

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Emergency Contracting Process  
(LAC 28:I.103, 305, 501, and 1103)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education proposes to amend LAC 28:I, BESE Code. The revisions provide for revisions to the emergency contracting process, as recommended by the Legislative Auditor.

#### Title 28

#### EDUCATION

#### Part I. BESE/8(g) Operations

#### Chapter 1. General Provisions

#### §103. Definitions

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*Louisiana Department of Education* or *LDE*—the Louisiana Department of Education, the administrative arm of the Board of Elementary and Secondary Education.

*RSD*—the Recovery School District.

*Senate*—the Louisiana Senate.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:409 (March 2008), amended LR 38:3149 (December 2012), LR 48:410 (March 2022), LR 48:

#### Chapter 3. Composition and General Authority

#### §305. Election of Officers and Their Duties

A. ...

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

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

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

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

superintendent or his/her designee, setting forth the request for action.

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

- i. the reason for the request;
  - ii. a description of the services to be provided;
- and

iii. any necessary backup documentation to support the request.

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

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:409 (March 2008), amended LR 38:3149 (December 2012), LR 39:3262 (December 2013), LR 48:

#### Chapter 5. Organization

#### §501. Committees

A. - A.3.a.i. ...

- (a). policy concepts;
- (b). certification revocations;
- (c). records reviews for certification denial or revocation in accordance with LAC 28:CXXXI.Chapter 19, Bulletin 746;

i. - 4.b.i. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:415 (March 2008), amended LR 35:223 (February 2009), LR 35:1874 (September 2009), LR 36:2851 (December 2010), LR 37:2139 (July 2011), LR 38:3152 (December 2012), repromulgated LR 39:308 (February 2013), amended LR 39:3263 (December 2013), LR 45:1443 (October 2019), LR 48:412 (March 2022), LR 48:

#### Chapter 11 Finance and Property

#### §1103. Purchasing, Auditing, and Contracts for Professional/Consulting/Social Services

A. - B.3. ...

C. Authority and Delegation for contracts for Professional/Consulting/Social Services

1. Entities under the jurisdiction of the board shall negotiate all contracts for professional/consulting/social services in accordance with all applicable federal and state laws and in accordance with all applicable federal and state rules and regulations and board policy.

2. The state superintendent may negotiate and approve contracts for professional/consulting/social services in the amount of \$50,000 or less and shall issue a report for receipt by the board on all contracts approved. Contracts in the amount of \$50,000 or less, approved via the authority of the state superintendent, cannot be amended under this same authority, such that the original contract and subsequent amendments result in an overall amount of greater than \$50,000, unless approved by the board, or the board president and chairman of finance via emergency authority.

3. The state superintendent shall recommend to the board for approval all contracts negotiated by the LDE and/or RSD in accordance with board policy for

professional/consulting/social services over \$50,000. BESE approval and signature of the board president shall be obtained prior to execution and/or payment of contracts greater than \$50,000.

4. In the event of a suspension of any provisions of the Louisiana Procurement Code or of any provision of the corresponding rules and regulations, BESE approval shall be required as provided in Subparagraphs 2 and 3 of this subsection, unless those provisions are also suspended.

a. The request shall be forwarded to the BESE executive director to include the following:

- i. the reason for the request, the name of the contractor/recipient, the amount of the contract/allocation;
- ii. the contract/allocation period; and
- iii. a description of the services to be provided.

b. The emergency approval shall be communicated, to the extent possible, electronically, including all of the aforementioned information, to all board members within 24 hours of approval, as well as presented at its next meeting.

