services to exceptional children, an uncertified person in the capacity of director of Special School District Number 1, agency coordinator, supervisor of special education, special school principal, child search coordinator, educational consultant, evaluation coordinator, teacher, assessment teacher, adaptive physical education teacher, teacher aide, paraprofessional, school psychologist, school counselor, school social worker, speech therapist, school nurse, physical therapist, occupational therapist, or bus attendant.

§221-229 Reserved.

§230 Review of enforcement recommendations.

A. The State Superintendent must review all enforcement recommendations made by the Division of Special Educational Services (the Division) pursuant to Subpart 310 of this Part.

B. The State Superintendent must within ten operational days after receiving an enforcement recommendation, in writing, either endorse the recommendation and forward it to the State Board; or decline to accept the recommendation and forward the legal and educational reasons for doing so to the State Board.

§231-239 Reserved.

§240 Appointment of hearing officers.

A. The Department shall within twenty operational days from the effective date of this Regulation prepare and maintain thereafter the lists of hearing officers required by Subpart 478 of this Part. Before placing the name of any person on any such list, the Department must ensure that the person has participated in and successfully completed an in-service training program approved by the Department. Additional in-service training shall be provided by the Department whenever warranted by changes in applicable legal standards or educational practices within the past three years.

B. A separate list of hearing officers must be maintained for each state planning region.

C. Hearing officers must be impartial persons knowledgeable about the legal and educational issues involved in assessing compliance with this Regulation.

D. The names of at least three qualified hearing officers must be placed and maintained on each regional list and no name shall appear concurrently on more than one regional list.

E. 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 such persons from the list if they leave the state, decline to actively participate in the hearing process, cease to be impartial or do not carry out their responsibilities in a satisfactory fashion. At no time may any list contain the names of fewer than three persons.

F. In order to insure impartiality, no person may be appointed to serve as hearing officer who has a personal or professional interest which would conflict with his or her objectivity or who has been employed by a school board, Special School District Number 1, or the Division within the past three years.

§241-249 Reserved.

§250 Coordination with accountability program. The Department must ensure that school boards participating in the public school accountability and assessment program provide sufficient information, including information regarding the provision of services by public schools to nonpublic schools, to permit the Department to identify the differential effectiveness of the various combinations of instructional objectives, curricula, instructional settings and teaching approaches employed pursuant to Individualized Education Programs (IEPs) in an effort to provide exceptional children with an appropriate, free, public education. The Department shall also review existing data related to the accountability of services provided by nonpublic schools.

§251-269 Reserved.

§270 Interagency agreements. The Department is authorized to enter into any agreement proposed by or developed with another public or private agency, or agencies, which is (a) essential to the achievement of full compliance with this Regulation; (b) designed to achieve or accelerate the achievement of full educational opportunity for all exceptional children; or (c) necessary to increase the effectiveness (both in terms of service, quality and cost) of the state's overall efforts to provide full services to exceptional children.

§271-274 Reserved.

§275 Fiscal agent. The Department shall act as the fiscal agent in disbursing funds under P. L. 89-313, including transfers of such funds to school boards described in Subpart 491 of this Regulation.

§276-279 Reserved.

§280 Full educational opportunity. The Department must ensure that public education programs of the state meet the goal of providing full educational opportunity to all exceptional children, aged birth through twenty-one years, no later than September 1, 1985.

§281-289 Reserved.

§290 Nondiscrimination in employment.

A. The Department must not discriminate on the basis of handicap in the treatment of handicapped employees or potential employees who are qualified.

B. A handicapped employee or potential employee is "qualified" to perform a particular job if the employee or potential employee can either perform the essential functions of the job in question or can do so with reasonable accommodation to the known physical or mental limitations of the person.

1. Accommodations to the known physical or mental limitation of an otherwise qualified handicapped employee are "reasonable" unless the accommodation would create an undue hardship on the operation of the program. Factors to be considered in determining whether a particular accommodation would create an undue hardship are the overall size of the program with respect to the number of employees, number and type of facilities, and size of budget; composition and structure of work force and type of operation; and nature and cost of the needed accommodation.

2. Reasonable accommodations include making facilities used by employees readily accessible to and usable by handicapped employees, job restructuring, part-time or modified work schedules, the acquisition or modification of equipment or devices, and the provision of readers and interpreters.

C. No employment opportunity may be denied a qualified handicapped employee or potential employee if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the person.

D. No qualified handicapped employee or potential employee may be, on the basis of handicap:

1. Limited, segregated or classified in a way which adversely affects his/her opportunities or status.

2. Denied employment, upgrade, promotion, tenure, transfer, or rehire.

3. Demoted, downgraded, transferred, laid off, or terminated.

4. Subjected to different and lower rates of pay or compensation, or less generous leave policies (including leaves of absence and sick leave) or fringe benefits.

5. Treated differently with respect to recruitment, advertising, the processing of employment applications, job assignments, job classifications, position descriptions, organizational structures, lines of progression, seniority lists or any other term, condition or privilege of employment.

6. Excluded from or provided less support (including leave) for training, including professional meetings, conferences, and other related activities.

E. In offering employment or promotions to handicapped individuals, the amount of compensation offered because of any disability income, pension or other benefit received from another source, must not be reduced.

F. In making any employment decision concerning a handicapped employee or potential employee:

1. Tests or other selection criteria may not be used that screen out or tend to screen out handicapped employees or potential employees unless:

a. The test score or other selection criterion is demonstrated to be job-related for the position in question.

b. Alternative job-related tests or criteria that do not screen out (or tend less to screen out) handicapped employees or potential employees have not been identified by the U. S. Department of Health, Education and Welfare.

c. The test or other selection criterion is consistent with business necessity and the safe performance of the job.

2. Tests and other assessment instruments which purport to measure the job skills, aptitude or other characteristics of a person must be selected and administered in a manner which best ensures that the impaired sensory, manual, or speaking skill of a person (except where those skills are the factor to be measured) does not render the assessment inaccurate.

G. A preemployment medical examination of a potential employee must not be conducted unless it is a condition attached to a bona fide offer of employment; and all entering employees are subject to the examination regardless of handicap.

H. Preemployment inquiries of whether a potential employee (applicant) is a handicapped person, or concerning the nature of the severity of any handicap, must not be made unless:

1. The Department is taking remedial action to overcome the effects of past discrimination; or voluntary action to overcome the effect of prior limited participation; or mandatory affirmative action; and

2. The Department states clearly, orally or in writing, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; the request is made on a voluntary basis and that refusal to provide the information will not subject the potential employee to adverse treatment; and any information supplied will be treated confidentially and will not be used in a discriminatory manner.

I. All information obtained as to the medical condition or history of handicapped employees or potential employees must be collected and maintained on separate forms and must be afforded the confidentiality regularly afforded to medical records, except as necessary to inform supervisors, managers, and first aid and safety personnel of restrictions on work, duties, mobility, etc.

J. No contract or other relationship entered into by the Department may have the effect of subjecting any handicapped employee or potential employee to discrimination, including relationships with employment and referral agencies, labor unions and organizations providing fringe benefits and training programs.

K. Multidisciplinary teams must employ and utilize persons who possess the cultural awareness necessary to competently administer evaluation instruments to children of various cultural backgrounds and properly interpret all information about the child collected during the evaluation process.

§291 Job restructuring guidelines. The Department shall, from time to time, issue bulletins and circulars setting forth appropriate job restructuring approaches which may be used to expand employment opportunity for handicapped persons in instructional and noninstructional job categories.

§292 Grievance procedures. The Department must extend grievance procedures now in effect pursuant to the regulation issued by the U. S. Department of Health, Education and Welfare implementing Title IX of the Education Amendments of 1972 (45 CFR 86.8) to include the grievance of handicapped employees.

§293 Affirmative Action.

A. Each multidisciplinary team under contract to the Department shall develop and submit to the Department no later than October 1, 1978 a plan to take affirmative action to employ and advance in employment minority, female, and qualified handicapped employees and potential employees. The plan must be approved by the Department and implemented no later than October 31, 1978.

B. Affirmative action efforts must occur at all levels of employment and must apply to all employment practices including, but not limited to: hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

C. All personnel processes must be reviewed to determine whether:

1. Their present procedures assure careful, thorough, and systematic consideration of the job qualifications of minority, female, and known handicapped applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available (to the extent necessary, a description of how personnel will be modified must be included in the affirmative action program); and

2. Their personnel programs provide the required affirmative action for employment and advancement of minority, female, and qualified handicapped individuals, and based upon the findings of such reviews, whether appropriate outreach and positive recruitment activities need to be undertaken consistent with size and resources of the employer (and the extent to which existing employment practices are adequate).

§294 Reserved.

§295 Certification of staff.

A. Staff of school systems who provide instructional services and instructional support services to any exceptional children must currently meet all applicable Louisiana Standards for State Certification of School Personnel. The standards must be revised to reflect the requirements of this Regulation and published by the Department no later than January 1, 1979, to take effect no later than January 1, 1980.

B. Interim certification requirements must be in effect no later than November 1, 1978, for each of the following categories for which current certification requirements do not exist: director of Special School District Number 1, agency coordinator, supervisor of special education, special school principal, child search coordinator, educational consultant, evaluation coordinator, teachers, assessment teacher, adaptive physical education teacher, teacher aide, paraprofessional, school psychologist, school counselor, school social worker, speech therapist, school nurse, physical therapist, occupational therapist, bus attendant.

C. Existing certification requirements for any of the categories listed in Subsection B of this Subpart must be met by school boards as of the effective date of this Regulation.

D. The education consultant employed for the purpose of providing education assessment programs shall be used only for the purpose of locating, identifying and reevaluating children in need of special education and related services and assisting the classroom teacher if a child is continued in regular classroom placement after completion of an educational assessment program.

E. Teacher aides meeting the qualifications described above shall be assigned only to special teachers or regular education teachers providing classroom services to exceptional children according to the IEPs of the children.

F. All paraprofessional staff must have the skills and capability necessary to work with children in order to provide an environment conducive to the physical, emotional, and social growth of children and must be at least eighteen years and must possess a certificate of good health signed by a physician. Paraprofessional staff must have successfully completed a preservice and/or in-service training program according to a curriculum designed and approved by the Department.

§296 Reserved.

§297 Special census. The Department shall conduct during the 1978-79 school year a census of all children in Louisiana who, on a date during the school year established by the Department, are between the ages of birth and twenty-two years and:

A. Have been determined to be exceptional children as defined in Subpart 931 of this Regulation; or

B. Have been identified as children suspected of being exceptional children pursuant to Subpart 410 of this Regulation and:

1. Are currently participating in an initial screening process as defined in Subpart 423 of this Regulation; or
2. Are currently enrolled in an educational assessment program as defined in Subpart 424 of this Regulation; or
3. Are currently proposed for or in the process of receiving an individual evaluation pursuant to Subpart 426 of this Regulation.

§298 Master plan. The Department shall prepare and submit to the State Board by November 1, 1979, a five-year Louisiana master plan for the provision of special education and related services to all exceptional children within the state. The Department shall develop and approve forms for the collection of all necessary information from affected agencies including the preparation of local master plans for each school board. The Department in preparing and submitting the statewide master plan shall follow the procedures set forth in Subpart 330 A 5-13 and B of this Regulation.

§299 Reserved.

Part 300. Activities of the Division of Special Educational Services

§301 General responsibilities and authorities.

A. The Division of Special Educational Services is established within the Department to provide general supervision and monitoring of all education programs for exceptional children within the state, including all approved nonpublic school programs and all education programs administered by other state or local agencies.

B. In carrying out its responsibilities, the Division must:

1. Regulate, consult with, and assist school boards, Special School District Number 1, approved nonpublic school programs and other responsible public agencies in the awareness, location, identification and evaluation, placement and reevaluation of all exceptional children and children suspected of being exceptional children.

2. Regulate all aspects of and assist with the development of all special education programs in the state, supported in whole or in part by the state.

3. Require all schools and agencies who receive federal or state monies from or through the State of Louisiana for exceptional children to provide any and all data regarding the use of these funds required by the Department.

Investigations and Monitoring

4. Receive and investigate complaints, initiate its own investigations and conduct hearings with power of subpoena on behalf of an individual child or group of children, regarding failure to comply with any provisions of this Regulation and all other applicable state or federal laws relating to exceptional children.

5. Investigate and conduct hearings upon evidence regarding failure to comply with any provision of this Regulation and all other applicable state or federal laws, rules and/or regulations and take such action as may be necessary to correct the situation.

6. Adopt effective procedures for acting on allegations of noncompliance by any public agency which are found to have substance, including technical assistance; negotiation; conciliation; recommendation that funds for special education and related services be withheld; and/or other remedial action.

7. Take all action necessary to insure that all of the requirements set forth in this Regulation are met fully by all affected agencies and organizations.

8. Regularly monitor and evaluate the compliance of school boards, Special School District Number 1 and other affected public agencies within the state with the requirements of this Regulation consistent with written procedures for conducting this monitoring (including specific timelines) which include collection of data and reports; conduct of on-site visits; review of federal fund utilization; comparison (by sampling) of IEP programs; and case-by-case review of the continued need for residential placement.

9. Regularly monitor the compliance of approved nonpublic school programs through procedures such as written reports, on-site visits, telephone interviews, and parent questionnaires; disseminate copies of applicable standards to each school and facility; and provide the schools and facilities an opportunity to participate in development and revision of standards applicable to them.

Placement

10. Require that all local education agencies apply to the Department, either on a case-by-case basis or by requesting approval of criteria and procedures of general applicability, for the authority to place exceptional children in programs other than local public school programs operated within the parish or in an approved cooperative arrangement.

11. Insure that when exceptional children are placed in special education or related services provided by nonpublic agencies, such agencies shall meet the minimum requirements established by the State Board.

12. Require placement of exceptional children needing special education or related services, to the extent appropriate, in the school system in which they reside, or in an educational program operated by Special School District Number 1 or in an approved nonpublic school which is nearest their place of residence.

13. Insure that out-of-state schools or programs in which Louisiana's exceptional children receive services have the capability and do provide an education program that would meet minimal standards for similar programs if they were available in Louisiana.

Procedural Safeguards

14. Closely monitor the implementation of the procedural safeguard requirements of Subparts 471-479 of this Regulation.

15. Recommend to the State Superintendent a list of persons qualified to serve as hearing officers for each region of the state.

Applications and Compliance

16. Prepare and submit, with State Board approval, the annual state program plan for participation in the program of educational grants operated under the EHA and P. L. 89-313 and all other documents and reports required by those programs.

17. Recommend to the State Superintendent and to the State Board the approval or disapproval of every annual application made by a school board or Special School District Number 1 on the basis of a determination made by the Division of the current compliance by the applicant with this Regulation and other applicable state and federal requirements governing the operation of special education programs.

18. With the approval of the Department, after giving reasonable notice and an opportunity for a hearing, to decide that any agency receiving funds has failed to comply with any requirement in the administration of an approved application and thereupon to recommend to the State Superintendent and to the State Board to make no further payments to the agency from state or federal sources until satisfied that there is no longer any failure to comply with the requirement, or consider its decision in its review of any application made by the agency, or both.

19. Issue from time to time whatever bulletins, circulars, guidelines or other written guidance are necessary to carry out the requirements of this Regulation.

General

20. Provide notice of and conduct the public hearings on the annual program plan called for by this Regulation.

21. Insure, to the extent consistent with their number and location in the state, that adequate provision is made by school boards for the participation of exceptional children voluntarily enrolled in approved nonpublic school programs.

22. Conduct the self-evaluation required by Section 504, modify any practices that are unlawful under Section 504, take appropriate action including recommending to the State Superintendent and the State Board any necessary modification to eliminate the effects of any discrimination that resulted from past adherence to these policies and practices.

23. Provide parents with adequate notice of any applicable confidentiality requirement.

24. Establish procedures to be used in counting exceptional children receiving special education and related services including dates by which reports must be made, procedures for the certification of an accurate and unduplicated count and for data aggregation and process documentation.

25. With the approval of the State Board, establish procedures to assure that testing and evaluation materials utilized for the evaluation and placement are free of racial, cultural and sex bias.

26. Take any and all actions, consistent with the other provisions of law, necessary and proper to fully implement and comply with all requirements of the Act, the EHA, Section 504 and any other applicable federal statutes and regulations.

§302-309 Reserved.

§310 Monitoring and complaint investigation.

A. The Division must conduct, during each year, a comprehensive administrative review of the compliance with this Regulation of no fewer than one-third of the school boards, one-third of the approved nonpublic school programs and other affected agencies and of Special School District Number 1. Each school board and approved nonpublic school program shall be comprehensively reviewed at least once during any three-year period.

B. In carrying out its responsibilities under this part to monitor the compliance of school boards, Special School District Number 1, approved nonpublic school programs, and other affected agencies, and to investigate complaints filed with it, the Division must, to the fullest extent practicable, seek the cooperation of each agency or organization in obtaining compliance with this Part and shall provide assistance and guidance to help each agency or organization comply voluntarily.

C. The failure of a school board, Special School District Number 1, an approved nonpublic school program, or any other affected agency to cooperate constitutes, separately, non-compliance with this Regulation.

D. School boards, approved nonpublic school programs, Special School District Number 1 and other affected agencies shall keep such records and submit to the responsible Division official (or designee) timely, complete and accurate compliance reports at such times, and in such form and containing such information as is determined to be necessary to enable the Division to ascertain compliance with the requirements of this Regulation, with due consideration given to the difficulties of collecting information from individual files and records and the need for advance notice.

E. School boards, approved nonpublic school programs, Special School District number 1 and other affected agencies must permit access by staff of the Division during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance.

F. Where the Division investigates any alleged failure to comply with this Regulation or other applicable state or federal law, the Division upon a finding of noncompliance, shall recommend to the State Superintendent that a hearing pursuant to the requirements of Subparts 476-478 of this Regulation be initiated; immediate compliance be required and that the Superintendent recommend to the State Board that funds be withheld pending full compliance; other appropriate enforcement action be taken.

§311-316 Reserved.

§317 Intimidation and Coercion. No school board, approved nonpublic school program, Special School District Number 1 or other agency to which this Regulation is applicable shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege protected by this Regulation, the Act or any federal statute or regulations relating to the education or civil rights of exceptional children, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing conducted pursuant to this Regulation.

§318 Confidentiality of complainants. The identity of complainants must be kept confidential except to the extent necessary to carry out the purposes of this part including the conduct of any investigation, hearing, or judicial proceeding.

§319 Reserved.

§320 Approval of out-of-district placement.

A. In determining whether to give approval to a request made by a school board pursuant to Subpart 443I of this Part for placement of an exceptional child in Special School District Number 1 or in an approved nonpublic school program located outside the geographical boundaries of the school system, the Division must consider:

1. The short-term and long-term educational and care needs of the child.
2. The alternative educational placements available within the school system or through a cooperative agreement.
3. 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.
4. The availability of community-based residential programs in the event that parents are opposed to continued "family" residence or such residence is determined to be inimical to the overall needs of the child.
5. The proximity of an approved nonpublic day school program located outside of the geographic boundaries of the

school system to the residence of the child (e.g., greater metropolitan area).

B. The Division must, in determining whether to give approval to a request made by the Director of Special School District Number 1 to shift an exceptional child to a more restrictive educational environment within the special district, carefully consider the short-term and long-term educational and care needs of the child and the actual or potential availability of appropriate community-based care.

§321-324 Reserved.

§325 Approval of cooperative programs.

A. The Division must review and approve any cooperative program proposed by two or more school boards pursuant to Subpart 444C of this Regulation.

B. The Division must make a decision to approve or disapprove a proposed cooperative program within ten operational days of receipt of a written request for approval.

§326-329 Reserved.

§330 Annual state program plan.

A. In the preparation and submission of the annual state program plan required by the EHA, the Division must:

1. Publish notice of initial public meetings scheduled to discuss the annual state program plan of the previous year and the development of the new program plan.

2. Distribute to each school board, approved nonpublic school program, public college and university, affected state agency, parent organization and child and youth organization operating in the state and concerned with general education which has previously registered with the Division, notice of the initial public meetings.

3. Hold a series of initial public meetings, at least one hundred operational days before submission, to discuss the annual state program plan of the previous year and the development of the new plan.

4. Prepare and file in a publicly available location a verbatim record of the initial public meetings.

5. Publish between forty-five and sixty calendar days before the submission of a final proposed plan to the State Board in newspapers of general circulation throughout the state, a summary of the proposed program plan indicating the purpose and scope of the program, its public availability, the timetable for final approval, the procedures for submitting written comments, and any policy changes from previous plans and a list of the times and places of the public meetings to be held.

6. Distribute, no later than thirty calendar days before submission, a copy of the proposed program plan and a list of the times and places of the public meetings to be held, to any parent organizations and child and youth advocacy organizations operating in the state and concerned with special education which has previously registered with the Division.

7. 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.

8. 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 program plan.

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

10. Review and consider all public comments.

11. Make necessary modifications to the program plan.

12. Insure through discussion, negotiation, and formal agreements with other divisions of the Department and other state and local agencies that all necessary and proper coordi-

nation among federal funding sources has been accomplished.

13. Attach a summary of the comments made during the public meeting or received by the board to the proposed final program plan submitted to the State Board.

14. Publicize the approval by the State Board of a final program plan and the location where copies of the plan can be obtained by the public.

