

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators
 Policy for Louisiana's Public Education Accountability System
 (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The State's Accountability System is an evolving system with different components. The changes more closely align the State's Accountability System with the "No Child Left Behind Act of 2002" follow.

Establishing a timeline for the release of School Performance Scores so that LEA's have time to plan and implement actions required in Corrective Actions Level II and III.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations §901. School Approval Standards and Regulations

A. Bulletin 741

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:483 (November 1975), amended LR 28:269, 272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:1802 (September 2003).

The Louisiana School and District Accountability System

2.006.03 A School Performance Score (SPS) shall be calculated for each school. This score shall range from 0-100 and beyond, with a score of 100 indicating a school has reached the 10-Year Goal and a score of 150 indicating a school has reached the 20-Year Goal. The lowest score that a given school can receive for each individual indicator index and/or for the SPS as a whole is "0".

For schools entering accountability after 1999, one year's data shall be used for schools formed in mid-cycle years and two year's data for other schools.

New schools with one year of test data shall be included in accountability. For attendance and dropout data, LEA's shall have the option of using:

- the district average for schools in the same category as the new school;
- data from the prior year, if whole grade levels from an existing school or schools moved to the new school.

During the summer of 1999 for K-8 schools, each school shall receive two School Performance Scores as follows:

- a score for regular education students, including gifted, talented, and Section 504 students;
- a score including regular education students AND students with disabilities eligible to participate in the CRT and/or NRT tests.

For the purpose of determining Academically Unacceptable Schools, during the summer of 1999 for K-8 schools, the School Performance Score that includes only regular education students shall be used.

Any references to Supplemental Educational Services in this policy apply to Title I schools only.

Beginning in 2003, for schools that may be subject to choice and/or Supplemental Educational Services provisions, the LDE shall annually release preliminary School Performance Scores and Corrective Action status at least two weeks prior to the first day of the school year following the school year in which the assessment data was collected. Final School Performance Scores will be issued during the fall semester each year.

Formula for Calculating an SPS [K-6]

The SPS for a K-6 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example, [(66.0 * 60%) + (75.0 * 30%) + (50.0 * 10%)] = 67.1

Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance	50.0	10%	5.0
SPS = 67.1			

Criterion-Referenced Tests (CRT) Index Calculations

A school's CRT Index score equals the sum of the student totals divided by the number of students eligible to participate in state assessments times 4 (number of subjects). For the CRT Index, each student who scores within one of the following five levels shall receive the number of points indicated.

Advanced =	200 points
Mastery (Exceeding the Standard) =	150 points
Basic (Meeting the Standard) =	100 points
Approaching Basic (Approaching the Standard) =	50 points
Unsatisfactory =	0 points

Option I students: those students failing the 8th grade LEAP 21 that have been

- retained on the 8th grade campus
 - must retake all parts of the 8th Grade LEAP 21
- If, during spring testing, a repeating fourth grade student or Option I 8th grade student receives a score of Approaching Basic (Approaching the Standard) or above on a LEAP 21 test of mathematics, English language arts, science or social studies for which he/she received a score of Unsatisfactory the previous spring, the retaining school shall receive 50 incentive points per subject in its accountability index. A student may earn a maximum of 200 incentive points for his/her school. (No incentive points will be awarded for passing parts of tests in the summer school of the year they first failed in spring testing.)

Formula for Calculating a CRT Index for a K-8 School

- Calculate the total number of points by multiplying the number of students at each performance level times by the points for those respective performance levels, for all content areas and summing those products. Add to the sum any Incentive Points. Divide by the product of the total number of students eligible to be tested times the number of content area tests.
- Zero shall be the lowest CRT Index score reported for accountability calculations.