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

- i. the functioning of Louisiana government;
- ii. the preservation or protection of property; or
- iii. the health or safety of any person.

d. The state superintendent shall require that a record be created of all emergency declarations by making a written determination stating the basis for an emergency procurement, in addition to BESE emergency approval, as well as the selection of a particular contractor/recipient. In addition to the written determination describing the basis for the emergency procurement and issuance, the record shall also contain:

- i. each contractor's/recipient's name;
- ii. the amount and type of each contract/recipient; and
- iii. a listing of services procured under each contract or allocated to each recipient; and
- iv. the written memorandum from the state superintendent of education or his designee setting forth the request for BESE approval, the reason for the request, the name of the contractor, the amount of the contract, the contract period, and a description of the services to be provided.

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 34:424 (March 2008), amended LR 38:3155 (December 2012), LR 39:3266 (December 2013), LR 48:

#### **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 rules proposed for adoption,

repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules 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 rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules 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 authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? No.

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 Statement**

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, 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 the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

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

2. the cost to the providers to provide the same level of service; or

3. 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 noon, August 10, 2022, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Emergency Contracting Process**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
The proposed revisions will not have an effect on costs or savings to state or local governmental units. The revisions amend the emergency contracting process, as recommended in a report published by the Louisiana Legislative Auditor.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed revisions will not have an effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed revisions will not result in costs and/or benefits to directly affected persons, small businesses, or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Beth Scioneaux  
Deputy Superintendent  
2207#045

Alan M. Boxberger  
Interim Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Graduation Requirements  
(LAC 28:IX.6821; LXXIX.2111; CXV.2318 and 2319)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education proposes to LAC28:IX, *Bulletin 118—Statewide Assessment Standards and Practices*, LAC 28: CXV, *Bulletin 741—Louisiana Handbook for School Administrators*, and LAC 28:LXXIX, *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators*. The revisions relate to the availability of flexibility of graduation requirements for high school seniors enrolled during the spring 2022 semester and scheduled to graduate by August 31, 2022.

**Title 28  
EDUCATION**

**Part IX. Bulletin 118—The Louisiana School, District, and State Accountability System**

**Chapter 68. LEAP 2025 Assessments for High School**

**§6821. High School Test Cohorts  
[Formerly LAC 28: CXI.1821]**

A. - B. ...

1. For high school seniors enrolled during spring 2021 and graduating by August 31, 2021, and for high school seniors enrolled during spring 2022 and graduating by August 31, 2022, the following may be substituted for the LEAP 2025 high school assessment requirement, provided the student has initially participated in all LEAP 2025 high school assessments.

a. - d.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:977 (May 2010), amended LR 38:36 (January 2012), LR 44:470 (March 2018), LR 47:859 (July 2021), LR 48:

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators**

**Chapter 21. Curriculum and Instruction**

**§2111. State Diploma**

A. - B.2. ...

3. For high school seniors enrolled during spring 2022 and graduating by August 31, 2022, the following may be substituted for the LEAP 2025 high school assessment requirement, provided the student has initially participated in all required assessments:

a. an ACT composite score of 17 or higher for all students; or

b. an ACT subject score of 17 or higher in the corresponding LEAP 2025 high school assessment pair, as follows:

i. a score of 17 or higher on the ACT English or Reading tests shall satisfy the English I/English II LEAP 2025 high school assessment requirement;

ii. a score of 17 or higher on the ACT Mathematics test shall satisfy the Algebra I/Geometry LEAP 2025 high school assessment requirement; and

iii. a score of 17 or higher on the ACT Science test shall satisfy the Biology/U.S. History LEAP 2025 high school assessment requirement; or

c. the student participates in 20 or more extended learning hours per LEAP 2025 high school assessment subject pair for which the student has yet to achieve level 2 (approaching basic) or above, with such instruction provided by a qualified teacher.

i. the instruction must take place following the academic year, and the student must demonstrate proficiency corresponding to level 2 (approaching basic) or above, as determined by either the school or school system.

ii. a qualified teacher is defined as a teacher holding a valid and current Louisiana teaching certificate or has received a final COMPASS evaluation of effective: emerging or higher.

d. for purposes of this Section, a qualified teacher is defined as a teacher holding a valid and current Louisiana