15. Publicize the approval by the U. S. Office of Education of the annual state program plan and the location where copies of the program plan can be obtained by the public.

B. The Division must make all reasonable efforts to inform potentially interested parent and child advocacy organizations throughout the state of the requirements of this Subpart and of Subpart 496 of this Regulation.

C. A letter signed by groups participating in the development of the annual state program plan confirming their participation in the initial activities of program development described in Subsections A 1-4 of this Subpart must accompany submission of the plan.

§331-334 Reserved.

§335 Annual report.

A. The Division shall require the preparation by school boards, Special School District Number 1, approved nonpublic school programs and other affected agencies, of such annual reports as are necessary to permit the Department to comply fully with requirements of this Regulation, the EHA, Section 504 and Title I of the Elementary and Secondary Education Act of 1965.

B. The Division may prescribe the format or formats to be used in preparing the reports.

C. Agencies required to submit annual reports must do so promptly, and in no event later than any date specified for their submission.

D. The failure to submit an annual report on or before the date required, without the express written permission of the Division, shall be considered noncompliance with both state and federal requirements and shall be treated accordingly.

§336-339 Reserved.

§340 Annual application.

A. The Division must review each annual application submitted by a school board or Special School District Number 1 as promptly as possible.

B. Written notice of whether the application is or is not in substantially approvable form (and, if not, the reasons therefor) must be provided to each school board and to Special School District Number 1 no later than July 1 of each year.

C. Formal written approval (or disapproval) must be provided within ten operational days following receipt by the Department of approval or disapproval by the U. S. Office of Education of the annual state program plan. General public notice of approval (or disapproval) of the annual state program plan shall be provided by the Department.

§341-342 Reserved.

§343 Approval of consolidated applications. In deciding whether to approve or disapprove a proposed consolidated application, the Division must determine whether each participating school board is unable to establish and maintain a program of sufficient size and scope to effectively meet the educational needs of exceptional children, after careful consideration of the following factors: the total student population; the number of exceptional children enrolled by category of exceptionality; the per capita resources available from local sources; the assessment of program effectiveness prepared for the last two school years; the availability of assistance and support services from other city or parish agencies; and the views of parents and other interested persons in the community.

§344-349 Reserved.

§350 Regular education membership.

A. In administering the State Equalization Fund Minimum Foundation for Public Education, the Department shall allow the inclusion of an exceptional child in the population used to determine the number of regular classroom teachers pursuant to pupil/teacher ratios established by the Department if the exceptional child is receiving not less than one hour of Certified Individualized Education Program time units per day of instruction in the regular classroom.

B. Inclusion of an exceptional child in the regular classroom membership as described in A. above shall not limit the ability of a school board or Special School District Number 1 to also include the same child in the population used to calculate the allowable costs of special education personnel providing special education services to the child.

§351 Allowable costs of special education personnel.

A. In administering the State Equalization Minimum Foundation Program for Public Education, the Department shall only allow the inclusion in the overall cost program of a school board requesting funds under the program of:

1. The salary of a certified special education teacher, speech therapist or teacher aide who is engaged exclusively in the teaching of exceptional children in an eligible membership (as defined by Subpart 352 of this Part) consistent with the bona fide multiple enrollment requirements of Subpart 353 of this Part; or

2. The salary of a certified assessment teacher who is engaged exclusively in the identification or reevaluation of exceptional children in an educational assessment program operated pursuant to Subpart 424 of this Regulation.

B. In administering the State Equalization Fund Minimum Foundation Program for Public Education, the Department shall include in the overall cost program developed for Special School District Number 1 the salary of a certified special education teacher, speech therapist or teacher aide who is engaged exclusively in the teaching of exceptional children in an eligible membership (as defined by Subpart 352 A and D of this Part) consistent with the bona fide multiple enrollment requirements of Subpart 353 of this Part.

C. The number of salaries which may be claimed under Subsections A and B of this Subpart shall be determined on the basis of the pupil/teacher, pupil/teacher aide, pupil/therapist ratios set forth in Appendix I of this Regulation. In calculating the pupil enrollment for pupil/speech therapist ratios (Appendix I, Item II) the weighted caseload approach set forth in Appendix II shall be utilized. When there are fewer than the minimum number of pupils per teacher specified by the ratios set forth in Appendix I of this Regulation, then the state 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 local school board funds. This reduction shall not be the cause or excuse for not providing an appropriate free public education.

D. The total number of children used by school boards for purposes of calculating the number of salaries to be claimed in Subsection C of this Subpart shall not exceed seventeen percent of the total school age (i.e., 3-22) population of the school system as determined by the Department.

E. School boards and Special School District Number 1 shall not, after March 15 of each school year, include, in their request for reimbursement for the balance of that school year, the salaries of certified special education teachers, therapists, assessment teachers, and teacher's aides not claimed for allotment on the Minimum Foundation Report before that date.

F. All salaries allowed under this Subpart must be in accordance with the Louisiana Teacher's Minimum Salary Schedule.

§352 Eligible membership. Subject to the limitation of Subpart 353 of this Part, an exceptional child enrolled in any of the following programs may be counted within each program as part of the pupil population used under §351 C of this Part to calculate the allowable number of certified special education teachers, therapists, and teacher's aides providing services under the program:

A. A self-contained special education class as defined in Subpart 980 of this Regulation.

B. A resource room program as defined in Subpart 978 of this Regulation in which the child is enrolled for not less than one-half nor more than three hours of Certified Individualized Education Program time units per day.

C. An itinerant special education program as defined in Subpart 949 of this Regulation in which the child is enrolled for not less than one-half nor more than two hours of Certified Individualized Education Program time units per day.

D. A speech therapy program in which the child is enrolled for not less than one-half nor more than two hours of Certified Individualized Education Program time units per day or not less than one hour nor more than ten hours per week.

E. An approved program of hospital or homebound instruction.

§353 Bona fide multiple enrollments.

A. For the purposes of Subparts 351C and 352 of this Part exceptional children may not be included concurrently in the pupil population of both:

1. A self-contained special education class and a resource room.

2. A self-contained special education class and an itinerant special education program.

3. A resource room program and an itinerant special education program.

B. An exceptional child may not be enrolled in a resource room for more than two hours per day of Certified Individualized Education Program time units unless the balance of the enrollment for the school day is in a speech therapy program and/or a regular classroom program.

C. An exceptional child must be enrolled in a school program which consists separately or in combination of a regular classroom enrollment; an eligible special education membership (as defined in Subpart 352 of this Part); a combination of eligible special education memberships not prohibited by A above.

§354 Utilization of special education personnel. The certified special education teacher, speech therapist, and teacher's aide whose salaries are included in the allowable costs under Subpart 351 of this Part shall be used to provide services only to those exceptional children needing special education and related services for whose benefit the state allotment was made. The certified assessment teachers whose salaries are included in the allowable costs under that Subpart shall be used only for the purpose of identifying or reevaluating children in need of special education except as otherwise provided in these regulations.

§355 Confidentiality.

A. The Division must comply with all of the requirements of Subpart 473 of this Part pertaining to confidentiality of personally identifiable education records.

B. The Division must provide parents full and effective notice of the requirements of Subpart 473 of this Part including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the state.

2. A description of the children on whom personally identifiable information is maintained, the types of information

sought, the methods the Department intends to use in gathering the information (including the sources from whom it is gathered) and the uses to be made of the information.

3. A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.

4. A description of all of the rights of parents and children regarding this information.

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

§357-359 Reserved.

§360 Review of challenge of hearing officer.

A. The Division must promptly review any written challenge by a parent to the impartiality of a proposed hearing officer made pursuant to Subpart 479 of this Regulation.

B. The review must be completed and a written decision prepared within five operational days after receipt of a written challenge.

C. The Division must provide full and effective notice of this decision to the parent and parish supervisor within three operational days after completion of the review.

D. If the Division determines that doubt exists as to whether the proposed hearing officer is truly impartial, a new proposed hearing officer must be immediately selected by the school board.

§361-369 Reserved.

§370 Comprehensive personnel development and manpower training. In the preparation, submission, and implementation of the comprehensive system of personnel development mandated by the EHA, the related personnel development plan and the comprehensive system of manpower training required by Section 1953 of the Act, the Division will:

A. Conduct an annual needs assessment to determine if a sufficient number of qualified special education instructional, related service, and support personnel are available in the state to provide the special education and related services required by this Regulation.

B. Identify, on the basis of the annual needs assessment, target populations for personnel development and manpower training, and describe procedures to insure that activities to carry out the personnel development and manpower training plan are scheduled.

C. Seek the involvement of public and private institutions of higher education and other interested agencies and organizations in the development of any policies concerning certification requirements affecting special education; in the review of annual personnel development and comprehensive manpower training plans; in the development of in-service training programs; and in all other appropriate activities.

D. Establish appropriate monitoring and program evaluation procedures.

E. Establish, with the approval of the State Board, a statewide system (including the in-service training programs of colleges and universities) to facilitate the dissemination of information and replication of demonstrated and effective educational practices related to the education of exceptional children.

F. Incorporate the elements of the Comprehensive Manpower Needs Plan (currently under development) during the 1978-79 academic year, and thereafter, into the comprehensive system of personnel development (and personnel development plan) and the comprehensive system of manpower training.

§371 Preservice training agreements. The Division shall develop in concert with colleges and universities within the state

whatever preservice training arrangements are necessary to permit school boards, Special School District Number 1 and approved nonpublic school programs to comply with the requirements of this Regulation and to achieve full educational opportunity for exceptional children by September 1, 1985.

§372-379 Reserved.

§380 Technical assistance.

A. The Division must take all necessary steps to ensure that staff of school boards, approved nonpublic school programs and Special School District Number 1 are fully informed of their responsibilities under this Regulation.

B. The Division must provide staff of school boards, approved nonpublic school programs and Special School District Number 1 with whatever technical assistance and training is necessary to permit them to comply with the requirements of this Regulation.

§381-399 Reserved.

Part 400. Responsibilities of City and Parish School Boards

§401 General Responsibility. School boards are responsible for providing an appropriate, free public education to all exceptional children within their jurisdiction who are not voluntarily enrolled in an approved nonpublic school program and whose third birthday has occurred but whose twenty-second birthday has not occurred. Exceptional children whose third birthday occurs after the beginning of a regular school year but before March 15, or whose twenty-second birthday occurs during the course of the regular school year shall be regarded as eligible exceptional children for the entire school year. This responsibility continues unabated regardless of whether the exceptional child is provided special education and related services through a contract entered into by the school board with a public or private agency; by an educational cooperative of which the school board is a member; by Special School District Number 1 as a result of placement, referral or judicial commitment; or by an approved nonpublic school program if following placement or referral by Special School District Number 1 or judicial commitment.

§402 Provisions of this Part. Subparts 410-449, 460-499 of this Part establish responsibilities of school boards with regard to exceptional children within their jurisdiction who are not voluntarily enrolled in an approved nonpublic school program. Subparts 450-459 address the responsibilities of school boards with regard to exceptional children who are voluntarily enrolled in an approved nonpublic school program. Part 700 sets forth the responsibility of approved nonpublic day school programs with respect to exceptional children enrolled in such facilities. Part 600 establishes the obligations of Special School District Number 1 and approved nonpublic school residential programs to exceptional children enrolled.

§403-409 Reserved.

Identification

§410 Child search. Each school board must continually seek out, identify and locate every child within the jurisdiction of the board (regardless of current residence or enrollment) between the ages of birth and twenty-two years who is suspected of being an exceptional child in need of special education and related services. A formal child search effort must be conducted at least once each school year and must include children:

A. Enrolled in a regular education program operated by the school board.

B. Enrolled in a public education program operated by a cooperative of local districts or by Special School District Number 1 who currently reside, or whose parents currently reside, within the geographic boundaries of the district.

C. Enrolled in a nonpublic school program (within Louisiana or out-of-state) either voluntarily or as a result of a placement or referral by the school board or a civil court.

D. Enrolled in a public or nonpublic pre-school or day-care program.

E. Currently out-of-school, including dropouts and excluding children who have graduated or otherwise successfully completed programs.

F. Within the state, who are native Americans regardless of whether they are enrolled in schools operated by the Bureau of Indian Affairs, U.S. Department of the Interior.

§411 Child identification. Identified children are children who, because of the child search activities in Subpart 410 of this part or because of current special education enrollment, are suspected of being exceptional children in need of special education and related services.

§412 Notification of parents. Each school board must provide full and effective notice to the parent(s) of each child identified and located within ten operational days after the identification and location has been completed. The notice shall contain a general description of the post-identification responsibilities of the school board, the alternative actions which may be taken by the school board and the name of the responsible child search coordinator.

§413 Child search coordination. In conducting the child search required by Subpart 410 of this Part, the school board shall actively seek the assistance of all public and private agencies and organizations within the parish which provide services to exceptional children. The school board shall also coordinate the identification of children for the Talent Search Program (funded by the U.S. Department of Health, Education and Welfare) with all child search activities.

§414 Reserved.

§415 Child search coordinator. Notwithstanding any other responsibilities established by this Part, the child search coordinator shall be responsible for tracking the progress of each child who is identified and located through the post-identification and evaluation activities required by Subparts 420-439 of this Part.

§416-419 Reserved.

§420 Post-identification responsibilities. Each school board must, for each child identified under Subpart 411 of this Part, comply with the requirements of Subparts 421-426 of this Part unless the child has, within three calendar years from the date that the identification and location has been completed, received an individual evaluation which meets all of the requirements of Subparts 430-439 of this Part.

§421 Timing. Within five operational days after the notice called for by Section 412 has been provided, each child who has been identified and located must be entered in an initial screening process; or proposed for enrollment in an educational assessment program; or proposed for an individual evaluation described in Subparts 430-439 of this Part.

§422 Selection of alternatives. The school board or designee (e.g., the parish supervisor) shall, in the case of children not currently enrolled in the regular school program, determine which of three alternatives described in Subpart 421 of this Part shall be selected for a particular child. For children currently enrolled in the regular public school program, the parish supervisor or other designee of the school board shall consult with the principal of the school before making the selection. This determination shall be made on the basis of the age of the child, nature of the suspected exceptionality, its suspected severity, the suitability of each alternative, and other criteria developed by the Division and approved by the State Superintendent. All children not currently enrolled in a public education program shall be initially entered in the initial screening process, or referred directly for an individual evaluation. Formal parental approval must be obtained before enrollment of a child in an educational assessment program or initiation of an individual evaluation. Formal parental approval is not required for entry into the initial screening process but full and effective notice must be given to parents before entry occurs.

§423 Initial screening process. Children entered into the initial screening process must within ten operational days of entry be provided with intensive classroom-based screening services, including observational and other developmental screening procedures related to cognitive functioning, social functioning, self-help skills, verbal abilities, and language. Based on the results of the initial screening process, the parish supervisor or other designee of the school board must, no later than ten operational days after entry of the child into the process, give full and effective notice to the parents of a decision to: (a) recommend the enrollment of the child in an educational assessment program; (b) recommend that the child be provided the individual evaluation described in Subparts 430-439 of this Part; or (c) conclude further screening or evaluation of the child on the basis that it is unwarranted.

Children enrolled in approved nonpublic school programs shall receive the initial screening process in the nonpublic school, staffed by nonpublic school personnel. Children not enrolled in school shall be enrolled in the regular public school program concurrent with entry into the initial screening process. A written report setting forth the findings of the initial screening process shall be completed within three operational days after the completion of the process.

§424 Educational assessment program.

A. The educational assessment program shall be conducted for a period of no less than four nor more than six calendar weeks in the current educational environment of the child. The program shall not be initiated if fewer than six calendar weeks remain in the school year. Enrollment in the educational assessment program is limited to children identified pursuant to Subpart 411 of this Part.

B. No child may be enrolled in an educational assessment program more than once during any twelve calendar month period.

C. Enrollment in an educational assessment program must be preceded by receipt of formal parental approval. Parents may remove a child from the program at any time by signing a written revocation of approval. If written revocation is received or formal parental approval is not obtained, the school board must, within five operational days thereafter, decide either to propose an individual evaluation for the child following the procedures set forth in Subpart 427 of this Part or to discontinue any further assessment. The school board may not initiate the override proceedings set forth in Subpart 476 of this Part in regard to revocation of parental approval; override procedures may be used (consistent with Subpart 430 B2 of this Part) in connection with a failure to obtain formal parental approval for a proposed individual evaluation.

D. At a minimum, the educational assessment program must include the following services and activities: sensory screening, if not previously conducted; informal or formal educational assessment; classroom observation; other systematized behavioral observation; development of a social history and family study; the development of an individual diagnostic/ prescriptive program for children for whom continued enrollment in the regular classroom is recommended. Formal educational assessment must be made by qualified persons consistent with standards established by the Department.

E. The educational assessment program shall be staffed with a person certified by the State Department of Education as an assessment teacher.

F. A written report summarizing the educational assessment must be prepared by the assessment teacher after consultation with the classroom teacher, promptly and no later than five operational days after completion of the educational assessment program. The written report shall contain: A recommendation of whether an individual evaluation (or reevaluation) should be conducted; the reasons for the recommendation; a summary of the information collected; the diagnostic/prescriptive program

4. The third anniversary of the last individual evaluation is reached.

5. A final written decision has been issued by a hearing officer, the State Board or a court of competent jurisdiction requiring that an individual evaluation be conducted.

C. In each instance all reasonable efforts must be made by the school board to obtain formal parental approval. If, after twenty operational days from the date the parent is notified of the proposed evaluation, the parent has denied or failed to give formal approval for the individual evaluation, the school board shall either determine that it erred in proposing the individual evaluation; or commence the override procedure set forth in Subpart 476 of this Part.

D. School boards are allowed up to thirty additional operational days to initiate an individual evaluation of a child suspected of being an exceptional child if the Evaluation Coordinator determines that the child has received an individual evaluation during the past year from any state or local educational agency, outside of the State of Louisiana, which at the time the evaluation was conducted was receiving funds under the EHA pursuant to an approved annual state program plan but which did not meet all of the requirements of Subparts 431-439 of this Part.

§431 Individual evaluation objectives.

A. The objectives of an individual evaluation are to:

1. Determine whether a child possesses an impairment or condition which would enable the child to be classified as exceptional.

2. Diagnose and evaluate the nature and extent of the effect of such impairment or condition on the educational performance of the child and assess the need for special education and related services.

3. Recommend those types of services (which may only be named generically) which should be provided to an exceptional child to enhance the child's ability to benefit from subsequent education or training or otherwise enhance opportunities for self-support or self-sufficiency, including elimination, reduction or prevention of dependency or inappropriate institutional care.

B. The school board is responsible for carefully reviewing the recommendations set forth in Subsection A 2 of this Subpart but is not bound by or restricted to such recommendations in the development of an IEP pursuant to Subpart 441 of this Part.

§432 Initial activities.

A. Consistent with the requirements of Subpart 430 of this Part and before the initiation of each individual evaluation, the parish supervisor shall designate an evaluation coordinator who will be responsible for all overall conduct of the individual evaluation. If contracted services are to be used to conduct the individual evaluation, the evaluation coordinator shall be an employee of the contractor.

B. The evaluation coordinator shall review all pertinent information regarding the child to be evaluated, including the written report of any initial screening process, educational assessment program or medical assessment which has been conducted.

C. The evaluation coordinator shall, in order to initiate the individual evaluation, appoint a multidisciplinary team for the conduct of the evaluation to be chaired by the evaluation coordinator.

D. The multidisciplinary team must be composed of persons, drawn from different disciplines, appropriate to a complete assessment of the suspected exceptionality. In all cases an educational consultant and a classroom teacher (or other instructional staff member) familiar with the child and knowledgeable with respect to the suspected exceptionality must be included on the

team. In addition, the multidisciplinary team must include persons certified as qualified examiners by the Department.

E. Where a low incidence handicapping condition is the suspected exceptionality, the evaluation coordinator must consider the desirability of utilizing a specialized statewide assessment center for the individual evaluation.

F. Where a sensory or other physical impairment is the suspected exceptionality (or is among them), a physician with specialized training and experience in the diagnosis and treatment of the particular physical condition or, as appropriate, a licensed audiologist or optometrist, must be included on the team.

G. Where mental retardation is the suspected exceptionality (or is among them), a psychologist certified by the Department who meets State Board approved standards, and, where appropriate, a licensed physician skilled in the diagnosis and treatment of neurological conditions must be included on the team.

H. Where mental illness or emotional disturbance is the suspected exceptionality (or is among them) the team must include a board certified or board eligible psychiatrist, or a licensed psychologist who meets the standards of the National Register for Health Service Providers in Psychology, or a qualified mental health professional under the general supervision of either a board certified psychiatrist or a licensed psychologist; and where appropriate, a physician skilled in the diagnosis and treatment of neurological conditions.

I. Speech pathologists, social workers, school counselors, school nurses, physical therapists, adaptive physical education teachers, and occupational therapists must be included on the team wherever appropriate to a full and accurate assessment of the needs of the child.

§433 Operation of the multidisciplinary team.

A. Each individual evaluation must be completed, with full attention to its comprehensiveness and thoroughness, within thirty operational days of its initiation unless an extension of time of no more than thirty additional operational days is approved in writing by the Department after a showing by the school board that unusual circumstances exist preventing completion of the individual evaluation in the specified time. No more than one extension may be approved in connection with a single individual evaluation. If a school board fails to meet the timeframes set forth in this Section, it shall, within ten operational days thereafter, contract or otherwise arrange for a conduct of the individual evaluation solely from local financial resources.

