



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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February 10, 2016

MEMORANDUM

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TO: Senator John A. Alario, Jr., Senate President
Representative Taylor F. Barras, Speaker of the House
Senator Dan "Blade" Morrish, Chair, Senate Committee on Education
Representative Nancy Landry, Chair, House Committee on Education

FROM: Shan N. Davis, Executive Director *Shan N. Davis*
Board of Elementary and Secondary Education

RE: Summary Report on Board of Elementary and Secondary Education Proposed Rulemaking

Pursuant to R.S. 49:968(D)(1)(b), the Board of Elementary and Secondary Education hereby submits to you this summary report and announces its plan to proceed with rulemaking by finalizing the January 20, 2016, Notice of Intent that was promulgated on pages 81 - 83 of the *Louisiana Register*.

The Board has received no comments or requests for a public hearing and has not conducted a hearing pursuant to R.S. 49:953(A)(2)(a).

The Board has made no change to the proposed Rule.

Subject to legislative oversight by either the House Committee on Education or Senate Committee on Education, the Board anticipates adopting the Notice of Intent as a final Rule in the April 20, 2016, issue of the *Louisiana Register*.

The following document is attached:

1. A copy of the Notice of Intent.

Please contact Nina Ford at (225) 342-5841 if the Board may be of any assistance to you concerning this Rule.

SND:naf

Attachment (1)

- c: Cheryl Serrett, Analyst, Senate Committee on Education
Nancy Jolly, Senior Legislative Analyst, House Committee on Education
Ryan Gremillion, Policy Director, Louisiana Department of Education
Shan N. Davis, Executive Director, BESE
Kevin Calbert, Communications Manager, BESE
Jeanne Johnston, Senior Policy Advisor to the Governor

Shan N. Davis
Executive Director

John C. White
State Superintendent

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
(LAC 28:CXXXIX.2301, 2713, and 2801)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 12—Charter Schools*: §2301, State Funding; §2713, At-Risk Students; and §2801, Transportation Requirements. The revisions are required by Act 421 of the 2015 Regular Legislative Session. These revisions also incorporate language newly amended by Act 467 of the 2015 Regular Legislative Session to weight Minimum Foundation Program (MFP) funding for charter schools.

Title 28 EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 23. Charter School Funding

§2301. State Funding

A. Unless otherwise provided by law, the per pupil amount provided to a type 1, 1B, 2, 3, 3B, or 4 charter school shall be computed at least annually and shall be equal to the per pupil amount provided through the Minimum Foundation Program formula, determined by the allocation weights in the formula based upon student characteristics or needs, received by the school district in which the student resides, as determined by the weighted differentiated funding formula based upon individual student characteristics or needs that is provided through the Minimum Foundation Program, except as provided in Subsection E of this Section.

1. The state-funded per pupil allocation shall be based upon the weighted student membership count received by the district pursuant to the most recent legislatively approved Minimum Foundation Program formula, and include all levels and allocation weights based upon student characteristics or needs as provided in the formula except any supplementary allocations for specific purposes. Supplementary allocations for specific purposes shall be provided to charter schools based solely on the funds generated by the charter school within each specific allocation.

B. ...

C. For the purposes of funding, each type 1, type 3, and type 4 charter school shall be considered an approved public school of the local school board entering into the charter agreement.

D. - G.2. ...

3. Local charter authorizers shall also submit the reports required in this Subsection to the LDE according to the timelines provided for in this Subsection.

4. The LDE may withhold and retain from state funds otherwise allocated to a local public school system through the Minimum Foundation Program an amount equal to 1 quarter of 1 percent of the fee amount charged to a type 3B charter school for administrative costs incurred by the LDE for providing financial oversight and monitoring of a type 3B charter school acting as its own LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3995, R.S. 17:3981.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:874 (March 2011), LR 39:3250 (December 2013), LR 40:1324 (July 2014), LR 42:

Chapter 27. Charter School Recruitment and Enrollment

§2713. At-Risk Students

A. Charter schools shall maintain required student enrollment percentages as provided in this Section, based on the demographic information collected in the February 1 pupil membership count for students who were enrolled at the school the previous October 1 according to the October 1 pupil membership count.