Transition Years [K-8]											
To accommodate the phase-in of the Social Studies and Science components of the CRT for Elementary and Secondary Accountability Cycles, the State Department of Education shall use following LEAP Test components when calculating the School Performance Scores (SPS) for K-8:											
Timelines/School Years			LEAP-CRT Index Components								
Cycle	Baseline SPS Data	Growth SPS Data	Grade								
			4				8				
			ELA	Math	Science	Social Studies	ELA	Math	Science	Social Studies	
1	1998-1999	2000-2001	✓	✓				✓	✓		
2	1999-2000 & 2000-2001	2001-2002 & 2002-2003	✓	✓	✓	✓	✓	✓	✓	✓	✓
3	2001-2002 & 2002-2003	2003-2004 & 2004-2005	✓	✓	✓	✓	✓	✓	✓	✓	✓

Norm-Referenced Tests (NRT) Index Calculations [K-8]

For the NRT Index, composite standard scores shall be used for computing the SPS. Index scores for each student shall be calculated, scores totaled, and then averaged together to get a school's NRT Index score.

NRT Goals and Equivalent Standard Scores

Composite Standard Scores Equivalent to Louisiana's 10- and 20-Year goals, by Grade Level *

Goals	Percentile Rank	Grade			
		3	5	6	7
10-Year Goal	55th	187	219	231	243
20-Year Goal	75th	199	236	251	266

NRT Formulas Relating Student Standard Scores to NRT Index [K-8]

Where the 10-year and 20-year goals are the 55th and 75th percentile ranks, respectively, and where SS = a student's standard score, then the index for that student is calculated as follows:

Grade 3:	Index 3 rd grade = (4.167 * SS) - 679.2 SS = (Index 3rd grade + 679.2)/4.167
Grade 5:	Index 5 th grade = (2.941 * SS) - 544.1 SS = (Index 5th grade + 544.1)/2.941
Grade 6:	Index 6 th grade = (2.500 * SS) - 477.5 SS = (Index 6th grade + 477.5)/2.500
Grade 7:	Index 7 th grade = (2.174*SS) - 428.3 SS= (Index 7th grade + 428.3)/2.174

Formula for Calculating a School's NRT Index [K-8]

- Calculate the index for each student, using the grade-appropriate formula relating the Standard Score to NRT Index. (NOTE: For accountability purposes, a student not taking the test and not exempted will be assigned a zero NRT index.)
- Sum the total number of NRT Index points for all grades in the school.
- Divide the sum of the NRT Index points by the total number of students eligible to be tested plus the number of students not exempted.

Zero shall be the lowest NRT Index score reported for School Performance Score calculations.

Attendance Index Calculations [K-8]

An Attendance Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indices shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

Attendance Goals		
	10-Year Goal	20-Year Goal
Grades K-8	95%	98%

Attendance Index Formula

Grades K-8
Indicator (ATT K-8) = (16.667 * ATT) - 1483.4
Where ATT is the attendance percentage, the Index Formula uses the definition of attendance established by the Louisiana Department of Education.

Lowest Attendance Index Score

Zero shall be the lowest Attendance Index score reported for accountability calculations.

Dropout Index Calculations

A Dropout Index score for each school shall be calculated. The initial year's index shall be calculated from the prior year's dropout rates. Subsequent years' indices shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

Dropout Goals		
	10-Year Goal	20-Year Goal
Grades 7 & 8	4%	2%

The national definition of *dropout* shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

Dropout Index Formulas

Non-Dropout Rate (NDO) = 100 - Dropout Rate (DO) (expressed as a percentage)

Grades 7 & 8	Dropout Index (7-8) = Indicator (DO Gr 7-8) = (25 * NDO) - 2300.0 NDO = (Indicator DO Gr 7-8 + 2300.0) /25
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Lowest Dropout Index Score

Zero shall be the lowest Dropout Index score reported for accountability calculations.

Formula for Calculating an SPS [K-8]

The SPS for a K-8 school is calculated by multiplying the index values for each indicator by the weight given to that indicator and adding the total scores. In the example, [(71.2 * 60%) + (76.1 * 30%) + (87.7 * 5%) + (90.4 * 5%)] = 74.4

Indicator	Index Value	Weight	Indicator Score
CRT	71.2	60%	42.7
NRT	76.1	30%	22.8
Attendance	87.7	5%	4.4
Dropout	90.4	5%	4.5
			SPS = 74.4

School Performance Scores for 9-12

A School Performance Score (SPS) shall be calculated for each high school. This score shall range from 0-100 and beyond, with a score of 100 indicating that a school has reached the 10-Year Goal and a score of 150 indicating that a school has reached the 20-Year Goal. The lowest score that a given high school can receive for each individual indicator index and/or for the SPS as a whole is "0."