B. The overall determination of whether a child is an exceptional child and, if so, the nature of needed special education and related services, must be based on the most comprehensive assessment practicable and must reflect a compilation of information drawn from different assessment sources. The depth of the assessment in each area will vary based on the suspected exceptionality and the initial review of screening information conducted by the evaluation coordinator. The weight given to each source area must be fully documented and a formal resolution must be made of any discrepancies between formal test results and the person's customary behavior and daily activities, and of any discrepancies among test results.

C. The evaluation coordinator is responsible for ensuring that full and complete records of information collected or generated in connection with an individual evaluation are maintained and that a report setting forth a full written explanation of the findings and the recommendations made by the multidisciplinary evaluation team is prepared. The report must include a description of the child's present level of functioning, a description of the needs of the child in rank order of importance and a recommendation of the types of services which should be provided for each listed need. If the report concludes that the child is

emotionally disturbed, it must be accompanied by a signed statement of a board eligible or board certified psychiatrist or a licensed psychologist who is listed in or who meets the standards of the most current edition of the National Register of Health Service Providers in Psychology to that effect.

Each member of the multidisciplinary evaluation team shall certify in writing whether the report prepared by the team reflects his or her conclusions, and if not, shall submit a separate statement presenting his or her conclusions. The report (and any required statements) must be prepared as promptly as possible following the completion of the individual evaluation and in no event later than ten operational days after completion.

D. School boards must establish and maintain the multidisciplinary team required for an individual evaluation by:

1. Regularly employing all or some of the members of the team.
2. Utilizing qualified examiners who are available from DHHR, the State Department of Corrections or other public agencies.
3. Contracting with individuals or organizations for the services of some or all of the members of the team.
4. Utilizing the services available from existing multidisciplinary teams located in colleges and universities (subject to the availability of funds appropriated by the Louisiana Legislature to support such teams).
5. Using a combination of the approaches listed above.

Regardless of the approach, school boards retain full responsibility for the conduct of the individual evaluation and any failure by an employee or contractor to meet any requirements of this Part constitutes a failure by the school board to comply.

E. Wherever possible, consistent with interagency agreements between the Department and DHHR, school boards shall accept for the purposes of determining whether a child is an exceptional child the results of evaluations, assessments or program entitlement determinations made within the preceding twelve months by DHHR agencies providing services to exceptional children.

§434 Responsibilities of multidisciplinary teams. Members of the multidisciplinary evaluation teams must be responsible for all aspects of the individual evaluation including, but not limited to:

- A. Selecting, administering, and interpreting tests and other evaluation materials.
- B. Defining pertinent information to be collected from the teacher in support of the teacher recommendation.
- C. Defining the nature and extent of a physical or medical examination which should be conducted and ensuring that a full and complete report of the findings of such an examination is prepared. The written report of a medical assessment, outlined in Subpart 425 of this Part, if conducted, must be reviewed as part of a physical or medical examination.
- D. Collecting all appropriate social and cultural background information related to each evaluation.
- E. Defining the measures of adaptive behavior to be used and collecting full and complete adaptive behavior information from sources outside of the school.
- F. Synthesizing information collected from all pertinent sources, assigning the weight to be given to each and reaching an overall evaluative diagnosis and educational service prescription which forms a basis for IEP development.

G. Ensuring the confidentiality of information collected during the individual evaluation.

H. Assisting those persons assigned responsibility for the development of an IEP for the person evaluated and for the placement decision which follows.

§435 Evaluation content. Each individual evaluation must include a full assessment of:

A. Current and past academic performance including a comparison of the level of educational attainment of the child with the level appropriate for the same age. The assessment in this area must be predicated on information from aptitude and achievement tests (excluding group or unapproved individual IQ tests); teacher assessment and/or assessment teaching; observation of academic performance in the regular classroom setting (or other environment appropriate for observing a child of that age).

B. The congruence of achievement and intellectual ability, i.e. whether a severe discrepancy between achievement and intellectual ability exists in one of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning, and, if so, whether the discrepancy exists despite the provision of learning experiences appropriate for the child's age and ability levels. The Department will issue guidelines providing acceptable techniques for measuring the discrepancy for each type of exceptionality.

C. Current physical and mental condition including emotional and psychological condition; health, medical needs, and nutritional state; developmental needs; the need for adaptive or special physical education services; and the report of any medical assessment undertaken such as audiologic and visual assessment for deaf, blind, and deaf-blind students.

D. Personal attributes, abilities, disabilities, behavior (including adaptive behavior), and language and other communication skills, and, to the extent appropriate, work behavior.

E. Environmental factors including the child's social, economic, and cultural background and the characteristics of family, home, and social environments.

F. The views of teachers and parents.

G. The written report of any independent evaluation of the child.

§436 Evaluation instruments.

A. No single procedure may be used as the sole criterion for determining an appropriate educational program for a child. A variety of instruments and sources of information should be utilized.

B. Tests and other evaluation materials used to assess the nature and extent of an exceptionality or suspected exceptionality and to assess general or specific areas of educational need, must be:

1. Tailored to assess specific areas of educational need and not merely those which are designed to provide a single intelligence quotient.
2. Recommended by their producer and validated adequately for the specific purpose(s) for which they are used.
3. Appropriate for the age and stage of development of each person to whom they are administered.
4. Free of racial, cultural, language, or sex bias.
5. Written in the native language or other mode of communication most familiar to the person being assessed (e.g., nonverbal intellectual assessment of deaf children) unless it can be demonstrated that it is infeasible to do so.
6. Selected so as to best ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the factor(s) the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors the test purports to measure).

C. No individual or group IQ tests may be administered as part of any individual evaluation, screening or assessment unless the test has been approved for the proposed use by the State Board after a review of a formal request by the Superintendent for such approval. The formal request must be accompanied by

a report signed by the Superintendent which sets forth in detail and convincingly demonstrates that (1) the tests, with respect to the use or uses proposed (for the racial and cultural groups specified) are free of racial and cultural bias, and (2) have been standardized with and are reliable and valid (for the uses specified) with respect to children of the specified racial and cultural groups. In no event shall an overall IQ score be reported or recorded and in every case determinations of mental retardation shall be based on an assessment of a variety of factors including adaptive behavior and past and current development activities (e.g. indices or manifestations of social, intellectual, adaptive, verbal, motor, language, emotional, and self-care development for age).

D. The determination of the functional level should include, as appropriate, reflex testing and an assessment of motor and self-help skills.

E. Testing batteries which have been developed by the Department, and approved by the State Board to diagnose a suspected exceptionality shall be utilized whenever available and appropriate.

§437 Administration of tests and materials.

A. All tests and other evaluation materials must be administered in the native language or other mode of communication most familiar to the person being assessed; in conformance with the administration instructions of their producer; and their results interpreted in a manner which does not improperly measure the level of sensory, manual or speaking skills of the person being assessed rather than the specified test objectives (e.g., achievement, intelligence); and interpreted by members of the multidisciplinary evaluation team who are qualified examiners certified by the Department; and interpreted in a manner free from racial, cultural and sex bias.

B. Information sufficient to permit a determination of the cultural compatibility between the child and the test administrator and the testing (or other evaluative) environment must be included in the report of the multidisciplinary team.

§438 Waiver of timeframe. An extension of up to six months for the completion of an individual evaluation may be granted by the Department upon a showing by a school board (concurrent by DHHR) that specialized medical services needed to complete the evaluation are not available in the parish. If after six months the services have still not been made available, the Department will provide the services directly, through an interagency agreement with DHHR.

§439 Summer recess. Whenever the initial evaluation of a child who is suspected of being an exceptional child and who is not currently receiving special education and related services is initiated (pursuant to Subpart 430 C of this Part) within fifteen operational days of the end of the school year, the school board may postpone the initiation of the evaluation to the first week of the next school year.

Provision of Special Education and Related Services

§440 Appropriate, free public education.

A. Each school board must provide an appropriate, free, publicly supported education to every exceptional child who resides within its jurisdiction between the ages of three and twenty-two years as defined in Subpart 401 of this Part.

B. The school board within whose geographic boundaries a foster home is located must immediately assume the responsibility for providing an appropriate, free, publicly supported education to an exceptional child who is placed in or transferred to such a foster home.

C. An appropriate education is one which meets the individual educational needs of exceptional children as adequately as the needs of other children are met in the least restrictive educational setting (as defined in Subpart 443 of this Part). An

appropriate education necessarily involves the provision of regular or special education and necessary related aids or services.

D. An appropriate education means special education and related services which must be provided in compliance with the requirements of this Regulation; be provided under public supervision and direction; and include preschool, elementary school, or secondary school education.

E. A free education is defined in Subpart 462 of this Part. §441 Individualized education program.

A. If as a result of an individual evaluation, a child is determined to be an exceptional child in need of special education and related services, school boards are required to develop within twenty operational days from the date of the written individual evaluation report a written individualized education program (IEP) which sets forth the approach which will be taken to ensure that the child will be provided an appropriate, free public education.

B. If a child has already been determined to be an exceptional child in need of special education and related services and an individual evaluation of the child is not required pursuant to this Part during the current school year, the IEP for the next school year must be developed no later than May 15 of the current school year.

C. If a child is currently enrolled in Special School District Number 1, responsibility for compliance with all requirements of Subparts 441-449 shall be jointly with Special School District Number 1 and the school board, consistent with the requirements of Part 600 of this Regulation.

D. At a minimum, the IEP must contain:

1. A description of current educational performance and levels of individual functioning.

2. A description of overall educational needs.

3. Long-term educational goals and a description of the ultimate educational outcomes.

4. A description of the criteria and evaluation procedures (and schedules) for determining whether goals are being met.

5. A description of the specific educational environment in which the child is to be placed for the first year (or partial year) of the IEP and the reasons which make it the least restrictive environment possible.

6. Annual educational performance goals for the child.

7. A description of short term instructional objectives for the child which are measurable intermediate steps to attaining goals.

8. A description of criteria and evaluation procedures for measuring progress toward objectives.

9. A description of the specific special education and related services needed by the child, the number of months of instruction required, if greater than the regular school year, the manner in which those services will be provided and a timetable for providing them.

10. An identification of those persons responsible for overall implementation and a description of the role and objectives of each agency participating in delivering services and all parties (including the person) in regard to the implementation of the plan.

11. An identification of any anticipated barriers to accomplishing goals and objectives and a description of how such barriers will be overcome.

12. An estimated cost of implementing the plan and wherever appropriate cost participation by individual.

13. A description of personnel (including qualifications) necessary to provide services described.

14. A description of the type of adaptive physical education services needed, if any.

15. The projected date for initiation of each type of service and the anticipated duration of each.

16. An identification of need for a program of bilingual education (as defined in 45 CFR 123.02g).

17. A description of any special instructional needs related to status as a currently or formerly migratory child (as defined in 45 CFR 116d.2).

E. A format which has been approved by the Department for the development of the IEP during the 1978-79 school year is attached as Appendix III. Information required by this Subpart but not included on the format should be maintained separately. A revised IEP format which includes all of the information required by this Subpart shall be developed, approved and circulated by the Department no later than January 1, 1979. The items required by Subsections D10-14 of this Subpart are included to enhance possible coordination (through interagency cooperation) of educational programs with existing habilitation, health and social services programs and concomitant opportunities for the financing of various types of "related services" through entitlement programs operated by other agencies.

F. Revisions to the IEP developed pursuant to Subsection B of this Subpart may be proposed at the beginning of the next school year in order to permit the involvement of the child's new teacher in the final development of the instructional program for the year and any modifications to the IEP necessary because of the effect of summer recess on the child's projected educational level. Formal parental approval must be obtained before any modifications may be made to the IEP developed and approved in Subsection B of this Subpart.

§442 IEP development.

A. Overall responsibility for the development of each IEP rests with the parish supervisor and the school board.

B. The IEP shall be developed by staff of the school board working in concert with the child's parent(s); the child's current teacher and/or school counselor and other relevant instructional staff; the evaluation coordinator or other member of the multi-disciplinary team knowledgeable about the child, the meaning of the evaluation data and the placement options; the parish supervisor or designee, knowledgeable about the costs of implementing a proposed plan; a representative of Special School District Number 1, where appropriate; a representative of an approved nonpublic school program, where appropriate.

C. In the development of the IEP at least one meeting shall be held among the persons identified in Subsection B of this Subpart no later than ten operational days after the written report of the individual evaluation has been completed.

D. In order to insure that one or both parent(s) of the child attends the IEP development meeting, school boards and Special School District Number 1 must provide parents full and effective notice sufficiently in advance of the meeting to permit attendance. The purpose, time, location, and persons in attendance must be included in the notice and the meeting must be scheduled at a mutually agreed on time and place. If neither parent can be contacted or both refuse or fail to attend a meeting, other methods must be used to insure parent participation:

1. Staff of school systems must make all reasonable efforts to meet personally with one or both parents and provide full and effective communication, both orally and in writing, regarding the IEP objectives and procedures and the need for parental participation.

2. If reasonable efforts to communicate in the manner described in Paragraph 1 are unsuccessful, staff of school systems must make every effort to reach one or more parents by telephone, followed by a certified letter, to discuss IEP objectives and procedures and the need for parental participation.

3. If reasonable efforts to communicate in the manner described in both Paragraphs 1 and 2 of this Subsection are

unsuccessful, staff of school districts shall issue a notice of intent to refer to child welfare. Referral will be made ten operational days after the notice is sent.

E. The provision of Subpart 439 of this Part (Summer Recess) shall also be applicable to the initiation of IEP development.

§443 Educational placement.

A. The IEP must describe the proposed educational placement of the child for the first year (or part year) of IEP implementation. The placement recommendation must be made by the parish supervisor after a careful consideration of all information obtained during the individual evaluation and consultation with the child's current teacher; the evaluation coordinator or other person knowledgeable about the meaning of the evaluation data and the continuum of alternative placements available; the parent(s) of the child.

B. A proposed placement must be selected from the continuum of alternative placements available to the school boards. School boards may not decline to propose placement for a child or recommend to parents that a child be enrolled "voluntarily" in nonpublic school programs. At a minimum, the continuum must include:

1. The regular classroom.
2. The regular classroom with consultation.
3. The regular classroom with resource teacher.
4. The regular classroom with itinerant resource teacher.
5. A self-contained special classroom with part-time instruction in regular class.
6. A self-contained special class (regular campus).
7. A self-contained special class in a special day facility.
8. Homebound/hospital instruction.
9. A residential program (i.e., referral to Special School District Number 1).
10. A resource center for gifted and talented students.
11. Any combination of 1-10.
12. Cooperative special education and related services.

C. In selecting from the continuum of alternative settings, except as provided in D and E below, no exceptional child may be proposed for placement in any of the alternative settings listed at 5-12 of B above unless it can be demonstrated that the nature or severity of a person's exceptionality is such that education in regular classes (in the school the child would attend if not exceptional) with the use of supplementary aids and services cannot be achieved satisfactorily. The proposed placement (or assignment) of a gifted, educationally handicapped or slow learning child to any self-contained special class setting to which children are assigned on any nonrandom basis related to educational achievement, ability or potential (e.g., a homogenous ability group of track) shall be regarded as a placement in a self-contained special class (regular campus).

D. The placement of a gifted and talented child in alternative 5, 6, 10, or in a combination involving 1-6 and 10 must be proposed where warranted by the particular educational needs of the child and the availability of suitable educational programs which are regular classroom based.

E. Children both above and below the age at which public education is mandatory for children who are not exceptional may be provided services by a school board directly or through a general contractual arrangement between the board and a private or public organization (e.g., Day Development Center; Headstart Program) so long as:

1. The only children of the given age receiving services are exceptional children;
2. If the school board or contractor also enrolls children who are not exceptional, the principles set forth in this Subpart are applied to determine placement within its instructional settings; and

3. The school board retains (directly or through the contract) supervision, direction and control over services provided by the contractor;

4. The school board and contractor comply fully with all applicable state and federal laws and regulations governing the provision of services to children, the facility in which services are provided and the qualifications of the staff providing services.

F. Except as provided in D and E above, if placement of an exceptional child is proposed in an alternative setting described by alternatives 5-12 of Subsection B of this Subpart, it must be proposed in the least restrictive alternative setting which is consistent with the IEP, with careful consideration given to the quality of services needed and to any potential harmful effect on the child and, in any event, as close as possible to the child's home. Placement may not be proposed if it would create in any one educational setting a chronological age span among children of more than three years. Parents may not waive any of the requirements of this Subpart.

G. The placement of an exceptional child by a school board in a program of homebound or hospital instruction may be proposed only if:

1. The child currently possesses a physical impairment or illness which directly (or because of treatment required) precludes the movement of the child from a hospital or home environment to the general educational environment; or

2. The child, consistent with the requirements of this Part, has been determined (after an individual evaluation) to be an emotionally disturbed child and:

a. A board certified or board eligible psychiatrist or a licensed psychologist who meets the standards of the most current edition of the National Register of Health Service Providers in Psychology has certified in a signed written report filed with the Division that the child is currently admitted to a full time inpatient program of care and treatment in a hospital certified or licensed by the State of Louisiana; and the psychiatrist or psychologist believes that the continued participation of the child in the inpatient program is necessary to the proper care and treatment of the child; or

b. A board eligible or board certified psychiatrist or a licensed psychologist who meets the standards of the most current edition of the National Register of Health Service Providers in Psychology has certified in a signed written statement filed with the Division that:

(1) The child is emotionally disturbed.

(2) The child is being provided a program of continuous care and treatment which would be seriously disrupted by movement to the general educational environment.

(3) The program of care and treatment in concert with the proposed homebound instruction should permit the return of the child to the general educational environment at a specified date.

(4) A copy of a treatment plan for the child signed by the psychiatrist or psychologist is attached to the written report together with a statement by the psychiatrist or psychologist that he or she will notify the school board if the treatment plan is significantly changed or discontinued.

H. If referral for residential placement to Special School District Number 1 is under serious consideration and it has been determined that the child could be provided an appropriate education without the treatment and care provided by a residential facility, school boards must, in order to fully investigate and rule out the possibility of community-based residential alternatives, contact the DHHR Coordinator in order to seek the assis-

tance of DHHR agencies in exploring the availability of in-home support services and home substitute services. DHHR, and not the school board, should assess the suitability or desirability of current residential arrangements, family support, and community-based residential alternatives. School boards may not propose the referral of a child to Special School District Number 1 for residential placement unless the school board attaches to the proposed IEP a written statement signed by the DHHR Coordinator stating that in-home services and support or alternative community-based residential care programs cannot be provided successfully because of the child's special needs. Children for whom placement in a residential school program is the least restrictive environment must be referred to Special School District Number 1 for residential placement.

I. No child may be placed in or referred to a public school which is not part of an approved cooperative program, or Special School District Number 1 or an approved nonpublic school program located outside of the geographic boundaries of the school district without the express written approval of the Department.

J. The placement of an exceptional child in a nonpublic day school program may be proposed by a school board only if the direct service provisions of Subpart 444 of this Part do not require the establishment of instructional programs by the school board directly or through cooperative arrangements with other school systems; and the nonpublic day school program is approved. Nothing in this Subpart shall be construed to limit or restrict the obligation of school boards under Subpart 450 B of this Part to provide services to voluntarily enrolled nonpublic school children.

K. The temporary admission of a child by Special School District Number 1 to a program of respite care or on an emergency basis shall not constitute a significant change in placement if it is made with formal parental approval and is limited to no more than twenty operational days in the case of respite care; no more than the number of days allowed for emergency commitment (i.e., before court review is required) under the laws of the state.

L. Standards defining those circumstances under which an environment other than the regular classroom would be the least restrictive educational environment shall be issued from time to time by the Department.

§444 Direct services.

A. Exceptional children for whom a self-contained special classroom (part or full-time) is the least restrictive environment must be placed in such a classroom:

1. At the regular public school they would normally attend, if there are a sufficient number of children in a particular category of exceptionality within an age span of three chronological years who live or whose parents live within the geographic attendance area of the school to justify the allocation of one teacher pursuant to the pupil/teacher ratios set forth in Appendix I.

2. In a regular public school operated by the school board, if there are a sufficient number of children residing in the jurisdiction of the school board, within an age span of three chronological years to justify the allocation of one teacher pursuant to the pupil/teacher ratios set forth in Appendix I.

3. In a regular public school operated by a cooperative of school boards, if there are a sufficient number of children residing in the jurisdiction of school boards in a cooperative who do not meet the requirements of either Paragraphs 1 or 2 of this Subsection, to justify the allocation of one teacher pursuant to the pupil/teacher ratios set forth in Appendix I.

B. Children for whom a self-contained special classroom in a special day school facility is the least restrictive environment must be placed in such a classroom:

1. In the city or parish in which they reside, if there are seven groups of exceptional children residing within the city or parish, each of which contains a sufficient number of children in a particular category of exceptionality and within an age span of three chronological years to justify the allocation of one teacher pursuant to the pupil/teacher ratios set forth in Appendix I.

2. In a special day facility operated by a cooperative, if there are seven groups of exceptional children residing in the jurisdiction of districts in the cooperative, each of which contains a sufficient number of children in a particular category of exceptionality and within an age span of three chronological years, to justify the allocation of one teacher pursuant to the pupil/teacher ratios set forth in Appendix I.