B. The following definitions shall apply in this Section.

Students from Local Public School Districts—public school students who reside within the geographic boundaries of the local city or parish school board's district where a particular charter school is located.

Students with Exceptionalities—students identified as having one or more exceptionalities, as defined in R.S. 17:1942, not including gifted and talented.

C. Unless otherwise explicitly stated in the charter school's contract, or otherwise provided by charter law, each type 1B or type 2 charter school created as the result of a conversion, type 3 charter school, and type 4 charter school shall maintain the following student enrollment percentages:

1. the charter school's percentage of free- or reduced-price lunch eligible students shall be greater than or equal to the percentage of free- or reduced-price lunch eligible students enrolled at the school in the school year prior to the establishment of the charter school; and

2. the charter school's percentage of students with exceptionalities shall be greater than or equal to the percentage of students with exceptionalities enrolled at the school in the school year prior to the establishment of the charter school.

D. Except as otherwise provided by charter law, each type 1, type 1B, or type 2 charter school created as a new school shall maintain the following student enrollment percentages:

1. the charter school's percentage of free- or reduced-price lunch eligible students shall be greater than or equal to 85 percent of the percentage of free- or reduced-price lunch eligible students from local public school districts. The remaining number of students enrolled in the charter school which would be required to have the same percentage of free- or reduced-price lunch eligible students from local public school districts shall be comprised of students who are otherwise at-risk as defined in §103 of this bulletin; and

2. the charter school's percentage of students with exceptionalities shall be greater than or equal to 85 percent of the percentage of students with exceptionalities from the local public school districts. The remaining number of students enrolled in the charter school which would be required to have the same percentage of students with exceptionalities from the local public school districts shall be comprised of students who are otherwise at-risk as defined in §103 of this bulletin.

E. For the purpose of Subsection D of this Section, the LDE shall determine the percentages of free- or reduced-price lunch eligible students and students with exceptionalities from local public school districts as follows.

1. For charter schools in operation prior to July 1, 2016, the student enrollment percentages shall be based on the February 1, 2015 pupil membership count and shall remain fixed until the charter school's contract is renewed, unless otherwise provided for in existing charter contracts.

2. For charter schools beginning an initial or renewal charter contract term on or after July 1, 2016, the student enrollment percentages shall be based on the pupil membership counts from the school year immediately preceding the beginning of the charter contract term and shall remain fixed during the charter contract term, unless the charter contract specifies that the percentages shall be required to reflect the current year's percentages.

F. The LDE shall perform all calculations necessary to implement this Section.

G. Annually, the LDE shall make a report to BESE on the student enrollment percentages detailed in this Section for all public schools and local education agencies.

H. Each charter authorizer shall hold its authorized charter schools accountable for meeting the required student enrollment percentages in this Section in accordance with state law by taking the following actions for each charter school that fails to meet required enrollment percentages:

1. conducting an inquiry to determine all actions taken by the charter school to attempt to meet the requirements and the reasons for such failure; and

2. providing a written notice to the charter school that provides specific annual enrollment percentage targets the charter school must meet to demonstrate progress toward meeting the required enrollment percentages, and details how the charter authorizer will hold the charter school accountable, including any potential consequences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011), LR 40:1325 (July 2014), LR 42:

Chapter 28. Transportation

§2801. Transportation Requirements

A. - D. ...

E. No later than the beginning of the 2016-2017 school year, each type 5 charter school located in Orleans Parish shall provide free transportation services for all students enrolled in the charter school who reside within Orleans Parish and more than 1 mile from the charter school's location, which shall include, at a minimum:

1. whatever transportation is necessary to implement any individualized education plan (IEP) for a child with an identified exceptionality, without regard to how far the child resides from the charter school;

2. free transportation by a vehicle approved for student transportation in accordance with BESE *Bulletin 119—Louisiana School Transportation Specifications and Procedures*, for students enrolled in grade 6 or below who reside more than 1 mile from the charter school; and

3. free transportation, free public transportation payments and/or reimbursements for all other students not included in Paragraphs 1 and 2 of this Subsection who reside more than 1 mile from the school.