Every year of student data shall be used as part of a high school's SPS. The school's initial SPS shall be calculated using the most recent year's NRT and CRT test data and the prior year's attendance and dropout rates. Subsequent calculations of the SPS shall use the most recent two years' test data, attendance and dropout rates from the two years prior to the last year of test data used.

Formula for Calculating an SPS for 9-12 and Combination Schools

The SPS for a 9-12 school shall be calculated by multiplying the index values for each indicator by the weight given to the indicator and adding the total scores. The formula is

$$SPS = (.60 * CRT \text{ Adjusted Achievement Index}) + (.30 * NRT \text{ Adjusted Achievement Index}) + (.05 * Dropout \text{ Index}) + (.05 * Attendance \text{ Index})$$

All intermediate results and the final result shall be rounded to the nearest tenth.
The following is an example of how this calculation shall be made:
 $[(.60 * 66.0) + (.30 * 75.0) + (.05 * 50.0) + (.05 * 87.5)] = 69.0.$

Indicator	Index Value	Weight	Indicator Score
CRT	66.0	60%	39.6
NRT	75.0	30%	22.5
Attendance Index	50.0	5%	2.5
Dropout Index	87.5	5%	4.4
SPS			69.0

Transition Years [9-12]							
To accommodate the phase-in of the grades 10 and 11 GEE 21 criterion-referenced tests, the Department shall use the following indicators:							
Timelines/School Years			Indicators Included				
Cycle	Baseline SPS Data	SPS Data	Grade 9 NRT	Grade 10 CRT	Grade 11 CRT	Attendance	Dropout
1	2000-01	2002-03 ¹	✓	✓		✓*	✓*
2	2001-02 & 2002-03 (avg.)	2003-04 & 2004-05 (avg.)	✓	✓	✓	✓*	✓*
3	2003-04 & 2004-05 (avg.)	2005-06 & 2006-07 (avg.)	✓	✓	✓	✓*	✓*

*Indicates use of prior year data for these indexes.
¹The SPS at the beginning of cycle 2 shall be calculated using the average of the 2002 and 2003 NRT scores, the average of the 2002 and 2003 CRT scores, and the average of the 2001 and 2002 attendance and dropout data. The SPS for the beginning of cycle 2 shall be compared to the 2001 baseline SPS for determining growth.

Transition Years [Combination Schools]	
Combination Schools are schools that contain a 10 th and/or 11 th grade and that also contain a 4 th and/or 8 th grade. To accommodate the phase-in of Social Studies and Science components of the CRT tests for Secondary Accountability Cycles, the Department shall use the following LEAP Test components when calculating the SPS for combination schools.	
Cycle 1 Baseline SPS for Combination Schools	Cycle 2 SPS for Combination Schools
K-8 portion of school: 2 years averaged (2000 and 2001) of all CRT data	K-8 portion of school: 2 years averaged (2002 and 2003) of all CRT data.
9-12 portion of school: 1 year baseline data (2001) without grade 11 CRT	9-12 portion of school: 2 years averaged (2002 and 2003) of all CRT data.

Criterion-Referenced Tests (CRT) Index Calculations [9-12]	
A high school's CRT Index score equals the sum of the eligible student totals divided by the number of tests those students were eligible to take. For the CRT Index, each student who scores within one of the following five levels shall receive the number of points indicated.	
Advanced	200 points
Mastery (Exceeding the Standard)	150 points
Basic (Meeting the Standard)	100 points
Approaching Basic (Approaching the Standard)	50 points
Unsatisfactory	0 points

Norm-Referenced Tests (NRT) Index Calculations [9-12]		
For the NRT Index, standard scores shall be used for computing the SPS. Index scores for each student shall be calculated, scores totaled, and then averaged together to get a high school's NRT Index score.		
NRT Goals and Equivalent Standard Scores for Grade 9		
Goal	Percentile Rank	Grade 9 Composite Standard Score
10-Year Goal	55 th	263
20-Year Goal	75 th	287