C. Children for whom a regular classroom placement (with supportive aids and services) is the least restrictive environment must be placed in such a classroom at the regular public school they would normally attend.

D. School boards shall establish, with the approval of the Division, whatever cooperative programs are needed to meet the requirements of this Part.

§445 Approval of placement decision.

A. Whenever a child's IEP (including the proposed educational placement described in Subpart 443 of this Part) has been completed (consistent with the timeframes established in Subparts 441 (a) and (b) of this Part), school boards must attempt to schedule a meeting between the parish supervisor (or designee), the child's parent(s), and the receiving teacher at a mutually convenient time no later than ten operational days after IEP completion. The meeting must include a thorough discussion of the results of the child's individual evaluation, if recently conducted; the child's proposed IEP and the child's proposed educational placement. The parish supervisor must then request parental approval of the educational placement or state that the child's proposed placement will be modified (as a result of the discussion) within three operational days of the meeting, at which time formal parental approval will be requested.

B. The parent(s) of the child must be provided full and effective notice of the meeting and all reasonable efforts must be made by the parish supervisor, as provided in Subpart 442 D1 and 2 of this Part, to ensure parental participation.

C. A copy of the proposed IEP (including the proposed educational placement) signed by the parish supervisor and a teacher to be assigned under the proposed educational placement must be given to parent(s) at the same time full and effective notice of the meeting is provided.

D. In lieu of attending the meeting, a parent who has received full and effective notice and a copy of the proposed IEP may choose to provide formal parental approval (or denial of approval) without attending the meeting.

E. If a board complies with the requirements of this Subpart and is unable to provide full and effective notice to a parent or obtain either formal parental approval or denial of approval, the procedures set forth in Subpart 442 of this Part must be followed.

F. If after twenty operational days, formal parental approval has not been given (or has been denied), school boards shall follow the procedures described in Subpart 430 B to determine whether to attempt to override the absence of formal parental approval.

§446 IEP implementation and placement.

A. For children not currently receiving services under an IEP consistent with the requirements of this Part, the IEP must be implemented and educational placement must be made within ten operational days after:

1. The written formal parental approval described in Subpart 445 of this Part has been received.

2. A final written decision has been issued by a hearing officer, the State Board or a court of competent jurisdiction following either a successful parental challenge to the IEP or educational placement, or a successful override by a school board of the absence of consent.

B. For children currently receiving services under an IEP consistent with the requirements of this Part, the IEP must be developed and completed before May 15 of the current year and must be implemented (and the educational placement made) no later than the first day of school of the next full term.

C. School boards must provide all services called for by each IEP and whatever additional services are needed to support its successful implementation.

D. The following services must be included in the IEP where necessary to accomplish comparability of outcome between exceptional children and children who are not exceptional in meeting individual educational needs:

1. Classroom instruction.
2. Instruction in nonclassroom settings including homebound instruction.
3. Social and personal habilitation services.
4. Preschool stimulation.
5. Other specially designed instruction.
6. Physical therapy.
7. Occupational therapy.
8. Recreation or recreational therapy.
9. Speech pathology.
10. Audiology.
11. Athletics.
12. Diagnostic and evaluative medical and health services.
13. School health and nutrition services.
14. The provision of prosthetic, orthotic, or other assistive devices and related services.
15. Post-institutionalization follow-along services.
16. Prevocational and career development services.
17. Psychological services.
18. Counseling services.
19. Social and social work services.
20. Interpreter and reader services.
21. Parent counseling and training.
22. Facilitating services, including transportation.
23. Room and board (when residential placement).
24. Nonmedical care (when residential placement).

E. Nonacademic and extracurricular services and activities (including counseling, physical recreational athletics, intramural and interscholastic athletics, transportation, health services, and clubs) must be offered in a way which allows equal opportunity for handicapped and exceptional children to participate in services and activities.

F. Nonacademic and extracurricular services, meals, and recess periods must be provided in the most integrated setting appropriate to the needs of the child.

G. Handicapped and exceptional children must be provided an equal opportunity for participation in physical education courses and interscholastic, club or intramural athletics sponsored by the school board.

H. Physical education services (including specially designed services when necessary) must be provided to handicapped children in the regular physical education program and may not be different from those provided other children, unless:

1. The child is enrolled full time in a separate facility or needs specially designed physical education (consistent with the description called for by Subpart 441 D14).

2. A separate physical education setting in the least restrictive environment.

3. No qualified handicapped person is denied opportunity to compete for teams or to participate in courses that are not different.

I. School boards which operate a preschool education or day care program or activity may not exclude handicapped or other exceptional persons and must take into account the need of these persons in determining the aids, benefits of services to be provided.

J. School boards which operate an adult education program or activity may not exclude handicapped or other exceptional persons and must take into account the need of these persons in determining the aids, benefits or services to be provided.

K. School boards are responsible for insuring that services provided children in residential facilities in which they are placed or in which placement is proposed conform, with respect to educational programs, to the requirements of this Regulation and standards issued by the Department with the approval of the State Board. School boards must also insure that such facilities conform to all applicable requirements established by DHHR and the State Department of Corrections.

L. School boards may provide special education services for children under three years of age who have serious handicapping conditions which, if untreated, could become greatly compounded by school age.

M. School boards must prepare a progress report related to the instructional objectives specified in the IEP for each exceptional child and must include it with, in, or in lieu of the parent report prepared by the school board for all elementary and secondary students.

N. School boards must, consistent with the requirements of the public school accountability and assessment program, regularly assess the proficiency and performance of exceptional children receiving services, the educational and cost effectiveness of instructional programs utilized, and the performance of public school personnel providing services under this Part.

§447 IEP revision and review of placement.

A. Consistent with the requirements of Subpart 442, the IEP must be reviewed and updated annually. The review and revision of the IEP must be completed no later than May 15 and reevaluation must be scheduled accordingly.

B. During the annual review, the description of current educational performance in the IEP must be updated and the overall educational needs, long-term educational goals, and related evaluation standards and procedures must be reassessed and appropriate modifications made. School boards are required to rewrite sections of the IEP only to the extent necessary to update or modify the plan.

C. The IEP must be revised on the basis of the annual review and with procedural safeguard requirements to propose the change in educational placement of each child:

1. Currently enrolled in a self-contained special classroom in a regular public school facility to placement in the regular classroom (with supportive aids and services);

2. Currently enrolled in a self-contained special classroom in a special day school facility to a self-contained special classroom in a regular public school facility or to a less restrictive environment;

3. Currently enrolled in Special School District Number 1 or an approved nonpublic school residential program to a self-contained special classroom in a special day school facility (with appropriate community based residential care) or to a less restrictive environment;

4. Currently assigned to any nonpublic day school to a public day school;

unless in the judgment (documented in writing) of the school board the child is virtually certain to be unable to function in the

less restrictive (or public) environment because of educational needs and personal characteristics; or the child's current IEP represents the most affirmative strategy appropriate to the needs of the child for educational development and has produced a marked increase in the acquisition and development of knowledge and educational skills.

D. The IEP shall be revised annually to shift the placement of children to schools nearer their home whenever required by the direct service requirements set forth in Subpart 444 of this Part.

§448 Discipline. A handicapped or other exceptional child may not be expelled or suspended from school or otherwise subjected to disciplinary treatment if the behavior for which action is being taken is related to the child's exceptionality. Where an exceptional child is so disruptive in the regular classroom or other alternative setting that the education of other students is impaired, the needs of the child cannot be met in that environment. Accordingly, continued placement would not be the least restrictive environment appropriate to the needs of the child and a review of the child's IEP and placement described in Subpart 447 of this Part must be undertaken.

§449 Summer program.

A. The individualized education program described in Subpart 441 of this Part shall provide for continuous (i.e., twelve-month) instruction (uninterrupted by the regular summer recess) whenever:

1. Continuous instruction is likely to be necessary in order to sustain with only minor regression current important educational skills and information retention;

2. Continuous instruction is likely to permit an exceptional child to more closely approximate over time the educational development of children who are not exceptional; or

3. Continuous instruction is necessary to provide maximum instructional continuity (at least six consecutive months of instruction where possible) for an exceptional child who is also a migrant child.

4. Residential placement is proposed for the child.

B. The extension of an IEP for a ten to twelve-month instructional program shall not result in any more restrictive change in placement on the continuum of alternative placements nor shall it constitute a basis for any deviation from any other educational placement requirement of Subpart 443 of this Part. However, the increased isolation of exceptional children which could result from the operation of an instructional program for exceptional children during a period of time when nonexceptional children are not attending school would not violate any requirements of this Regulation.

Services to Nonpublic School Children

§450 Exceptional children in approved nonpublic schools.

A. School boards who place an exceptional child in or refer an exceptional child to an approved nonpublic school program must provide the approved nonpublic school program whatever resources are necessary to provide the child and the child's parents with all of the rights, privileges, and services established by this Part. School boards remain fully and directly responsible for the complete compliance of the education program being provided with the requirements of this Part.

B. School boards are not responsible for providing basic instructional services to voluntarily enrolled nonpublic school children. School boards must operate a program of supplemental instructional services and related services which provides voluntarily enrolled nonpublic school children with general opportunities to participate in special education and related services, assisted or carried out under the EHA, designed to meet the needs of voluntarily enrolled nonpublic school children residing in the jurisdiction of the board, consistent with the number of those children and their needs.

1. Services provided by school boards must be designed to meet the special educational needs of exceptional children rather than the needs of the nonpublic school or its student body at large. The responsibility for providing basic appropriate instructional services for children rests with the approved nonpublic school program. These requirements must not serve to replace basic educational obligations owed by approved nonpublic school programs to their pupils but only to support and supplement existing good faith efforts in that regard.

2. School boards are required to determine on an aggregate basis the needs of voluntarily enrolled nonpublic school children for special education and related services in excess of those which would be met by an appropriate existing level of instruction. School boards must identify those children to whom services will be provided; and the types of special education and related services which will be provided on a basis comparable to that used in providing for the participation of exceptional children in public school.

3. An IEP must be developed and implemented for each voluntarily enrolled nonpublic school child who receives special education and related services from a school board. The IEP must meet the requirements of Subparts 441 and 442 of this Part. School boards are responsible for ensuring participation by representatives of the approved nonpublic school in IEP development on the same terms and conditions set forth for parent participation under Subpart 442 D of this Part. Any sustained failure or refusal by a nonpublic school to participate shall be reported to the Division immediately.

4. The type of services provided by school boards to voluntarily enrolled nonpublic school children may differ from those provided to public school children only if the services provided to voluntarily enrolled nonpublic school children are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance; and the differences in services (from those provided to public school children) are necessary to meet the needs of participating voluntarily enrolled nonpublic school children.

5. Services may be provided by school boards through arrangements such as dual enrollment; educational radio and television; mobile educational services and equipment. Services may be provided by public school personnel in nonpublic school facilities only to the extent necessary to provide such services effectively and only if the same services are not normally provided by the nonpublic school.

6. Services must be provided under the continuing administrative control and direction of the school board and, if provided in public school facilities, may not be provided in classes segregated on the basis of school enrollment or religious affiliation.

7. Services may be provided jointly with another school board where a nonpublic school enrolls children from both school systems and the nonpublic school is located in one of the school systems.

C. In connection with the provision of services under Subsection B of this Subpart, public funds may not be used to:

1. Pay the salaries of teachers or other employees of nonpublic schools except for services provided outside of their regular hours of duty and under public supervision and control.

2. Construct nonpublic school facilities.

3. Purchase equipment placed on nonpublic school premises for more than twenty operational days during any twelve month calendar period.

4. Purchase equipment the title to which or administrative control over which is exercised by the nonpublic school.

5. Finance the existing level of instruction in the nonpublic school.

6. Confer any benefit, directly or indirectly, upon the nonpublic school.

§451 Child identification. Each school board must ensure that each child who resides within the jurisdiction of the school board who is voluntarily enrolled in any nonpublic school program:

A. Is included in the child search conducted pursuant to Subpart 410 of this Part.

B. Is identified pursuant to Subparts 411-415 of this Part.

C. Receives all appropriate post-identification services established by Subparts 420-425 of this Part including where required by Subpart 430 A of this Part an individual evaluation which meets the requirements of Subparts 430-438 of this Part.

§452 Training of personnel for initial screening. Training must be provided by the Department to personnel of approved nonpublic schools who are responsible for implementing the initial screening process established by Subpart 423 of this Part.

§453-459 Reserved.

Accessibility

§460 Geographic Accessibility. Educational programs and services required in each IEP must be geographically accessible to a child. The educational placement must be made as close to the child's home as possible.

§461 Architectural barriers and program accessibility.

A. Facilities used by school boards, directly or through contractual arrangement, must be accessible to and usable by exceptional persons. Architectural barriers must not prevent an exceptional child from being educated in the least restrictive educational environment as defined in Subpart 443 of this Part.

B. New facilities or parts of facilities:

1. May not be approved for construction unless and until the Department and the State Board gives express written approval on the basis of a satisfactory showing by a school board that adequate provision has been made for the access needs of exceptional children.

2. Must be designed and constructed in a manner which results in their being readily accessible to and usable by exceptional persons.

3. Which are altered for the use of the school boards 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.

4. Must be constructed to at least meet the then current level of accessibility provided by the American National Standards Institute (ANSI) standards.

C. Program accessibility (i.e., where each program or activity, when viewed in its entirety, is readily accessible to handicapped persons) must be ensured in all existing facilities.

1. Program accessibility may be accomplished through the following methods: redesign of equipment; reassignment of classes or other services to accessible buildings; assignment of aides to children; home visits; delivery of health, welfare or other social services at alternate accessible sites; alteration of existing facilities; or other methods.

2. The method for accomplishing program accessibility which offers programs and activities to persons in the most integrated setting appropriate must be selected.

3. Structural changes in facilities do not need to be made where other methods effectively ensure program accessibility; must be made as expeditiously as possible and no later than June 3, 1980, and must be described in detail in a transition plan filed with the Office for Civil Reports, U.S. Department of Health, Education and Welfare.

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

§462 Provision of a free education.

A. The provision of a free education is the provision of educational and related services at public expense without cost to the person (or parents), except for those fees that are imposed on a nonhandicapped person, and may consist of the provision of free services or the payment of the costs of the program.

B. All educational services, room and board and nonmedical care must be provided at public expense for a person placed in or referred to an approved nonpublic school program, or placed in or referred to Special School District Number 1 or an approved nonpublic school residential program.

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

D. An independent educational evaluation must be provided at public expense if a parent disagrees with an individual evaluation conducted by the school board and the school board either fails to initiate or fails to prevail in a hearing to show that its evaluation is appropriate, or if an independent educational evaluation is requested by a hearing officer, the State Board or a court of competent jurisdiction pursuant to the provisions of Subparts 476-478 of this Part. If provided at public expense, the independent evaluation must be provided consistent with the requirements of Subparts 431-439 of this Part.

E. The costs of enrolling an exceptional child in an approved nonpublic school program may be borne from public funds only where the documented costs of enrollment and attendance at the nonpublic school or facility are less than the costs which would be incurred for the same services in a public school or publicly owned or operated facility.

§463 Transportation costs. Transportation must be provided in order to assure access of persons to services. School boards, Special School District Number 1 and cooperative programs must provide whatever transportation is necessary to implement a child's IEP. With respect to a child placed in or referred to a program not operated by the school board, any cost of providing transportation to such program which is in excess of the cost that would have been imposed on the child if the child were placed in the program operated by the school board must be assumed by the school board.

§464-469 Reserved.

Procedural Safeguards

§470 Full and effective notice. Full and effective notice is written notice which:

1. Contains a full explanation of all the procedural safeguards available to the parents including confidentiality requirements.
2. Describes the proposed (or refused) action, and explanation of the reasons for such action and a description of any options which were considered and rejected.
3. Describes each evaluation procedure, test, record or report used as a basis for the action and any other relevant factors.
4. Identifies the employee or employees of the school board who may be contacted.
5. Is written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless clearly infeasible.
6. Is also communicated orally (where necessary) in the native language or other mode of communication so that the parent understands the content of the notice.

§471 Formal parental approval.

A. Formal parental approval (or disapproval) is written approval (or disapproval) of a proposed action which is made by a parent who has been fully informed of all information relevant to the activity for which approval is sought, in his or her native language or other mode of communication; and understands

that the granting of approval is voluntary and may be revoked at any time.

B. Formal parental approval for the release of documents pursuant to the confidentiality requirements of Subpart 473 of this Part must also be made by a parent who understands and agrees in writing to the carrying out of the activity in a document which describes the activity and lists the records which will be released.

§472 Rights of exceptional children. Exceptional children (and their parents on their behalf) have the right to:

- A. Nondiscrimination on the basis of handicap.
- B. Be provided a free appropriate public education.
- C. Receive an independent educational evaluation:
 1. At public expense if the child, where appropriate, or the parent disagrees with an evaluation obtained by a public agency and the school board agrees with the parent, or if it is requested by a hearing officer.
 2. At private expense, if the parent disagrees and the school board does not agree with the parent, but is unsuccessful in a hearing proceeding brought by the school board (or Special School District Number 1), or if the parent acts on his or her own initiative.
- D. Have careful consideration given to the results of an independent evaluation by the school board (or Special School District Number 1) with respect to the provision of an appropriate free public education.

E. Inspect and review all relevant records with respect to the identification, evaluation, and placement of the child and the provision of an appropriate, free public education.

F. Initiate a hearing on any action for which notice is required but formal parental approval is not required.

G. An impartial hearing with opportunity for direct participation, representation by counsel, and other procedural rights.

H. Present complaints to the school board and/or the Department relating to identification, post-identification decisions, evaluation or educational placement, or to the provision of an appropriate free public education.

I. Remain, if already enrolled, in the current educational placement, pending final decision of the hearing and review process, unless the parents and agency agree otherwise.

J. If not enrolled, be placed, with the consent of the parents in the public school program operated by a school board until a final decision of the hearing and review process.

K. Have a surrogate parent assigned by the school board where appropriate.

L. Be provided, by the evaluation coordinator or designee, with a copy of the full written explanation and findings of the individual evaluation as soon as it is completed together with a full oral explanation (effectively communicated) of both the findings and the recommendations.

M. A personal consultation with a member of the multidisciplinary team.

N. Full and effective notice of proposed actions as provided in this Part.

O. Provide formal parental approval or disapproval as provided in this Part.

P. Be informed of any free or low-cost legal and other relevant services available if a hearing is initiated or upon request.

Q. Know the qualifications of the teacher or teachers to be assigned under any proposed educational placement.

§473 Confidentiality of information.

A. Each school board must permit parents to inspect and review any records directly relating to their children which are maintained by the school board or by a party acting for the school board.

B. School boards must comply with a parental request to inspect and review records without unnecessary delay and be-

fore any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than thirty operational days after the request has been made. The right to inspect and review educational records under this Subpart includes:

1. The right to a response from the school board to reasonable requests for explanations and interpretations of the records.

2. The right to request that the school board 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.

3. The right to have a representative of the parent (authorized in writing) inspect and review the records.

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

D. The school board must keep a record of parties obtaining access to education records (except access by parents and authorized employees of the board), including the name of the party, the date access took place, and the purpose of the authorized use.

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

F. The school board shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the board.

G. The school board may charge a fee for copies of records which 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.

H. A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child, may request the school board to amend the information. The school board must decide whether to amend the information as requested within a reasonable period of time of receipt of request. If the school board decides to refuse to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing. The hearing and review process must be available to parents seeking to amend information in the education records where the school board refused to make such amendments. The hearing must be provided in accordance with the requirements of 45 CFR 99.22.

I. Formal parental approval must be obtained before personally identifiable information is used for any purpose other than meeting a requirement under these regulations; or disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in this Regulation.

J. School boards must not release information from education records to participating agencies without formal parental approval unless the disclosure is consistent with all applicable federal statutes.

K. School boards must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One person designated by the school board must assume responsibility for insuring the confidentiality of any personally identifiable information; all persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures set forth in this Subpart. School boards must maintain, for public inspection, a current listing of the names and positions of the

employees who may have access to personally identifiable information.

L. School boards must inform parents when personally identifiable information collected, maintained, or used under this Part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended (including the annual IEP), grade level completed, and year completed may be maintained without time limitation.

M. Information contained in the IEP or individual evaluation must not be available to the public and must be available to the professionals in need of such information in connection with the responsibilities established by this Regulation consistent with the requirements of this Subpart and existing federal and state laws governing such information.

N. The provisions of this Subpart expressly extend to any records of other information collected or maintained by any agency, organization or person in connection with an individual evaluation.

§474 Surrogate parents.

A. Whenever a school board after repeated and reasonable efforts is unable to identify and locate a parent of an exceptional child, or of a child suspected to be an exceptional child, or whenever a child is a ward of a court, the school board must assign an individual to act as surrogate parent who may represent the child in all matters relating to the identification, individual evaluation, and educational placement of the child and the provision of an appropriate, free public education.

B. A method for determining whether a child needs a surrogate parent and for assigning a surrogate parent must be developed and implemented by each school board in a manner which insures that:

1. A person assigned as a surrogate parent has no interest that conflicts with the interests of the child, and is not a present or past employee of the school board involved in the education or care of the child.