F. Each charter school operator shall adopt policies and procedures or shall make provision in its bus transportation service agreement to do all of the following:

1. prohibit a bus driver from loading or unloading students at school while the bus is in a traffic lane of any type of street as defined in R.S. 32:1 and require that students be loaded or unloaded on a shoulder, in a school parking lot, or at other appropriate off-road location at the school as determined by the school governing authority. The requirements of this Paragraph shall not apply if the shoulder of a municipal road is the only available alternative and the municipality has not made the shoulder available by designating that area for loading and unloading students during designated school zone hours;

2. prohibit a bus driver from loading or unloading students at or near their homes while the bus is in a traffic lane of any type of street as defined in R.S. 32:1 and require that students be loaded or unloaded on a shoulder unless the governing authority determines that loading or unloading on a shoulder is less safe for the student. However, if there is no shoulder or if the shoulder is determined to be less safe, a bus driver may load and unload a student while the bus is in a lane of traffic but only if the bus is in the lane farthest to the right side of the road so that there is not a lane of traffic between the bus and the right-side curb or other edge of the road;

3. prohibit a bus driver from loading or unloading a student in a location on a divided highway such that a student, in order to walk between the bus and his home or school, would be required to cross a roadway of the highway on which traffic is not controlled by the visual signals on the school bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:158, R.S. 17:3981, and 17:3996(B)(37).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:1266 (July 2015), amended LR 42:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the

purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., February 8, 2016, to Shan N. Davis, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 126—Charter Schools

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The enrollment requirements for students on free or reduced lunch and students with exceptionalities could increase enrollment at certain schools to the extent they do not currently meet these standards. While Type 5 charter schools in Orleans Parish currently provide free transportation to students living in Orleans Parish, costs could increase for those schools which do not meet this requirement.

The policy revisions incorporate requirements of Act 467 of the 2015 Regular Legislative Session regarding funding for at-risk students, and those with exceptionalities, as well as implement transportation policy required by Act 421 of the 2015 Regular Legislative Session.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed revisions requiring the use of weighted, differentiated funding may result in a reallocation and distribution of MFP funds to charter schools based on their student enrollment characteristics.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1601#032

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
(LAC 28:CXLV.505, 1103, and 1105)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 129—The Recovery School District*: §505, Return of Schools to Local School Board; §1103, Annual Budget; and §1105, Budget Planning, Preparation, and Schedules. Current policy currently details a process for the Recovery School District (RSD) to return an RSD charter school to the former local school board when the charter school has earned a school performance score of 54.0 or above for two consecutive school years. The revisions to this section simplify the process of returning schools to the RSD by clarifying terms and existing processes, deleting unnecessary language, and aligning the policy with yearly accountability timelines for letter grade release and charter renewals. Additional revisions ensure that the policy aligns to the appropriate BESE meetings and budgetary timelines each year.

Title 28 EDUCATION

Part CXLV. Bulletin 129—The Recovery School District Chapter 5. Failed Schools

§505. Return of Schools to Local School Board

A. Schools transferred to the jurisdiction of RSD shall remain with the RSD for a period of not less than five years.

1. A school that has been under the jurisdiction of the RSD for a minimum of five years as either a direct-run RSD school or a type 5 charter school may be returned to the jurisdiction of its former local school board based upon the RSD's report and recommendation to BESE. The RSD's report shall include the following:

a. the status of the school, the nature of its faculty and administration, the demographics and size of the student body, its organizational and management structure, whether student academic performance has improved, the amount of any improvement, an explanation of why student academic performance has or has not improved, and to what extent performance targets were achieved;