NRT Formulas Relating Student Standard Scores to NRT Index [9-12]	
If the 10-Year and 20-Year Goals are the 55 th and 75 th percentile ranks respectively and if the SS = a student's standard score, the index for a grade 9 student is calculated as follows:	
Index 9 th grade = (2.083 * SS) - 447.8	
SS = (Index 9 th grade + 447.8)/2.083	

Only with the exception of grade 8 Option II students, all Louisiana students in grades three through eleven will participate in only one of the following state assessments on an annual basis:
<ul style="list-style-type: none"> • LEAP 21 or, • GEE 21 or, • Iowa On-Level or, • LEAP Alternate Assessment B (LAA-B) or, • LEAP Alternate Assessment (LAA)

Formula for Calculating the NRT and CRT Adjusted Achievement Index for a High School

1. Sum the number of points earned by all students. For the NRT, there shall be one score for each student: the NRT Index calculated from the student's composite standard score. For the CRT, students shall be taking two tests at each grade.
2. Divide the sum by the total number of students eligible to be tested times the number of content area tests. This calculation provides the raw achievement index for the grade.
3. Multiply the raw index by the product of the non-dropout rates from the previous year. For that grade and for all the previous grades. (See Examples below.) This operation means that the grade 9 NRT Index shall be multiplied by the grade 9 non-dropout rate + .07, the grade 10 CRT Index shall be multiplied by the grade 9 and grade 10 non-dropout rates rate + .07, and the grade 11 CRT Index shall be multiplied by the grade 9, grade 10 and grade 11 non-dropout rates rate + .07. Any Option II student who passes a previously failed portion of the CRT earns 50 Incentive Points for his/her high school. Add any Option II Incentive points to the NRT value after multiplying to adjust for dropouts. This operation shall yield the Adjusted Achievement Index.
4. Zero shall be the lowest NRT or CRT Adjusted Achievement Index score reported for accountability calculations.

The formula for calculating the NRT and CRT Adjusted Achievement Index for a High School is:

NRT Adjusted Achievement Index = Raw Achievement Index * (1-DO Gr 9 + .07)
 CRT Adjusted Achievement Index (Gr 10) = Raw Achievement Index * (1-DO Gr 9 + .07) * (1-DO Gr 10 + .07)
 CRT Adjusted Achievement Index (Gr 11) = Raw Achievement Index * (1-DO Gr 9 + .07) * (1-DO Gr 10 + .07) * (1-DO Gr 11 + .07)

Example 1 – Grade 9:

- Before beginning grade 9, a class has 50 students; by the end of September, 45 remain in the class. The grade 9 dropout rate is $(5/50) = .100$.
- The number of points earned on the NRT is 5000.
- The raw achievement index is $5000/45 = 111.1$.
- The adjusted achievement index is $111.1 \times (1 - .100 + .07) = 107.8$.

Example 2 – Grade 10:

- Another 5 students dropout before October of grade 10. The grade 10 dropout rate is $5/45 = .111$.
- The 40 students remaining in the class earn 10,000 points on the two CRT tests. The raw achievement index is $10,000/(40 * 2) = 125.0$.
- The adjusted achievement index is $125.0 \times (1 - .100 + .07) \times (1 - .111 + .07) = 116.3$.

Attendance Index Calculations for Grades 9-12

An Attendance Index score for each high school shall be calculated. The initial year's index shall be calculated from the prior year's attendance rates. Subsequent years' indexes indices shall be calculated using the prior two years' average attendance rates as compared to the State's goals.

Attendance Goals

	10-Year Goal	20-Year Goal
Grades 9-12	93%	96%

Attendance Index Formula for Grades 9-12

If the 10-Year and 20-Year Goals are 93% and 96% average attendance respectively and if the ATT = attendance percentage using the definition of attendance established by the Department of Education, the attendance index is calculated as follows:

Indicator (ATT 9-12) = (16.667 * ATT) – 1450.0.

Example:

- If the average attendance percentage is 94.3%, the Attendance Index would be $(16.667 * 94.3) - 1450.0 = 121.7$.

Zero shall be the lowest Attendance Index score reported for accountability calculations.

Dropout Index Calculations for Grades 9-12

A Dropout Index score for each high school shall be calculated. The initial year's index shall be calculated from the prior year's dropout rates. Subsequent years' indexes indices shall be calculated using the prior two years' average dropout rates as compared to the State's goals.