2. The person assigned has knowledge and skills that insure adequate representation of the child.

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

§475 Conciliation. Whenever a school board refuses to conduct an individual evaluation requested by a parent, disagrees with a parent about the conclusions reached through an individual evaluation, refuses to make a placement or change of placement requested by a parent, or refuses to make changes in an IEP requested by a parent, the school board must make all reasonable efforts consistent with its obligations under this Part to resolve informally any ongoing disputes between the parent and the school board.

§476 Initiation of hearings.

A. Hearings may be initiated by the parent of an exceptional child or a child suspected of being an exceptional child, by sending a written request for hearing to the parish supervisor, if the parent disagrees with any action taken by a school board for which full and effective notice to parents is required by this Part. The parish supervisor must acknowledge receipt of the written request within three operational days of actual receipt.

B. Hearings may be initiated by a school board by providing full and effective notice to parents in any instance where, after reasonable efforts at conciliation (as defined in Subpart 475 of this Part), a parent either fails to provide a formal written approval of a proposed action, or provides a formal disapproval.

C. Whenever a hearing is initiated, full and effective notice of the initiation of the hearing must be provided to any affected public or nonpublic school personnel.

D. The written notice of hearing shall include a statement of the date, time, place and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes or regulations involved; and a short and plain statement of matters asserted.

§477 Hearing procedures.

A. A hearing must be conducted by the school board at a time and place which is reasonably convenient to the parents and the child involved.

B. Both parties to a hearing must have the right:

1. To respond and present evidence, confront, cross-examine, and compel the attendance of witnesses.

2. To obtain a written or electronic verbatim record of the hearing.

3. To obtain written findings of fact and decisions.

4. To appeal the decision of a hearing to the State Board and, thereafter to any court having jurisdiction.

5. To prohibit the introduction of any evidence at the hearing which has not been disclosed at least five operational days before the hearing.

6. If parents, to have the child present and/or to have the hearing open to the public.

C. The hearing decision must be reached (and a copy mailed to each party) not later than thirty operational days after the final appointment of a hearing officer unless a specific extension of time, requested by a party, is granted by the hearing officer for good cause shown. A decision made in the hearing is final unless an appeal is taken.

D. Any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of exceptional children.

E. Affected school personnel shall have the right to submit a written statement, appear at the hearing and present a brief oral statement.

§478 Hearing officers.

A. A proposed hearing officer must be selected by the parish supervisor within one operational day of receipt of a request for a hearing, from a list, established and maintained by the Department pursuant to Subpart 240 of this Part, for the region in which the school system is located or for an adjacent region.

B. After selecting a proposed hearing officer, the parish supervisor must, within three operational days, give the parent(s) full and effective notice of the name of the proposed hearing officer.

C. The parent may upon receiving notice of the proposed hearing officer and at the parent's discretion, automatically disqualify the person proposed by the parish supervisor or request that staff of the Division determine that the person so designated is not impartial. The parent must notify the parish supervisor of such a decision within five operational days from receiving notice of the name of the proposed hearing officer.

D. If the parent chooses to automatically disqualify the proposed hearing officer either directly or following a decision by staff of the Division, the parish supervisor must within three operational days designate another person from the relevant lists to serve as a hearing officer. The person so designated shall serve in the capacity unless the parent successfully demonstrates to staff of the Division that the person so designated is not impartial, whereupon the parish supervisor must designate another person from the relevant lists.

E. Final appointment of a hearing officer occurs whenever a proposed hearing officer is selected by the parish supervisor and the parent fails to notify the parish supervisor of a decision to challenge the impartiality of the proposed hearing officer or of a

decision to automatically disqualify the proposed hearing officer (available only once), or when the Division pursuant to Subpart 360 of this Regulation determines that no doubt exists as to the impartiality of a proposed hearing officer.

§479 Costs. School boards must, upon request, reimburse any affected public school employee for the reasonable mileage and other actual expenses incurred by the employee, including the cost of legal counsel, which are reasonably related to participation in a hearing required under this Part.

Employment

§480 Reserved.

§481 Appointment of supervisor of special education. Each school board must employ a supervisor of special education on a full or part-time basis no later than the effective date of this Regulation.

§482 In-Service training. Each school board must participate fully in the preparation and implementation of the state comprehensive personnel plan. In this regard, each board must provide continuous in-service training to staff identifying, evaluating, and placing exceptional children, and/or providing special education and related services to exceptional children. In-service training must be coordinated with any plan required under the public school accountability and assessment program for employees.

§483-484 Reserved.

§485 Nondiscrimination in employment. Each school board must comply with all of the requirements governing nondiscrimination in employment set forth in Subpart 290 of this Regulation.

§486 Affirmative action.

A. Each school board must submit to the Department a plan to take affirmative action with respect to multidisciplinary evaluation teams to employ and advance in employment minority, female and qualified handicapped employees and potential employees.

B. Affirmative action efforts must occur at all levels of employment and must apply to all employment practices including, but not limited to hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

C. All personnel process must be reviewed to determine whether:

1. The present procedures assure careful, thorough and systematic consideration of the job qualifications of minority, female, and known handicapped applicants, and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. To the extent necessary, a description of how personnel procedures must be modified must be included in the affirmative action program.

2. Their personnel programs provide the required affirmative action for employment and advancement of minority, female, and qualified handicapped individuals.

D. Based upon the findings of the reviews described in Subsection C of this Subpart appropriate outreach and positive recruitment activities, must be undertaken consistent with size and resources of the employer and the extent to which existing employment practices are adequate.

E. The Department must, no later than thirty calendar days after the effective date of the Regulation, distribute an approved format or formats for use in preparing the affirmative action plan required by this Subpart.

§487 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.

B. Each teacher providing instruction in a resource room shall be afforded one instructional period per day for preparation and consultation.

§488 Master plan. Each school board shall submit any information required by the Department (including a local master plan developed consistent with the standards established by the Department) pursuant to Subpart 298 of this Regulation no later than August 31, 1979. The preparation and submission of any local master plans shall be done in conformance with the requirements of Subpart 330 A 5-13 of this Regulation.

§489 Reserved.

Administrative Matters

§490 Self-evaluation. Each school board must complete a comprehensive self-evaluation on or before the first anniversary of the effective date of this Regulation. In order to carry out such a comprehensive self-evaluation, each school board must, with the direct involvement of interested persons and organizations, including exceptional persons or organizations representing exceptional persons:

A. Evaluate its current policies and practices and the effects thereof on handicapped persons.

B. Modify any policies and practices that are unlawful under this Regulation or under applicable federal regulations.

C. Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from past adherence to these policies and practices.

D. Maintain on file for three years following the completion of the self-evaluation, available for public inspection, a list of interested persons consulted, a description of areas examined and any problems identified, and a description of any modifications made and any remedial steps taken.

E. Solicit assistance from other state and parish agencies providing assistance to exceptional children.

§491. Transfer of funds.

A. A school board may receive P.L. 89-313 funds to serve a handicapped child if the handicapped child left an educational program in Special School District Number 1 in order to participate in a program operated or supported by the school board; the child continues to receive an appropriately designed educational program; and the Department approves the transfer of funds generated by the child under this Part to the school board.

B. If a handicapped child counted under this Subpart ceases to be enrolled in the school district, the school board shall notify the Department and the Department shall require that the school board either retain the P.L. 89-313 funds generated by that child, to be used for other handicapped children enrolled in the district; or return all or a portion of the P.L. 89-313 funds to Special School District Number 1.

C. If all handicapped children counted under this Subpart cease to be enrolled in the school district, no P.L. 89-313 funds shall be transferred to the school board.

§492 Assurance of compliance. In connection with each annual application for state and federal financial assistance, each school board must sign a written assurance that the pre-school, elementary, and secondary program operated by the board is currently in compliance and will, in the future, be operated in compliance with this Regulation and any applicable federal regulations.

§493 Annual application.

A. On or before June 1 of each year, each school board must submit an application for special education funds to the Division which sets forth a request for all State and State-administered federal funds sought by the school board to provide an appropriate, free public education and all necessary special education and related services to exceptional children enrolled in the school system or within the jurisdiction of the school board for each of the next three school years.

B. The annual application must be submitted on forms issued by the Department with State Board approval, and must contain any request which the school board intends to make for funds under any of the designed state and federal categories.

C. The annual application must be approved by the school board before submission to the Division.

D. The annual application must include:

1. A description of procedures used to insure that all children residing within the jurisdiction of the school board who are exceptional and in need of special education and related services are identified, located, and evaluated.

2. A description of the practical method used by school boards to determine which exceptional children in need of special education are, and are not, currently receiving needed services.

3. School board policies and procedures which insure that confidentiality requirements are met.

4. A stated goal of providing full educational opportunity to all exceptional children aged birth through twenty-one, with a detailed timetable of the kind and number of facilities, personnel, and services necessary to meet the goal and procedures for participation by, and consultation with, parents or guardians of exceptional children.

5. A description of procedures for the implementation and use of the comprehensive system of personnel development.

6. A description of procedures to ensure that exceptional children are placed in the least restrictive environment.

7. A description of the types of alternative placements available to exceptional children and the number of exceptional children within each category who are served in each type of placement.

8. Procedures to ensure that each IEP is developed and implemented.

9. A description of how each type of funds will be used.

10. A description of the kind and number of facilities, personnel, and services necessary to meet the goal of full educational opportunity.

11. The written report prepared by the local advisory council established pursuant to Subpart 496 of this Regulation.

12. Assurances that:

a. EHA funds will be used only for excess costs and to supplement and not supplant state and local funds.

b. Services comparable to those provided other exceptional children will be provided from state and local funds to children receiving EHA funds.

c. Information will be furnished to the Department which is necessary to enable the Department to carry out its responsibilities.

d. Required records will be maintained and made available.

e. Local policies will be consistent with federal and state laws.

f. The procedural safeguards established by this Regulation will be implemented.

g. The school board will comply with this Regulation and Section 504.

h. The annual application and all documents related to it have been and are available to parents and the general public.

i. All required evaluations and reports will be made available to the public.

E. The procedures set forth in Subpart 330A of this Regulation relating to public involvement in the preparation of the state annual program plan are applicable to school boards in the development and submission of the annual application, except

that requirements addressed to statewide activity shall for the purposes of this Subpart be limited to identical actions taken within the geographic boundaries of the school system.

F. A list of the organizations to which a distribution of the application is made pursuant to E above must accompany the application.

G. Data and information required in the annual application must be used by the Department as the uniform data base in the development of the personnel development and manpower training plans required by this Regulation.

§494 Consolidated applications.

A. Two or more school boards may submit a consolidated annual application, with the approval of the Department, if each demonstrates that it is unable to establish and maintain a program of sufficient size and scope to effectively meet the educational needs of exceptional children.

B. School boards seeking approval to submit a consolidated application must prepare and file a written request for approval with the Department no later than March 1 of that year. The request must include the information set forth in Subpart 343 of this Regulation and a certification that the public involvement requirements set forth in Subpart 493 E of this Part have been met prior to the request.

C. The request for Department approval must be signed by the Superintendent of each school system in the proposed consolidation and must be formally approved by the school board of each.

D. School boards participating in a consolidated application will be jointly responsible for implementing a program of appropriate, free public education in the participating school systems and the noncompliance of one participating school board with the requirements of these regulations shall constitute the noncompliance of all.

E. The consolidated application must designate one of the school boards as the designated fiscal agent for the application.

§495 Annual reports.

A. An annual report must be prepared by each school board and filed by August 15 of each year with the Department.

B. The annual report must be prepared on a form issued by the Department with the approval of the State Board and shall require the reporting of pupil enrollment and employment data by race, sex, age, and physical or mental handicap.

§496 Local advisory council.

A. Each local advisory council must consist of no more than twenty persons who are appointed on or before the effective date of this Regulation as follows:

1. A specified number of members must be selected by the school board from a list of persons compiled by the school board from nominations of no more than two persons made by each of the organizations which pursuant to Subpart 493 E of this Part have registered with the school board.

2. The remaining number must be appointed by the board directly.

3. In selecting persons from the list compiled in 1 above, the board must ensure that the group includes at least one person who is a handicapped person; a parent of an exceptional child; a parent of a child who is not exceptional; a representative of a parent organization; and a representative of a college or university.

4. In the direct appointment of the remaining persons, the board must ensure that the group as a whole includes at least one person who is a special education teacher; a regular classroom teacher; an official of the school board; a special education program administrator; and a representative of vocational-technical schools.

B. The local advisory council must provide general advice and assistance to school districts. Specifically, each council must

review and comment in writing on each annual application before its approval by the school board; and generally assess the current compliance of the school system with the requirements of this Regulation.

C. Upon a formal request by the majority of the members of any local advisory council, the Division must conduct a public hearing in the parish within twenty operational days of the request to investigate any alleged noncompliance with this Regulation.

D. One third of the members of the advisory council shall serve initially for a term of one year, one third of the members shall serve initially for a term of two years, and one third shall serve initially for a term of three years.

E. Upon the expiration of any term of office of a member of the advisory council, a reappointment or new appointment of a person eligible in the same manner as the person being replaced shall be made for a three year term.

F. The Division must provide all legal and special education related training and consultation requested by the local advisory council in order to assist the council in carrying out its responsibilities under Subsection B of this Subpart.

§497 Use of funds.

A. A school board may only use EHA funds for the excess costs of providing special education and related services for handicapped children. Costs must be directly attributable to the education of a handicapped child. EHA funds received must not be commingled with state funds.

B. To meet the excess cost requirements set forth in Subsection A of this Subpart each school board must on the average, have spent at least the minimum average amount of state and local money for the education of its handicapped children during a given year.

1. The minimum average amount must be computed separately for elementary and secondary school students and is calculated as follows:

a. Total all expenditures for the preceding school year, except capital outlay and debt service.

b. Subtract from this total, amounts spent during this year from federal funds received under EHA, and Titles I and VII of the Elementary and Secondary Education Act of 1965 (ESEA); from state, local and other federal funds for programs for handicapped children; for educationally disadvantaged children; and for bilingual education.

c. Divide the amount remaining after subtraction by the average number of pupils enrolled during the year.

2. The minimum average amount if two or more school boards submit a consolidated application, is the average of the combined minimum average amounts determined in those agencies for either elementary or secondary school students.

3. EHA funds may be used to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eighteen, nineteen, twenty, or twenty-one, if no local or state funds are available for the education of nonhandicapped children in that age range.

C. School boards may not replace state and local funds with EHA funds, on either an aggregate basis or for a given expenditure.

1. To determine that the "aggregate basis" requirement is met school boards 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 handicapped children 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 handicapped children in the most recent preceding fiscal year for which the information is available. Allowance

may be made for decreases in enrollment of handicapped children; and unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of school facilities.

2. To determine that the "given expenditure" requirement is met, school boards must be able to demonstrate that EHA funds have not been used to replace state or local funds for any particular cost.

D. School boards must use state and local funds to provide services to handicapped children receiving EHA funds which, taken as a whole, are at least comparable to services provided to other handicapped children.

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

F. Consistent with the requirements of this regulation, a school board may enter into a purchase of services agreement with any other public or nonpublic school, agency, or institution to provide appropriate free public education to exceptional children in need of special education and related services; provided that any such school, agency or institution from which services are purchased meets standards approved by the Department. In purchasing such services, a school board is authorized to negotiate a contract for special education and related services and to pay tuition or other costs not to exceed the average gross costs per educable child in the school system plus the pro rata part of the state allotment for serving pupils requiring special education and related services. The time of payment shall be determined by contract. Regardless of the terms and conditions of the contract, the school board remains fully responsible for the provision of an appropriate free public education and all related services and rights. The Department is responsible for providing whatever additional amount of funds is required to implement the IEP.

G. Facilities which are identifiable as being for exceptional children 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 children.

H. A school board which received P.L. 89-313 funds shall use those funds to supplement the appropriately designed education for handicapped children which the school board provides. A school board may enter into contract with other agencies, schools, intermediate school districts or the Department to carry out the activities of the P.L. 89-313 program but must administer and supervise all activities and may not provide all P.L. 89-313 services through contract.

§498 Grievance procedures. Each school board must extend grievance procedures now in effect pursuant to the regulation issued by the U. S. Department of Health, Education and Welfare implementing Title IX of the Education Amendments of 1972 (45 CFR 86.8) to include the grievance of handicapped employees.

§499 Interagency coordination.

A. Each school board 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 children.

B. Each school board shall enter into cooperative agreements and must coordinate activities with other public and publicly funded agencies to the extent necessary to comply with all provisions of this Regulation and to provide the best possible overall program of services to exceptional children. Such agreements shall be consistent with any interagency agreement entered into by the Department.

C. Each school board must develop whatever cooperative agreements are necessary to ensure that funds received by any public agency under programs for which there is specific author-

ity for assistance for the education of exceptional children will be used in a manner consistent with the goal of providing an appropriate free education for all exceptional children. Funds available to provide identification, screening, evaluation and related services under various federal programs (e.g., Title V, XIX, and XX of the Social Security Act; the Vocational Education Act of 1963; the Rehabilitation Act of 1973) operated by other agencies should be used to the greatest extent possible to improve the delivery of special education and related services to exceptional children.

Part 500

Establishment and Operation of Special School District Number 1

§501 Establishment of special school district. Special School District Number 1 is established as an intermediate educational unit administered by and under the general supervision of the Department. Special School District Number 1 is not a regional or state center within the meaning of 45 CFR 121a. 360 (a) (5).

§502 Composition. Special School District Number 1 shall consist of all educational programs enrolling exceptional children between the ages of three and twenty-two which are provided within or for residential facilities operated by the State of Louisiana and all facilities operated under the supervision and control of the State Board.

§503-519 Reserved.

§520 Office of Special Schools. The responsibility for administering Special School District Number 1 shall be assigned to the Office of Special Schools, Division of Special Educational Services of the Department.

§521 Director, Office of Special Schools.

A. The State Superintendent shall appoint a Director, Office of Special Schools ("the Director") who shall serve as the chief administrative officer of the district.

B. The Director shall be under the supervision of the Assistant Superintendent for Special Educational Services.

§522 State agency coordinator.

A. The Director shall appoint a coordinator for each state agency which participates directly in the operation of residential programs for exceptional children (e.g., DHHR; State Department of Corrections).

B. The appointment of an agency coordinator must be concurred in by the Secretary (or other chief administrative official) of each state agency involved.

C. Each agency coordinator shall be responsible for:

1. Assisting school boards seeking to identify appropriate and available community-based residential services (i.e., in-home services and support, and home substitute services) in connection with the development of a proposed IEP including the individual placement recommendation.

2. Supervising and monitoring the educational component of all residential programs (public and private) within Special School District Number 1 or receiving financial assistance from the District and generally carrying out all responsibilities assigned by Part 400 of this Regulation to the school board or designee (e.g., parish supervisor).

D. The agency coordinator shall be an employee of the Office of Special Schools. The coordinator shall be physically located within the jointly involved state agency and shall report both to the Director and to the Secretary (or other appropriate chief administrative officer) of such other state agency. Each coordinator shall be provided with a professional staff of from two to five professional staff persons in the employ of the Department and with administrative expenses.

§523-529 Reserved.

§530 General responsibilities. Whenever an exceptional child is enrolled in Special School District Number 1 consistent with the

requirements of Subpart 605 of this Regulation, Special School District Number 1 shall assume full responsibility for the financial support (either by providing funds directly or by arrangement with another service provider or entitlement program) necessary to provide all needed special education and related services to each exceptional child.

§531-549 Reserved.

§550 Financing.

A. The Department shall by interagency agreement with DHHR and the State Department of Corrections provide necessary financial support for the purchase of services from approved nonpublic residential schools. The Department shall provide whatever financial resources are necessary to support the educational program of Special School District Number 1. The Department, DHHR, and the State Department of Corrections shall by interagency agreement provide for the overall financial support of a program of noninstructional services to children enrolled in Special School District Number 1.

B. Each school board shall pay to Special School District Number 1 before the beginning of each school year in which an exceptional child who is resident within the jurisdiction of the board and is enrolled in Special School District Number 1, an amount equal to the local board contribution to the education of its exceptional children in the second fiscal year prior to the current year.

C. Services provided to exceptional children enrolled in Special School District Number 1 from sources other than school boards or the Department are presumed to be for related services (including those described in the IEP) and treatment aspects of the total residential care program of the facility in which the education program is conducted.

§551-569 Reserved.

§570 Cooperation with city and parish school boards. Special School District Number 1 shall sufficiently cooperate with each school board which is jointly responsible for an exceptional child enrolled in the district to permit the school board to carry out its ongoing responsibilities with respect to child search, individual evaluation, IEP development, IEP implementation, placement, IEP (and placement) review, accountability, fiscal auditing, self-evaluation, procedural safeguards, in-service training and staff development, annual applications and reports, and other administrative matters.

§571-579 Reserved.

§580 Annual application.

A. On or before June 1 of each year, the Director must submit an application for special education funds to the Division which sets forth a request for all state and state-administered federal funds sought by Special School District Number 1 to provide an appropriate, free public education and all necessary special education and related services to exceptional children enrolled in Special School District Number 1 for each of the next three years.

B. The annual application must be submitted on forms issued by the Department with State Board approval, and must contain any request which the Director intends to make for funds under any of the designated state and federal categories.

C. The annual application must include:

1. A description of procedures used to insure that all children enrolled in Special School District Number 1 are properly identified and evaluated.

2. A description of the practical method used to determine which exceptional children in need of special education are, and are not, currently receiving needed services.

3. Policies and procedures which insure that confidentiality requirements are met.

4. A stated goal of providing full educational opportunity to all exceptional children, aged birth through twenty-one,

with a detailed timetable of the kind and number of facilities, personnel, and services necessary to meet the goal and procedures for participation by, and consultation with, parents or guardians of exceptional children.

5. A description of procedures for the implementation and use of the comprehensive system of personnel development.

6. A description of procedures to ensure that exceptional children are placed in the least restrictive environment.

7. A description of the types of alternative placements available to exceptional children and the number of exceptional children within each category who are served in each type of placement.

8. Procedures to ensure that each IEP is developed and implemented.

9. A description of how each type of funds will be used.

10. A description of the kind and number of facilities, personnel and services necessary to meet the goal of full educational opportunity.

11. Assurances that:

a. EHA funds will be used only for excess costs and to supplement and not supplant state and local funds.

b. Services comparable to those provided other exceptional children will be provided from state and local funds to children receiving EHA funds.

c. Information will be furnished to the Department which is necessary to enable the Department to carry out its responsibilities.

d. Required records will be maintained and made available.

e. Policies will be consistent with federal and state laws.

f. The procedural safeguards established by this Regulation will be implemented.

g. The Director will comply with this Regulation and Section 504.

h. The annual application and all documents related to it have been and are available to parents and the general public.

i. All required evaluations and reports will be made available to the public.

D. The procedures set forth in Subpart 330 A of this Regulation relating to public involvement in the preparation of the state annual program plan are applicable to Special School District Number 1 in the development and evaluation of the annual application.

E. A list of the organizations to which distribution of the application is made pursuant to Subsection D of this Subpart must accompany the application.

F. Parents of children to be served with P.L. 89-313 funds shall have an opportunity to participate in the development of the annual application.

G. Data and information required in the annual application must be used by the Department as the uniform data base in the development of the personnel development and manpower training plans required by this Regulation.

H. If a handicapped child is receiving a free public education from more than one state agency, the state agency which is primarily responsible for the child's education (as determined by the Department) shall be the only agency to count the child in the application for P.L. 89-313 funds.

§581-584 Reserved.

§585 Use of funds.

A. The entire amount of P. L. 89-313 funds generated by a child need not be spent on that child, as long as some of the funds are used to meet his or her individual special education needs. The remaining funds may be spent on other handicapped children who are enrolled in the Special School District

Number 1 school where the child is located and who were not counted in computing the grant of P.L. 89-313 funds.

B. P.L. 89-313 funds may not be used by a school to pay for its entire educational program for handicapped children.

C. A school may not use P.L. 89-313 funds for the payment of tuition or fees.

§586-589 Reserved.

§590 Double counting.

A. A handicapped child who is counted in average daily attendance for the purpose of computing a grant under the Program for Neglected or Delinquent Children (45 CFR 116c) may not be counted for the purpose of computing P.L. 89-313 funds.

B. A handicapped child who is counted for the purpose of computing a grant under the EHA may not be counted in computing a grant under P.L. 89-313.

§591-599 Reserved.

Part 600. Responsibilities of Special School District Number 1 and Nonpublic School Residential Programs

§601 Applicability. This part is applicable to Special School District Number 1, and to every approved nonpublic school program in the State of Louisiana which provides residential as well as educational services and which enrolls one or more exceptional children who have been placed in the program by Special School District Number 1; enrolls one or more exceptional children who have been placed in the program by a court of the State of Louisiana; or currently receives state education funds.

§602-604 Reserved.

§605 Enrollment.

A. Special School District Number 1 shall enroll and provide services to all exceptional children within the state, irrespective of their place of residence (1) who currently reside in a residential facility operated by the State of Louisiana; or (2) for whom a residential placement has been proposed by a school board consistent with the least restrictive environment requirements of Subpart 443 of this Regulation and a final placement decision has been reached pursuant to Subparts 445 and 446 A of this Regulation; or (3) who have been placed in a residential facility operated by the State of Louisiana by order of a court of the State of Louisiana.

B. If after following the procedure set forth in §443 H of this Regulation, and consistent with the requirements of §445 and 446 A, a school board refers a child to the Director of Special School District Number 1, the child shall be admitted and enrolled in Special School District Number 1 within five operational days of receipt by the District of a written notice of referral and a copy of the child's IEP.

§606 Emergency and respite care programs. The admission of an exceptional child by a residential facility operated by the State of Louisiana for a temporary program of respite care shall not constitute enrollment in Special School District Number 1 for purposes of this Regulation. The admission of a student on an emergency basis shall not constitute enrollment in Special School District Number 1. However, if such admission continues on a nonemergency basis after a decision by a court of the State of Louisiana to place the child in a state operated residential facility (or because of a referral by the local school board to the Director of Special School District Number 1), then the child must be admitted and enrolled in Special School District Number 1.

§607-609 Reserved.

§610 Joint responsibility.

A. Special School District Number 1 must, upon admitting or enrolling an exceptional child, assume a joint responsibility with the appropriate school board for providing each child an appropriate, free, public education in full compliance with all provisions of Part 400 of this Regulation, including those related to

child search, evaluation, IEP development and implementation, and placement of exceptional children; the provision of special education and related services; adherence to procedural safeguards; and the provision of all necessary care (medical and nonmedical) and residential services and the certification of staff.

B. School boards shall be provided by Special School District Number 1 and approved nonpublic residential school programs with whatever information is necessary to allow them to carry out their responsibilities under this Part and Part 400 of this Regulation with respect to annual applications, annual reports, self-evaluation, individual evaluations, placement, procedural safeguards, and other required activities.

§611-614 Reserved.

§615 Post-enrollment responsibilities.

A. Within three operational days after admission and enrollment in Special School District Number 1 the Director shall assign responsibility under this Part to the appropriate agency coordinator.

B. Special School District Number 1 must ensure that an individual evaluation is conducted (or accept an evaluation consistent with the requirements of Subpart 433E of this Regulation) and must develop and implement an IEP within sixty operational days, consistent with the requirements of Subparts 430-447 of this Regulation for each exceptional child enrolled therein who is placed in the district (or facility) by a state court without the benefit of an individual evaluation which meets the requirements of Part 400 of this Regulation or is enrolled in the district on the effective date of this Regulation and has not received an individual evaluation or an IEP which meets the requirements of Part 400.

C. For exceptional children enrolled in Special School District Number 1 for whom an IEP which meets the requirements of Part 400 has been developed either at the time of enrollment or pursuant to A above, the designated agency coordinator shall, no later than twenty days after the assignment of the referral, hold a meeting among the child's parents; a person designated by the school board pursuant to Subpart 620 B of this Part; the agency coordinator; and officials of the jointly involved state agency knowledgeable about the programs provided by both public and nonpublic residential programs to discuss the appropriate placement for the child and any needed revision to the child's IEP.

D. No later than five operational days following the meeting held in Subsection C of this Subpart, the agency coordinator, with the approval of the Director, must recommend to the Secretary (or other chief administrative official) of the jointly involved state agency, the placement of the child either in a state residential facility (with a Special School District Number 1 operated education component) or in an approved nonpublic residential program consistent with the requirements of Subpart 443 D of this Regulation. Before recommending placement in an approved nonpublic residential program, the agency coordinator must have determined that an appropriate and adequate program of education and treatment for the child cannot (even with reasonable modifications to existing facilities and programs) be provided in a residential facility operated by the State of Louisiana and/or in an educational program operated by Special School District Number 1. The evaluation coordinator shall attach to the placement recommendation a copy of the child's IEP with any proposed changes.

E. The Secretary shall, upon approval of the placement recommendation submitted by the agency coordinator pursuant to D above, follow the procedures outlined in Subpart 445 to obtain formal parent approval. No later than twenty operational days after the approval has been received (or the override procedure has been successful), the secretary shall place the child in a state operated residential facility (with a Special School

District Number 1 operated education component) or in an approved nonpublic residential program.

F. The person designated by the school board pursuant to Subpart 620 B of this Part shall participate actively in all meetings and discussions held with respect to the matters described in Subsections A and B of this Subpart, and must sign the proposed IEP (including the proposed educational placement).

G. Placement in a public or nonpublic residential facility does not require that all educational services described in the IEP of the child must be provided within the facility. Wherever possible, consistent with the least restrictive environment standard, children enrolled in Special School District Number 1 operated programs or placed in approved nonpublic school programs must participate in educational programs operated by school boards serving the geographic attendance area in which the facility is located.

H. The procedures set forth in Subpart 442 D of this Regulation shall be followed with respect to the attendance of parents and the placement meeting described in Subsection C of this Subpart.

§616 Temporary homebound instruction.

A. If, after complying with the procedures of Subpart 615 of this Part, the agency coordinator is unable to identify a residential care facility operated by the State of Louisiana or by an approved nonpublic residential program in which appropriate placement of the child can be made immediately, the agency coordinator with the approval of the Director may enter into an agreement with a school board to provide homebound instruction to the child pending the admission of the child to an appropriate residential care facility.

B. The temporary homebound instruction described in Subsection A of this Subpart may be provided for a period not to exceed sixty operational days and may not be renewed. The school board shall be fully reimbursed by the Department for the cost of providing such temporary homebound instruction.

§617-619 Reserved.

§620 Operation of multidisciplinary team.

A. Special School District Number 1, in carrying out the individual evaluation (and reevaluation) of exceptional children enrolled therein, must in addition to the requirements set forth in Subparts 430-438 of this Regulation include on any multidisciplinary team formed to evaluate an exceptional child, an academic teacher familiar with the needs of the child; and promptly inform the jointly responsible school board with respect to the results of the individual evaluation or reevaluation.

B. Persons designated by the school boards pursuant to Subsection A of this Subpart must be generally knowledgeable about the evaluation of exceptional children and knowledgeable about the alternative education settings available for placement within the parish or through local cooperative programs.

§621-629 Reserved.

§630 Financial arrangements. The cost of special education teachers, teacher aides, principals, speech therapists and other instructional and support staff for the education programs operated by Special School District Number 1 shall be included in the State Equalization Fund Minimum Foundation Program for Public Education. The Office of Special Schools and Special School District Number 1 may from time to time enter into contracts for the delivery of educational services with school boards in whose jurisdiction residential facilities are located. School boards must participate in such contractual arrangements unless the State Board approves the request by a school board to withdraw.

§631-634 Reserved.

§635 Revision of IEP and review of placement.

A. Special School District Number 1 must, in concert with the jointly responsible school board and approved nonpublic school

residential program, annually review and update the IEP and reevaluate the child's educational placement consistent with the requirements of Subpart 447 of this Regulation.

B. The IEP must be revised on the basis of the annual review and consistent with procedural safeguard requirements to propose the change in educational placement of each child:

1. Currently enrolled in a self-contained program in a residential facility to a regular or self-contained educational program (with continued residential placement) operated by the school system for the geographic area in which the residential facility is located.

2. Currently admitted to a residential facility and enrolled in a regular or self-contained program operated by the geographically proximate school board to a self-contained special classroom in a special day school facility (with appropriate community-based residential care) operated by the school system in which the parents of the child reside.

3. Currently enrolled in an approved nonpublic school residential program to a state-operated residential facility (and direct educational program operated by Special School District Number 1).

Unless in the judgment of the agency coordinator:

1. The child is virtually certain to be unable to function in the less restrictive (or public) environment because of educational needs and personal characteristics.

2. The child's current IEP represents the most affirmative strategy appropriate to the needs of the child for educational development and has produced a marked increase in the acquisition and development of knowledge and educational skills.

§636 Reserved.

§637 Direct Services.

A. If on the effective date of this Regulation or during any twelve calendar month period thereafter, and consistent with the requirements of Subpart 635 of this Part, Special School District Number 1 places (or continues the placement of) twenty or more exceptional children with similar treatment and education needs in approved nonpublic school programs, then the Secretary of DHHR shall recommend to the State Legislature either that existing state operated residential facility be expanded or that a new state operated residential facility be opened to provide education and treatment services to all children with such treatment and education needs.

B. The Department shall bear the costs of expanding existing facilities or opening a new facility if the only reason for residential placement is the low incidence of an exceptionality or specific type of disability and the concomitant need for a minimum program population rather than the need for treatment, care, or habitation. DHHR shall assume responsibility for such costs if the reason for residential placement includes the need for treatment, care or habitation independent of the educational need of the child (and any ancillary residential requirement).

§638-639 Reserved.

§640 Procedural Safeguards. In addition to the procedural safeguards provided by Subparts 641-647 of this Part, parents of exceptional children enrolled in Special School District Number 1 and approved nonpublic residential school programs to which this Part applies are provided the procedural safeguards of Subparts 470-474 and 477 of this Regulation.

§641 Conciliation. Whenever a parent disagrees with any action taken by Special School District Number 1 (or the approved nonpublic residential school program in which the child was placed), officials of Special School District Number 1 (or the administrators of the approved nonpublic residential school program) must make all reasonable efforts consistent with its obligations under this Part to resolve informally any ongoing disputes

with the parent concerning any of the matters addressed by this Regulation.

§642 Request for a hearing. Parents of an exceptional child or a child suspected of being an exceptional child who disagree with any action taken by Special School District Number 1 or the approved nonpublic residential school program in which the child was placed for which full and effective notice to parents is required by this Part and for which formal parental approval is not required, may request a hearing by sending a written request to the appropriate agency coordinator.

§643 Initiation of hearings.

A. If, within ten operational days of the receipt of the request, the agency coordinator is unable to resolve the dispute to the satisfaction of the parent, the hearing must be initiated in the manner provided in Subpart 476 C of this Regulation.

B. The agency coordinator, with the approval of the Director, may initiate a hearing in the manner provided in Subpart 476 B of this Regulation.

§644 Responsible parties. The Director, the Secretary (or other chief administrative officer) and, where appropriate, the administrator of an approved nonpublic residential school program shall be the responsible parties against whom a hearing is initiated pursuant to Subpart 643 of this Part.

§645 Hearing procedures. The hearing initiated pursuant to Subpart 643 of this Part shall be conducted as outlined in Subpart 476 C-477 of this Regulation.

§646 Hearing officers.

A. A proposed hearing officer must be selected by the agency coordinator within five operational days of the initiation of the hearing, from a list established and maintained by the Department pursuant to Subpart 240 of this Regulation, for the region in which the parents of the child reside or for an adjacent region.

B. After selecting a proposed hearing officer, the agency coordinator must, within three operational days, give the parent(s) full and effective notice of the name of the proposed hearing officer.

C. The parent may, upon receiving notice of the proposed hearing officer, and at the parent's discretion, automatically disqualify the person proposed by the agency coordinator. The parent must notify the agency coordinator of such a decision within five operational days from receiving notice of the name of the proposed hearing officer.

D. If a parent chooses to automatically disqualify the proposed hearing officer, the agency coordinator must within three operational days designate another person from the relevant list to serve as a hearing officer. The person so designated shall serve in the capacity unless the parent successfully demonstrates to staff of the Division that the person so designated is not impartial, whereupon the agency coordinator must designate another person from the relevant lists.

§647 Costs. Special School District Number 1 must, upon request, reimburse any affected public school employee for the reasonable mileage or other actual expenses incurred by the employee, including the cost of legal counsel, which are reasonably related to participation in a hearing required under this Part.

§648-649 Reserved.

§650 Conformance to DHHR standards. Each residential facility in which educational services are provided consistent with this Part must meet the current requirements for the design, maintenance, and operation of residential facilities and for the qualifications of noninstructional staff established by DHHR.

§651-654 Reserved.

§655 Certification of staff. Persons employed by Special School District Number 1 must meet the certification requirements set forth in Subpart 295 of this Regulation unless a transitional training program has been approved for the individual employee

no later than forty-five days from the effective date of this Regulation.

§656 Transitional training program.

A. A transitional training program may only be approved for persons who are employees of Special School District Number 1 on the effective date of this Regulation.

B. A transitional training program must set forth in writing a program of in-service training for an employee which, if successfully completed, would result in the employee receiving full certification for the position currently occupied by the employee. Specific in-service training activities (including part-time enrollment in higher education institutions and corollary "release time" provisions) must be fully described and annual milestones for meeting discrete parts (or discrete interim levels) of the overall certification requirement must be set forth.

C. Each transitional training program shall establish an overall timetable designed to reach full certification for the individual as quickly as possible. In no event shall such a plan extend beyond September 1, 1982.

D. Each transitional training program must be reviewed and approved in writing by the Director.

E. Approval of a transitional training program must be revoked if an employee fails to successfully complete any of the required activities.

F. The cost of employee participation (including the payment of tuition and the provision of release time) shall be assumed by the Department.

§657-659 Reserved.

§660 Administrative matters.

A. Special School District Number 1 and approved nonpublic school residential programs must, consistent with the requirements of Part 400 of this Regulation, prepare and submit an annual report and an annual special school report, conduct a comprehensive self-evaluation, and ensure nondiscrimination in employment and in contractual arrangements.

B. Special School District Number 1 must comply with all other requirements established by Subparts 490-499 of this Regulation.

§661-689 Reserved.

§690 Monitoring.

A. Approved nonpublic residential school programs in which students are placed pursuant to this Part shall be monitored and complaints investigated by the Department consistent with the requirements of Subpart 310 of this Regulation.

B. To the extent practicable, the Department and DHHR (pursuant to the requirements of Subpart 650 of this Part) shall develop cooperative and coordinated procedures for monitoring and complaint investigation with respect to approved nonpublic residential school programs in which students are placed pursuant to this Part.

§691-699 Reserved.

Part 700. Responsibilities of Nonpublic Day Schools

§701 Applicability.

A. This Part is applicable to approved nonpublic day school programs operating within the State of Louisiana which enroll one or more exceptional children placed in or referred to the program by a school board; or receive state or federal financial assistance.

B. Subpart 736 of this Part is also applicable to all other nonpublic day schools operating within the State of Louisiana which meet state standards for special schools.

§702-709 Reserved.

§710 Joint responsibility. Approved nonpublic day schools which enroll an exceptional child who has been placed in or referred to that school by a school board, upon enrolling the child

assume a joint responsibility (and liability) with the school board for providing an appropriate, free public education in full compliance with all provisions of Part 400 of this Regulation, which address the provision of special education and related services, and adherence to procedural safeguards. Any noncompliance of the approved nonpublic school is also noncompliance of the school board.

§711-714 Reserved.

§715 Applicable standards. Approved nonpublic day schools must comply with all requirements imposed on school boards under Part 400 of this Regulation, by Subparts 447-449, 461, 470-473, 482, 485, 490, and 495 of this Regulation.

§716-719 Reserved.

§720 Enrollment in approved nonpublic day schools. Schools may not refuse to enroll any person on the basis of exceptionality where the school or facility operates a program within which the person can, with minor adjustments, be offered an appropriate education.

§721-729 Reserved.

§730 Tuition. Approved nonpublic day schools may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent any additional charge is justified by a substantial increase in cost to the school or facility.

§731-734 Reserved.

§735 Participation in IEP development.

A. Representatives of the approved nonpublic day school shall attend the IEP meeting required by Subpart 442 of this Part whenever notified in advance by a school board that educational placement in the approved nonpublic day school is an alternative under serious consideration; or that an IEP for an approved nonpublic day school exceptional child receiving services from a school board is under consideration.

B. Representatives of the jointly responsible school board must attend any meeting to review and revise the IEP of an exceptional child previously placed in or referred to the approved nonpublic day school by the board.

§736 Child search coordination. Approved nonpublic day schools must provide to school boards whatever assistance is required by such boards to fully implement the child search requirements of Subparts 410 and 412 of this Regulation.

§737-739 Reserved.

§740 Administrative matters. Approved nonpublic day school programs to which this Part is applicable must, consistent with the requirements of Part 400 of this Regulation, prepare and submit an annual report and an annual special school report; conduct a comprehensive self-evaluation; and ensure nondiscrimination in employment and in contractual arrangements.

§741-799 Reserved.

Part 800. Responsibilities of the Department of Health and Human Resources and the Department of Corrections

§801 Coordination and cooperation.

A. All programs operated by or under the authority of the DHHR and the State Department of Corrections which provide benefits or services to exceptional children shall take all actions necessary to assist the Department, the Division, school boards, Special School District Number 1 and approved nonpublic school programs to comply fully with the requirements of this Regulation, including but not limited to:

1. Active assistance in the implementation of the child search, screening, and individual evaluation activities required by Part 400 of this Regulation.

2. Active assistance by day developmental centers, day care programs, and headstart programs in the development of initial IEPs for children entering the public school program, who were previously enrolled in those programs.

3. Cooperation in the development of comprehensive parish-level self-evaluations including the development and implementation of necessary remedial action programs.

4. Cooperation in the development of coordinated budget strategies and interagency agreements to provide necessary funding for Special School District Number 1.

5. Active assistance in achieving the full educational opportunity goal of this state.

6. Cooperation and coordination in monitoring and complaint investigation with respect to approved nonpublic school programs.

B. The State Department of Corrections shall work closely with Special School District Number 1 to ensure that exceptional children who are placed by state courts in the district are identified, wherever possible, in advance of court commitment; provided an opportunity to have their placement periodically reviewed by the appropriate state court in light of the information developed in the annual review and updating of the IEP; and placed in the least restrictive education, residential and living environments consistent with their needs and the interests of the State of Louisiana.

§802-804 Reserved.

§805 Confidentiality. The requirement in Subpart 801 A1 of this Part for active assistance by DHHR and the State Department of Corrections in the implementation of the child search and screening activities of the various public and nonpublic education programs shall not be interpreted to prevent children or parents from receiving confidential health and mental health evaluations or services from the state departments. Child search information potentially available from staff or health records of these agencies may not be transferred to public education agencies unless formal parental approval has been received.

§806-809 Reserved.

§810 Nondiscrimination.

A. Programs operated by or under the authority of DHHR which contract with school boards or the Department to provide educational services to exceptional children must not discriminate on the basis of handicap or exceptionality in the provision of services or in employment consistent with the requirements of Subparts 290 and 448 of this Regulation.

B. Upon receiving official notification from the State Superintendent of a determination by the Department that a contractor program (as defined in Subsection A of this Subpart) has discriminated on the basis of exceptionality or has otherwise failed to comply with applicable subparts of this Regulation, the Secretary of DHHR shall initiate, pursuant to regulations issued by the Secretary and within twenty operational days of notification, a formal investigation of the contractor program.

§811-889 Reserved.

§890 Development of protocol. The Department shall develop, in concert with DHHR and the State Department of Corrections, separate protocols which set forth the day-to-day working relationships between the Departments which are necessary to fully implement all of the requirements of this Regulation. The protocol between the Department and DHHR shall reflect the full range of responsibilities assigned under state and federal laws to DHHR for the provision of residential care, treatment, and training in DHHR operated facilities. Each protocol shall be signed by the State Superintendent and the Secretary (or chief administrative officer) of the other state agency and shall be submitted to the State Board for review and approval no later than November 1, 1978.

§891-899 Reserved.

Part 900. Definitions

§901 General. The terms defined in Subparts 902-999 of this Part are used throughout this Regulation. Unless expressly pro-

vided to the contrary, each term used in this Regulation shall have the meaning established by this Part.

§902-904 Reserved.

§905 "The Act" means Sections 1941 through 1957 of Chapter 8 of Title 17 of Louisiana Revised Statutes of 1950.

§906 "Adaptive physical education" means a physical education program, set forth in the IEP, that is uniquely designed to meet the needs of a handicapped student.

§907 "Affected agency" means any board, agency or other organization to which any requirement of this Regulation is applicable.

§908 "Appropriate free public education" is defined in Subparts 440 and 462 of this Regulation.

§909 "Approved nonpublic day school program" means any approved nonpublic school program which is not located in or operated in conjunction with a residential facility.

§910 "Approved nonpublic residential school program" means any approved nonpublic school program which is located in or operated in conjunction with a residential facility.

§911 "Approved nonpublic school program" means an educational program for exceptional children operated by a private person, agency or organization which meets the educational standards for such programs established by the Department.

§912 "Assessment teacher" means a teacher who is engaged exclusively in the identification or reevaluation of exceptional children in an educational assessment program.

§913 "Audiology" means:

A. The identification of children with hearing loss.

B. The determination of the range, nature and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing.

C. The provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing, evaluation, and speech conservation.

D. The creation and administration of programs for prevention of hearing loss.

E. The counseling and guidance of pupils, parents and teachers regarding hearing loss.

F. The determination of the child's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

§914 "Autism" means a severe developmental disability which appears during the first three years of life, which is behaviorally defined to include disturbances in the rate of appearance and sequencing of developmental milestones, abnormal responses to sensations, delayed or absent speech and language while specific thinking capabilities may be present, and abnormal ways of relating to people and things; and which adversely affects a child's educational performance.

§915 "Blind" means the possession of a central visual acuity of 20/200 or less in the better eye with correcting glasses, or a peripheral field of vision so contracted that its widest diameter is less than twenty percent.

§916 "Bona fide multiple enrollment" is defined in Subpart 353 of this Regulation.

§917 "Certified IEP time unit" means those specific periods of time set aside for instruction under an approved individualized education program.

§918 "Child identification" means the identification, location, and individual evaluation of exceptional children.

§919 "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other otherwise qualified personnel.

§920 "DHHR" means Department of Health and Human Resources.

§921 "Day care" means comprehensive and coordinated sets of activities providing direct care and protection of infants, pre-

school, and school-age children outside of their homes during a portion of a twenty-four hour day.

§922 "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and which adversely affects a child's educational performance.

§923 "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

§924 "The Department" means the Louisiana State Department of Education.

§925 "The Division" means the Division of Special Educational Services of the Louisiana State Department of Education.

§926 "Educationally handicapped or slow learner" means a rate of acquisition and/or retention of information or educational skills significantly slower than the rate expected for children of the same age within the state, but not including all educationally deprived children eligible to participate in programs funded under Title I of the Elementary and Secondary Education Act of 1965 (cf. 45 CFR 116a.2).

§927 "Education records" means the type of records covered under the definition of "education records" in 45 CFR 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).

§928 "EHA" means Part B of the Education of the Handicapped Act as amended by the Education for All Handicapped Children Act of 1975 (P.L. 94-142), 20 USC 1411-1420, and the regulations issued by the U.S. Department of Health, Education and Welfare at 45 CFR 100b; 121a.

§929 "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance: an inability to learn which cannot be explained by intellectual, sensory, or health factors, an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, inappropriate types of behavior or feelings under normal circumstances, a general pervasive mood of unhappiness or depression, or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are emotionally disturbed.

§930 "Evaluation coordinator" means the designee of the parish supervisor responsible for the overall conduct of the individual evaluation.

§931 "Exceptional child" means a child evaluated in accordance with Subparts 430-439 of this Regulation who is determined to be gifted and talented, emotionally disturbed, educationally handicapped or slow learning, learning disabled, mentally retarded, hard of hearing, deaf, deaf-blind, speech impaired, severe language disordered, autistic, visually handicapped, multihandicapped, orthopedically handicapped, hospital/homebound, or otherwise health impaired or handicapped.

§932 "Exceptionality" means any of the characteristics described in Subpart 931 of this Part which would render a child exceptional.

§933 "Facilitating services" means transportation, subsistence away from home, drugs, biologicals, communications, supplies and equipment as may be necessary for the provision of services.

§934 "Family day care home" means a day care facility which serves only as many children as it can integrate into the physical setting and pattern of living of a home.

§935 "Formal parental approval" is defined in Subpart 471 of this Regulation.

§936 "Foster family home" means a home licensed or approved by appropriate state or local authority or an Indian tribal council on Indian reservations, to provide board and care including parenting for children and oversight for adults.

§937 "Full and effective notice" is defined in Subpart 470 of this Regulation.

§938 "Full educational opportunity goal" means the goal of providing full educational opportunity to all exceptional children aged three through twenty-one.

§939 "Gifted and talented" means the possession, singly or in combination, of any of the following characteristics: high intellectual potential and the ability to master the symbolic codes; highly creative thinking and/or demonstration of highly creative abilities in visual or performing arts; superior psychomotor ability, including exceptionally fine motor coordination; and outstanding leadership qualities.

§940 "Handicapped child" means an exceptional child who is not an educationally handicapped or slow learning child or a gifted and talented child. The term also includes a child who is found to have an impairment or condition which would enable the child to be classified as a handicapped child but who is found not to be in need of special education and related services.

§941 "Handicapped employee or potential employee" means any person employed by any agency or other organization, seeking or interested in such employment, who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The term includes, but is not limited to, persons who are mentally retarded, hard of hearing, deaf, speech impaired, hospital or homebound, deaf-blind, multihandicapped; or who have a learning disability, severe language disorder or any other mental or psychological disorder, or any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting a major body system.

§942 "Hard of hearing" means a hearing loss, ranging from mild to severe unaided, (pure tone average of 500, 2000 Hz, at seventy decibels or more, ANSI, in the better ear) which does not significantly impede the learning of speech and language through normal channels and which adversely affects a child's educational performance.

§943 "Has a record of having been an exceptional child" means has a history of, or has been misclassified, as having an exceptionality.

§944 "Hearing and review process" means the system of procedural safeguards set forth in Subparts 120-123, and 476-478 of this Regulation.

§945 "Hospital or homebound" means any situation in which a physical or mental impairment or illness, or the treatment thereof, precludes the movement of an individual from a hospital or home environment to the general educational environment.

§946 "Identify and locate" means obtain the name and current address of the child and the child's parent.

§947 "IEP" means the individualized education program required by Subpart 441 of this Regulation.

§948 "Individual or group IQ test" means any group or individual test, device, or measure which purports, or is used, to assess a child's current or future mental abilities, capacity, intellectual functioning, retarded intellectual development or aptitude, but does not include achievement tests or adaptive behavior scales.

§949 "Itinerant special education program" means a type of instructional program in which a resource teacher provides special education instruction at more than one approved preschool, elementary or secondary school site, and where the program is provided in areas designated by the principal for special education instruction after consultation with the teacher; does not concurrently enroll any less than fourteen nor more than twenty-seven exceptional children; is provided by a teacher certified in each

exceptionality for which instruction is provided in the itinerant program.

§950 "Learning disabled" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, or mental retardation, or emotional disturbance, or of environmental, cultural, or economic disadvantage.

§951 "Least restrictive environment" means the educational placement of an exceptional child required by Subpart 443 of this Regulation.

§952 "Major body system" means any of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine.

§953 "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

§954 "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the development period, which adversely affects a child's educational performance.

§955 "Migratory child" means a child (a) whose parent or guardian is a migratory agricultural worker or migratory fisherman; and (b) who has within the past twelve months moved from one school district into another (or, in a State comprising a single school district has moved from one school administrative area into another) in order to enable the child, the child's guardian or a member of the child's immediate family to obtain temporary or seasonal employment in an agricultural or fishing activity.

§956 "Minimum foundation report" means the Equalization Data Report—State Equalization Fund Minimum Foundation Program for Public Education.

§957 "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

§958 "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 child, the language normally used by the parents of the child.

§959 "Occupational therapy" means:

(a) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation.

(b) Improving ability to perform tasks for independent functioning when functions are impaired or lost.

(c) Preventing, through early intervention, initial or further impairment or loss of function. Specific occupational therapy services include, but are not limited to, activities of daily living; the design, fabrication and application of splints, sensorimotor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; exercises to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of the physical environment for the handicapped.

§960 "Operational day" means any day on which the Louisiana State Department of Education is open for the conduct of public business.

B. In which instruction is provided for each exceptional student for no less than five and one-half hours where the balance of the school day is in regular class placement; and

C. From which a child may be released during the school day to receive related services, adaptive or special physical education or speech therapy consistent with the child's IEP.

§984 "Severe language disorder" means a type of speech impairment which results from any physical or mental condition which seriously interferes with the development, formation and articulation of language of an individual and which adversely affects the educational performance of the child.

§985 "Significant change in educational placement" means a change in placement from a regular classroom based alternative placement (Subpart 443 B 1-4) to any other alternative placement or a change in placement from any alternative placement which is not regular classroom based (Subpart 443 B5-10) to any other alternative placement, provided that the term shall not include a change in placement automatically proposed under Subparts 447 C or 635 B of this Regulation.

§986 "Social and social work services" means preparing a social or developmental history on an exceptional child; group and individual counseling with the child and family; working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and mobilizing school and community resources to enable the child to receive maximum benefit from his or her educational program.

§987 "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of an exceptional child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

§988 "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

§989 "Speech pathology" means identification of children 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 or prevention of communicative disorders; and counseling and guidance of parents, children, and teachers regarding speech and language disorders.

§990 "The state" means the State of Louisiana.

§991 "The State Board" means the Louisiana Board of Elementary and Secondary Education.

§992 "The State Department of Corrections" means the Louisiana State Department of Corrections.

§993 "The State Superintendent" means the State Superintendent of Public Elementary and Secondary Education of the State of Louisiana.

§994 "Transportation" means travel to and from the place or places where services are delivered and includes specialized equipment if required to provide special transportation for a handicapped person; transportation by ambulance, taxicab, common carrier or other means; and cost of meals and lodging and of an attendant (and attendant's meals and lodging).

§995 "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance and includes both partially seeing and blind children.

§996 "Visual services" means visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, as prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.

§997 "Vocational education" means an organized educational program which is designed upon its completion to prepare individuals for employment in a specific occupation or a related cluster of closely related occupations in an occupational field, and which is especially and particularly suited to the needs of those engaged in or preparing to engage in such occupation or occupations.

§998 "Voluntarily enrolled nonpublic school child" means an exceptional child, or a child suspected of being an exceptional child who is enrolled in an approved nonpublic school program at the choice of his or her parent(s) after the parent(s) had been provided full and effective notice by a school board of its obligation and willingness to provide an appropriate free public education.

§999 "Within the jurisdiction of the school board" means:

A. A child (if the child does not reside in a residential facility) who resides within the geographic boundaries of a school system and who is not voluntarily enrolled in a nonpublic school.

B. A child who resides in a public residential facility or in a nonpublic residential facility on a nonvoluntary basis and whose parents reside within the geographic boundaries of a school system.

C. A child who resides in a residential facility located within the geographic boundaries of a school system who is a ward of the State.

Appendix I

Pupil/Teacher, Pupil/Speech Therapist, and Teacher/Teacher Aide Allotments and Ratios under the State Equalization Fund Minimum Foundation Program 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 (per teacher):

| | Preschool and Elementary Level | Secondary Level |
|--------------------------------------------------|--------------------------------|-----------------|
| 1. Mentally Retarded Pupils: | | |
| a. Mild | 9 - 17 | 10 - 19 |
| b. Moderate | 8 - 15 | 9 - 17 |
| c. Severe | 5 - 9 | 5 - 9 |
| d. Profound | 4 - 7 | 4 - 7 |
| 2. Emotionally Disturbed Pupils | 7 - 13 | 7 - 13 |
| 3. Autistic Pupils | 2 - 4 | 2 - 4 |
| 4. Educationally Handicapped/Slow Learner Pupils | 12 - 23 | 14 - 27 |
| 5. Learning Disabled Pupils | 7 - 13 | 8 - 15 |
| 6. Pupils with Severe Language Disorders | 5 - 9 | 5 - 9 |

| | Preschool and Elementary Level | Secondary Level |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|----------------------------|
| 7. Visually Handicapped Pupils: | | |
| a. Blind | 6 - 11 | 7 - 13 |
| b. Partially Sighted | 7 - 13 | 8 - 15 |
| 8. Hearing Impaired Pupils: | | |
| a. Deaf | 6 - 11 | 7 - 13 |
| b. Hard of Hearing | 8 - 15 | 9 - 17 |
| 9. Pupils with Orthopedic Handicaps (including Cerebral Palsy and other anatomical anomalies) | 6 - 11 | 7 - 13 |
| 10. Pupils with other health impairments (including neurological and cardiac disorders) | 7 - 13 | 8 - 15 |
| 11. Pupils with Multiple Handicaps (Deaf-Blind) | 4 - 7 | 4 - 7 |
| 12. Gifted and Talented Pupils | 12 - 23 | 14 - 27 |
| 13. Pupils Enrolled in Noncategorical Preschool Program | 6 - 11 | --- |
| B. Resource Room and Itinerant Instruction Programs (per teacher, per instructional group): | | All Levels |
| 1. Pupils with Severe Impairments | | 5 - 10 |
| 2. All other pupils | | 14 - 27* |
| C. Hospital and Homebound Instruction (per teacher): | | |
| 1. All pupils | | 6 - 11 |
| D. Adaptive or Special Physical Education Instruction (per teacher instructional group): | | All Levels |
| 1. Pupils with severe physical impairments and who are deaf-blind, multiple handicapped, autistic, or severely or profoundly mentally retarded. | | 7 - 14 |
| 2. All other pupils | | 20 - 39 |
| E. Educational Assessment Program (per teacher)** | | |
| 1. All pupils | | 14 - 27 |
| II. Numbers of Pupils Receiving Speech Therapy Services Which Justify the Inclusion of the Salary of a Speech Therapist. | | 40 - 79*** |
| A. All pupils | | |
| III. The Salary of One Teacher Aide Must Be Included for Each Teacher Justified Under IA Above. | | |
| IV. The Salary of a Paraprofessional Assigned to Assist a Teacher Whose Salary is Justified Under IA Above May Be Included (to form a Paraprofessional Training Unit) for Each Three Pupils Receiving Instruction Whose Participation in the Program is Approved by the Division. | | |

*Because of the travel requirements of the program, this range shall be reduced to 10-19 when applied to students receiving itinerant instruction if the teacher so justified provides instruction in at least two different schools.

**For an instructional period of 4-6 weeks.

***See Appendix II.

Appendix II

I. In determining the number of pupils which justify the inclusion of the salary of a speech therapist in State Equalization Fund Minimum Foundation Program for Public Education, the following weighted caseload procedure shall be utilized:

| Pupils Actually Receiving Services | Multiplier Factor | Pupils Included in Ratio for Each Pupil Actually Receiving Services |
|-----------------------------------------------|------------------------------|----------------------------------------------------------------------------------------|
| Mild | X1 | 1 |
| Moderate | X2 | 2 |
| Severe | X3 | 3 |
| Profound | X4 | 4 |
| Multiple | X4 | 4 |

II. The following definitions shall be used in determining the communicative deficit category under which a pupil should be counted:

A. Mild: A communicative deficit identified by medical or nonmedical causative factors that deviates slightly from the expected level appropriate for a student of that chronological age

and cultural background. The deficit is to be identified by a speech/hearing/language specialist according to the guidelines developed and approved by the Department and the State Board.

B. Moderate: A communicative deficit identified by medical or nonmedical causative factors that does not seriously or permanently disable or handicap that student within his cultural and educational background. The level of performance deviates to a greater degree than the expected level appropriate for a student of that chronological age. The deficit is to be identified by a speech/hearing/language specialist according to the guidelines developed and approved by the Department and the State Board.

C. Severe: A handicapping communicative deficit that warrants intensive diagnosis and therapy in order to provide maximum success within his cultural and educational environment. The deficit is to be identified by a speech/hearing/language specialist in accordance with the guidelines developed and approved by the Department and the State Board in conjunction with other qualified examiners forming a multidisciplinary team.

D. Profound/Multiple: A debilitating communicative deficit which renders the individual incapable of receiving, processing, and/or expressing information to a great degree. Intensive diagnosis and therapy is warranted in order to provide maximum success within his cultural and educational environment. The deficit is to be identified by a speech/hearing/language specialist in accordance with the guidelines developed and approved by the Department and the State Board in conjunction with other qualified examiners forming a multidisciplinary team. The Department shall issue standards setting forth separately specific procedures for determining the severity of communicative deficits relating to language disorders (expressive and receptive skills), fluency (including stuttering), voice disorders, and articulation.

Appendix III Individualized Education Program (IEP) Form

James V. Soileau, Executive Director
Board of Elementary and Secondary Education

RULES

Department of Labor Office of Labor

The Department of Labor, Office of Labor, has adopted the following amendments to Section 7 of the Apprenticeship Council Standards and Procedures:

J. Registration or approval reciprocity. Apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multistate basis and are registered pursuant to all requirements of Title 29 CFR Part 29 amended March 21, 1977, by any recognized State Apprenticeship Agency/Council or by the Bureau of Apprenticeship and Training, U. S. Department of Labor, shall be accorded registration or approval reciprocity of program apprentices by the Louisiana State Apprenticeship Council if such reciprocity is requested by the sponsoring entity.

K. Union notification. Under a program proposed for registration by an employer or employers' association and where the standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or "no objection" to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The Louisiana State Apprenticeship Council shall provide a reasonable time period of not less than thirty days nor more than sixty days for receipt of union comments, if any, before final action on the application for registration and/or approval.

The authority for the Louisiana State Apprenticeship Council to adopt these rules of standards and procedures are contained in R.S. 23:382. The purpose of these changes to the Louisiana Apprenticeship Standards and Procedures by adding the above two quoted provisions to Section 7 thereof is to place the Louisiana State Apprenticeship Program in compliance with Title 29, CFR Part 29 Amendments, being the federal regulations adopted by the U. S. Department of Labor, Bureau of Apprenticeship and Training, governing state apprenticeship programs.

Curtis C. Luttrell, Assistant Secretary
Office of Labor

RULES

Department of Public Safety Office of Alcoholic Beverage Control

Rule Prohibiting Certain Unfair Business Practices in the Malt Beverage Industry

I. Definitions.

The following terms have the respective meanings ascribed to them, except in those instances where the context indicates a different meaning:

A. "Alcoholic beverages" means any fluid or any solid capable of being converted into fluid, suitable for human consumption, and containing more than one-half of one percent alcohol by volume, including malt, vinous, spiritous, alcoholic or intoxicating liquors, beer, porter, ale, stout, fruit juices, cider, or wine.

B. "Beverages of low alcoholic content" means alcoholic beverages containing not more than six percent alcohol by volume.

C. "Beverages of high alcoholic content" means alcoholic beverages containing more than six percent alcohol by volume.

D. "Malt beverages" or "malt liquors" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, or malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

E. "Manufacturer" means any person who, directly or indirectly, personally or through any agency, engages in the making, blending, rectifying, or other processing of alcoholic beverages in Louisiana.

F. "Brewer" means any person who, directly or indirectly, personally or through any agency, engages in the making or production of malt beverages.

G. "Importer" means any person who imports alcoholic beverages from any state, territory, possession, or foreign country for handling in Louisiana.

H. "Wholesale dealer," or "wholesaler" means those persons who sell alcoholic beverages to licensed wholesale dealers or licensed retail dealers exclusively, within the state or to any person for delivery beyond the borders of the state and who conduct a bona fide wholesale business and maintain a warehouse or warehouses for the storage and warehousing of alcoholic beverages in the area where domiciled and licensed by the state, and conduct and maintain systematic and regular solicitations, distribution, deliveries and sales of said beverages to licensed retail dealers located within the boundary of each parish and municipality in which the wholesale dealer makes any sale or delivery.

I. "Retailer dealer" or "retailer" means every person who offers for sale, exposes for sale, has in his possession for sale or distribution, or sells alcoholic beverages in any quantity to persons other than licensed wholesale or retail dealers.

J. "Person" means any individual, municipality, industry, public or private corporation, partnership, firm or any other entity.

K. "Handle" means sell, use, distribute, store, consume, or otherwise handle.

L. "Commission" means the Louisiana Commission on Alcoholic Beverages.

M. "Bureau" means the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury of the United States.

N. "Industry member" means any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, but

shall not include an agency of a state or political subdivision thereof, or an officer or employee of such agency.

II. Findings and Declaration of Policy.

The Louisiana Commission on Alcoholic Beverages finds and declares the following:

A. The Bureau of Alcohol, Tobacco and Firearms of the Treasury of the United States has for several years prohibited "exclusive outlet" and "tied house" arrangements with respect to the marketing and sale of beverages of both high and low alcoholic content in Louisiana.

B. The Bureau has prohibited these practices by enforcement of Section 5 of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C., §205, in Louisiana.

C. The Bureau's enforcement of this federal law in Louisiana, in the case of malt beverages, depends on the existence of a "similar" Louisiana law (i.e., a law that imposes similar requirements with respect to similar transactions).

D. For several years, the Bureau has enforced the provisions of Section 5 of the FAA Act prohibiting exclusive outlets and "tied house" arrangements in the marketing and sale of malt beverages in Louisiana under the authority and legal conclusion that R.S. 51:422 of the Louisiana Unfair Sales Law was the required "similar" Louisiana law.

E. The Commission finds that federal enforcement of the prohibitions contained in Section 5 of the FAA Act against exclusive outlets and tied house arrangements with respect to the marketing and sale of malt beverages in Louisiana has brought stability to that industry, has prevented unlawful and unfair inducements for the retail purchase of malt liquors, and has prevented unlawful coercion, bribery, kickback demands, and other unfair and unlawful business practices from occurring.

F. The Commission declares it to be in the best interest of the citizens of Louisiana that fair business dealings and unfettered competition govern the malt beverage industry in Louisiana, that it remain an industry dominated by fairness and integrity, and that it should be safeguarded against the threat of corrupt and unfair business practices.

G. The Commission believes it to be necessary and proper to remove any uncertainty regarding the applicability and scope of R.S. 51:422 as it applies to the malt beverage industry in Louisiana.

III. Applicability of R.S. 51:422 to the Marketing and Sale of Malt Beverages in Louisiana.

The Commission finds that the substantive legislative intent and full purpose of R.S. 51:422 of the Louisiana Unfair Sales Law was to prevent the unfair inducement to purchase goods or services by wholesalers or retailers, thus unfairly diverting trade from a competitor and thereby impairing fair and free competition.

Therefore, to fully implement the legislative intent and purpose of R.S. 51:422 with respect to the malt beverage industry in Louisiana, the Commission hereby adopts and promulgates the following rule to prohibit certain unfair business practices within the malt beverage industry:

It shall be unlawful for any person engaged in business as a brewer, manufacturer, or other producer, or as an importer or wholesaler of malt beverages or malt liquors, directly or indirectly or through an affiliate:

A. Exclusive outlet. To require, by agreement or otherwise, that any retail dealer engaged in the sale of malt beverages or malt liquors, purchase any such products from such person to the exclusion in whole or in part of malt beverages or malt liquors sold or offered for sale by other persons.

B. "Tied house." To induce through any of the following means any retail dealer engaged in the sale of malt beverages or malt liquors, to purchase any such products from such person to the exclusion in whole or part of malt beverages or malt liquors sold or offered for sale by other persons:

1. By acquiring or holding (after the expiration of any existing license) any interest in any license with respect to the premises of the retail dealer.

2. By acquiring any interest in real or personal property owned, occupied, or used by the retail dealer in the conduct of his business.

3. By furnishing, giving, renting, lending, or selling to the retailer dealer, any equipment, fixtures, signs, supplies, money services, or other thing of value, subject to such exceptions as the Commissioner of Alcoholic Beverage Control shall by regulation prescribe, having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this subsection.

4. By paying or crediting the retail dealer for any advertising, display, or distribution service.

5. By guaranteeing any loan or the repayment of any financial obligation of the retail dealer.

6. By extending to the retail dealer credit.

7. By requiring the retail dealer to take and dispose of a certain quota of any of such products.

IV. Exceptions.

A. Equipment. In order to provide proper dispensing of draught malt beverages by retail dealers, industry members may provide without charge tapping equipment such as rods, tavern heads, vents, taps, hoses, washers, couplings, vent tongues and check valves. Items such as CO₂ tanks, regulators and other draught equipment items with a reasonable open market price of more than five dollars must be sold to retailers at a price no less than the cost to the wholesaler as defined in R.S. 51:421(G). Such sales shall be made for cash only.

B. Inside Signs. Signs, posters, placards, designs, devices, decorations or graphic displays, bearing advertising matter and for use in the windows or elsewhere in the interior of a retail establishment, may be given, rented, loaned, or sold to a retailer by an industry member engaged in business as a brewer, importer, or wholesaler of malt beverages if the total value of such materials does not exceed one hundred fifty dollars during any one calendar year to any one retail establishment, including all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, assembly, and installation of such materials and of accessories thereto, provided, that the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation.

C. Supplies. Carbonic acid gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price thereof in the locality where sold. Industry members may price, stock, shelf and rotate their products at retail premises.

D. Retailer Advertising Specialties. Retailer advertising specialties, such as trays, coasters, beer mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, tap markets, thermometers, clocks, and calendars, which bear advertising matter, and which are primarily valuable to the retailer as point of sale advertising media, may be furnished, given, or sold to a retailer if the aggregate cost to any industry member of such retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed twenty-five dollars.

E. Merchandise. Merchandise, such as groceries, drugs, plastic and paper cups, and other such containers designed to hold liquid, pitchers, glassware, novelty items, may be sold to a retailer without limit as to quantity or value, by an industry member who is also engaged in business as a bona fide vendor of such merchandise, if such merchandise is sold in accordance with the reasonable open market price thereof in the locality where sold, and if such merchandise is not sold in combination with distilled spirits, wine, or

malt beverages and is itemized separately on the industry member's invoices and other records, provided, that equipment, fixtures, signs, supplies, and consumer and retailer advertising specialties may be furnished only as provided elsewhere in this Part.

F. Fairs and Festivals and Special Events. When a retail dealer calls upon an industry member to service a particular limited event where malt beverages will be sold or given away, the industry member must charge the retail dealer a price at least equal to the cost to the wholesaler as defined in R.S. 51:421(G) for the product and charge for all equipment used and services given in an amount at least equal to that listed as follows:

1. Labor, five dollars per hour per person.
2. Self contained electric units in which the beer container is refrigerated within the unit, fifteen dollars per day.
3. Electric unit in which the beer container sits outside the cooling unit, five dollars per day.
4. Picnic pumps, one dollar per day.
5. Tubs, one dollar per day.
6. Cold Plates, two dollars per day.
7. Trucks, designed to handle packaged or draught beer, thirty dollars per day.
8. Mobile draught units such as trailers or other vehicles, thirty dollars per day.

Lynn E. Williams
Commissioner on Alcoholic Beverages

RULES

Department of Public Safety Office of State Fire Protection

Request for Rule Change

Anyone petitioning the Assistant Secretary of the Department of Public Safety, Office of State Fire Protection commonly known as the Louisiana State Fire Marshal for the adoption of or change of any rule shall submit in writing to the Fire Marshal at 9131 Interline Avenue, Building C, Baton Rouge, Louisiana an application containing the following basic information organized and captioned:

1. The name, address, and telephone number of the applicant.
2. A brief description of the facts supporting the applicant's request for the adoption of a rule or the change of a rule that has already been adopted.
3. Suggested specific language or language setting forth the substance of the rule or rule change which is being requested.
4. An indication as to whether or not a public hearing is requested.
5. A copy of each and every document upon which the applicant bases his request for a rule or a citation of the information and where it can be easily obtained for review by this office.
6. Whenever the Fire Marshal determines that a public hearing or public hearings should be held prior to the adoption of any rule or rule change, a notice of the meeting date and place and the agenda will be recorded in the *Louisiana Register*; however, whenever that is not possible, a copy of the meeting notice including the date, time and place, and agenda of the meeting will be mailed to the official journals of the cities of Shreveport, Monroe, Lafayette, Lake Charles, Alexandria, New Orleans, and Baton Rouge, and any city or town in which the public hearing is to be held if it is not in one of the aforementioned major cities; and the same information shall also be mailed to each individual who has notified the Fire Marshal of his desire to receive a notice of the adoption of or change of any rule.
7. Within ninety days of the request for adoption of or change of a rule, the Fire Marshal will notify the applicant and each individual

who requests a copy of either his denial of the application or notice of intent to adopt the requested rule.

Building Permits

In accordance with the requirements set forth in R.S. 40:1574 that plans and specifications for any and all buildings to be constructed in the state must first be submitted to the Office of State Fire Protection for review before construction, renovation, remodeling, or repair. No governmental subdivision in the State of Louisiana shall issue any building permit until the plans and specifications therefor have been approved by the Office of State Fire Protection. Accordingly, with the application for a building permit from any governmental subdivision of this state, a copy of the approval of the plans and specifications for which the building permit is being requested shall be attached to the application. This ruling shall not apply to the following:

1. One and two family dwellings.
2. Existing buildings in which there are no structural modifications to be made and there is no change in the exit arrangement.

Equal Access to Public Buildings By the Physically Handicapped

In accordance with the intent of the 1977 Louisiana Legislature as expressed through the passage of Act 625, Raymond B. Oliver, Assistant Secretary of the Department of Public Safety in charge of the Office of State Fire Protection, that is State Fire Marshal hereby gives notice of intent to adopt the following regulations in accordance with the Administrative Procedures Act in order to assure equal access and exit from all government owned and operated buildings, and from all buildings open to the public, for the purpose of assuring the life safety of all persons including those physically handicapped.

1. This regulation shall apply to all existing governmental facilities owned by the State, rented by the State, or financed by the State on or after November 20, 1978; all new governmental facilities constructed after November 20, 1978, including property owned, leased, or financed through this State; and all privately owned facilities generally opened to the public, remodeled or constructed after November 20, 1978, with the following exceptions:

- A. Building maintenance, freight loadings, storage areas, and other such areas not normally used by the public.
 - B. That portion of any privately owned building which is not necessary for the use of the State government and/or the public.
 - C. Any privately owned building with 3,000 square feet or less.
2. For the purpose of this regulation, implementation of these requirements will be required where more than fifty percent of the facility is to be used by the government or the public or where the alteration of any existing building will cost more than twenty percent of the appraised value of such facility. In both cases, the entire facility must then be made accessible to the physically handicapped.
3. There shall be no obstructions whatsoever of any exits which would prevent the physically handicapped from utilizing standard devices to facilitate their movement. All such barriers must be removed immediately.
4. Parking spaces shall be provided for physically handicapped persons designated by the international symbol of accessibility for the physically handicapped. There shall be at least one space in the immediate vicinity of any governmental facility, three spaces at physical rehabilitation centers, one space for each three hundred meters per street or government owned or maintained parking lot. All such space shall have:
- A. Easy curb accessibility not requiring the physically handicapped to proceed behind parked vehicles.
 - B. Marked parking spaces with a minimum width of twelve feet.

C. Parallel parking spaces with a height or design which will not interfere with the access of the physically handicapped.

5. Whenever the exits for physically handicapped are other than the same exits as for those persons not physically handicapped, adequate exit signs showing the location of these exits utilizing the international symbols of accessibility for the physically handicapped shall be prominently, logically, and adequately displayed.

6. Public facilities with five thousand square feet or less per floor accessible at habitable grade levels are not required to comply with these regulations at floors above such levels unless an elevator is provided.

7. Public facilities for accommodation of less than four stories with less than forty-nine units accessible at habitable grade levels are not required to comply with these regulations above such levels except when an elevator is provided.

8. Public facilities for accommodation of fifteen or more dwelling units must have at least five percent or one dwelling unit which meets these regulations. Such facilities with less than fifteen dwelling units are not required to meet these regulations except that all exits and passageways to exits must be at least thirty inches in width.

9. No building permits shall be issued until building plans have been approved by the Fire Marshal's office as have complied with the requirements of these regulations. No buildings shall be occupied until a certificate has been issued by a licensed architect or engineer or the Office of State Fire Protection that the building has been built in reasonable compliance with these regulations.

10. In cases of practical difficulty or unnecessary hardship, the State Fire Marshal may grant exceptions under the requirements of these regulations.

11. The specific standards which will be accepted by the State Fire Marshal as compliance with these regulations is set forth in the draft copy of the proposed 1977 American National Standards Institute A 117.1 standard prepared by the Syracuse University School of Architecture, Research Office, 118 Claraton Street, Syracuse, New York 13210, a copy of which may be obtained from that office or the Office of State Fire Protection, 9131 Interline Avenue, Building C, Baton Rouge, Louisiana 70809.

Raymond B. Oliver
State Fire Marshal

RULE

Department of Transportation and Development

The Department of Transportation and Development has adopted "Regulations for Trucks, Vehicles, and Loads." The Department of the State Register has chosen not to publish the regulations in accordance with R. S. 49:954.1C. Copies may be obtained from Mr. Francis A. Becnel, Truck Permits and Weight Administration, Department of Transportation and Development, Box 44245, Baton Rouge, Louisiana 70804.

George A. Fisher, Secretary
Department of Transportation and Development

Notices of Intent

NOTICE OF INTENT

Department of Agriculture Office of Marketing Market Commission

The Department of Agriculture, Office of Marketing, Market Commission, intends to adopt rules to implement Act 242 of the 1978 Regular Session. Act 242 amends and reenacts Sections 401 through 414 of Title 3 of the Louisiana Revised Statutes of 1950, and repeals Sections 415, 416, 417, 417.1, 418, 419, and 420 of said Title 3, relative to the State Market Commission, to provide for membership, compensation and domicile; general and specific powers, duties and responsibilities of the Commission; the promulgation of regulations by January 1, 1979; the employment of qualified personnel; the powers and duties of the Commission with respect to agriculture loan and guarantee programs and the conduct of meetings; certain definitions; the levy of a charge on the amount of loans guaranteed equivalent to one percent of the Commission's participation and for a special fund and purpose for such charges; standards and criteria and limitations and prohibitions relative to making loans and guarantees; annual reports from the Commission to the House and Senate Agriculture Committees.

Interested persons may submit comments, in writing, through December 4, 1978, at the following address: Dr. Mary B. Blalock, Executive Secretary, State Market Commission, Department of Agriculture, Box 44184, Baton Rouge, Louisiana 70804. Dr. Blalock is the person responsible for responding to inquiries about the proposed rules.

Mary B. Blalock, Executive Secretary
State Market Commission

NOTICE OF INTENT

Department of Commerce Board of Examiners in Watchmaking

The Louisiana Board of Examiners in Watchmaking is calling a meeting on Tuesday, December 5, 1978, at 5604 Government Street, Baton Rouge, Louisiana beginning at 11:00 a.m. for the purpose of deleting Section 37 from its Law and Regulations Relating to the Practice of Watchmaking in Louisiana. This rule is now obsolete, having been superseded by the Administrative Procedures Act (R.S. 49:951-968). Written comments concerning the proposal may be addressed to W. L. Huckabay, Secretary, Board of Examiners in Watchmaking, Rt. 1, Box 50, Monroe, Louisiana 71201.

W. L. Huckabay, Secretary
Board of Examiners in Watchmaking

NOTICE OF INTENT

Department of Corrections

Notice is hereby given that the Louisiana Department of Corrections intends to adopt amendments to its department regulation on the assignment of inmates to work release that will more fully and completely set out the criteria to be used in selecting inmates for assignment to the program.

Information concerning these proposed changes can be obtained from Richard Crane, Chief Legal Counsel, Department of Corrections, Box 44304, Baton Rouge 70804, (504) 342-6742.

Written comments on the proposed amendments may be submitted until 4:30 p.m., December 6, 1978, to Mr. Crane at the above address.

C. Paul Phelps, Secretary
Department of Corrections

NOTICE OF INTENT

Department of Corrections Board of Pardons

Notice is hereby given that the Louisiana Board of Pardons intends to meet at 4:00 p.m., December 6, 1978, in the Board's office, Suite 1402, One American Place, to amend Rule 4 of its Rules and Regulations to read as follows:

Rule 4

An application may be considered by the Board any time after it is received, but no application will be considered by the Board until it deems the application to have been completed and proper notice given, as required by the next rule.

However, in determining which cases are ready to be heard, the Board may, in its discretion, refuse to grant a hearing if an applicant has not served one-fifth of his sentence. In cases of life sentences and sentences of forty-five years or longer, the applications may be heard at the discretion of the Board. Additionally, the Board can refuse a hearing to an applicant because of his past criminal record or his poor conduct while incarcerated. If good cause is shown, nothing in this article shall prevent the Board from hearing the types of cases mentioned hereinabove.

Written comments and inquiries concerning the proposed amendment may be addressed to Mr. John D. Hunter, Chairman, Louisiana Board of Pardons, Box 44142, Baton Rouge, Louisiana 70804, through December 4, 1978.

John D. Hunter, Chairman
Board of Pardons

NOTICE OF INTENT

Department of Corrections Office of the Secretary

Notice is hereby given that the Department of Corrections proposes to adopt as a permanent rule the following regulation pertaining to inmate furloughs and temporary releases pursuant to R. S. 15:833. The rule was adopted as an emergency rule, effective October 10, 1978, and is published elsewhere in this issue.

Interested persons may submit their written views and opinions until 4:30 p.m., December 6, 1978, to Mr. Richard Crane, Department of Corrections, Office of the Secretary, Box 44304, Baton Rouge, Louisiana 70804.

Regulation 30-7

Inmate Furloughs and Temporary Releases

1. Purpose. The purpose of this regulation is to establish the inmate furlough and temporary release policy of the Department of Corrections.

2. To whom this regulation applies. This regulation is applicable to wardens and correctional treatment administrators of each adult correctional institution in the Department of Corrections and the Office of Adult Services and to all inmates sentenced to the Department of Corrections, regardless of institution where they are housed.

3. Legal. The granting of inmate furloughs, or temporary releases, to adult inmates is controlled by R.S. 15:811 (C), 15:831 and 15:833.

4. General. Inmate furloughs or temporary releases from any correctional facility of the Department of Corrections may be granted only by the Secretary and shall be approved by him before they begin. The period during which the inmate will be on furlough or temporary release will be clearly indicated in the approval.

5. Definitions.

A. Furlough—A release from incarceration without security supervision for the purpose of maintaining family ties or for needed medical care.

B. Temporary Release—A release from incarceration without security supervision because of death or serious illness of a close family member or for an interview with a prospective employer.

C. Close Family Member—Means the father, mother, wife, husband, and children of the inmate and, when recommended by the warden, the grandparents, legal guardians, brothers or sisters.

D. Furlough Violation—Includes the commission of new offenses as well as any misconduct resulting in any disciplinary action while on furlough or temporary release.

6. Procedures.

A. Furlough and temporary release requests should be reviewed by the head of the unit to which the inmate is assigned to determine that the application is justified and is not in contravention of this regulation.

B. Necessary verification of furlough plans, transportation, coordination with family or medical facility are the responsibility of the warden recommending the furlough or temporary release.

C. Requests are to be forwarded to the Office of Adult Services where it shall be determined whether they are in compliance with this regulation and whether the sheriff, and if specifically requested, the district attorney and/or the chief of police of the locality where the inmate is going objects. The Office of Adult Services will notify the Warden at the originating institution of the Secretary's decision regarding the furlough.

D. When a request is received from a sheriff or warden of a nondepartmental facility, the Office of Adult Services shall certify to the Secretary that the inmate meets the same eligibility standards as those required of inmates in the custody of the Department.

E. Furlough requests for inmates in work release or maintenance status may be processed and approved for up to six months at a time.

F. All incidents of furlough violations by participating inmates shall be reported to the Office of Adult Services which shall compile a yearly report on or before April 1 of each year indicating the nature of the incident, age of offender, original offense, length of sentence, prior criminal record, and any other characteristics found to be predictive of success or failure. The Office of Adult Services will include in the report any suggested changes in eligibility standards dictated by the experiences of the previous year.

7. Eligibility. Inmates must meet the following criteria in order to be eligible for a furlough.

A. Must have been in custody for a period of not less than one year for the current offense and at least three months of the year must have been in a Department of Corrections facility, or have been approved by the sheriff, if in the sheriff's custody.

B. Must not be serving a sentence for any of the following crimes:

1. First or second degree murder or attempted murder.
2. Aggravated or attempted aggravated rape.