Dropout Goals

	10-Year Goal	20-Year Goal
Grades 9-12	7%	3%

Dropout Index Formula for Grades 9-12

Dropout Index = 187.5 – (12.5 X dropout rate)

Example:

If the dropout rate is 4.5%, the Dropout Index would be $187.5 - (12.5 * 4.5) = 131.3$.

Zero shall be the lowest Dropout Index score reported for accountability calculations.

The national definition of *dropout* shall be adhered to, but in certain instances the Louisiana Department of Education shall calculate an "Adjusted Dropout Rate" for accountability purposes.

School Performance Scores for Combination Schools

Combination Schools are schools that contain a 10th and/or 11th grade and that also contain a 4th and/or 8th grade.

The formula for calculating an SPS for Combination Schools is defined in the High School calculations.

Formula for Calculating a CRT Index for a Combination School

1. Calculate the CRT Index score for the K-8 portion of the school as instructed above in the K-8 directions.
 2. Calculate the CRT Adjusted Index score for the 9-12 portion of the school as instructed above in the 9-12 directions.
 3. Multiply the K-8 CRT Index by the number of students eligible to take the K-8 CRT times 4 (number of subjects). Multiply the 9-12 CRT Adjusted Index by the number of tests 9-12 students were eligible to take.
 4. Sum the two products in step 3.
 5. Divide the sum in step 4 by the sum of tests all students (K-12) were eligible to take.
- $$[(K-8 \text{ CRT Index} * \text{number students eligible to test} * 4) + (9-12 \text{ CRT Adjusted Index} * \text{number of tests students were eligible to take})] / \text{Total of tests K-12 students were eligible to take.}$$

Formula for Calculating a NRT Index for a Combination School

1. Calculate the NRT Index score for the K-8 portion of the school as instructed above in the K-8 directions.
 2. Calculate the NRT Adjusted Index score for the 9-12 portion of the school as instructed above in the 9-12 directions.
 3. Multiply the K-8 NRT Index by the number of students eligible to take the K-8 NRT. Multiply the 9-12 NRT Adjusted Index by the number of 9-12 students eligible to take the NRT. Sum the two products. Divide the sum by the number of K-12 students eligible to take the NRT.
- $$[(K-8 \text{ NRT Index} * \text{number students eligible to test}) + (9-12 \text{ NRT Adjusted Index} * \text{number of students eligible to test})] / \text{Total K-12 students eligible to test.}$$

Formula for Calculating an Attendance Index for a Combination School

6. Calculate the Attendance Index for the K-8 portion of the school as instructed above in the K-8 directions.
 7. Calculate the Attendance Index for the 9-12 portion of the school as instructed above in the 9-12 directions.
 8. Multiply the K-8 Attendance Index by the K-8 enrollment total. Multiply the 9-12 Attendance Index by the 9-12 enrollment total. Sum the two products. Divide the sum by the number of K-12 students enrolled in the school.
- $$[(K-8 \text{ Attendance Index} * \text{number of K-8 students}) + (9-12 \text{ Attendance Index} * \text{number of 9-12 students})] / \text{Total K-12 enrollment.}$$

Formula for Calculating a Dropout Index for a Combination School

1. Calculate the Dropout Index for the K-8 portion of the school as instructed above in the K-8 directions.
 2. Calculate the Dropout Index for the 9-12 portion of the school as instructed above in the 9-12 directions.
 3. Multiply the K-8 Dropout Index by the 7-8 enrollment total. Multiply the 9-12 Dropout Index by the 9-12 enrollment total. Sum the two products. Divide the sum by the number of 7-12 students enrolled in the school.
- $$[(K-8 \text{ Dropout Index} * \text{number of 7-8 students}) + (9-12 \text{ Dropout Index} * \text{number of 9-12 students})] / \text{Total 7-12 enrollment.}$$

Corrective Actions

2.006.09 A school shall enter in Corrective Actions I if any of the following apply.

- It is Academically Below the applicable State Average and it did not make its Growth Target, or
- It is Academically Above the applicable State Average and has a Growth Label of School in Decline or No Growth.

A school that enters Corrective Actions shall receive additional support and assistance, with the expectation that extensive efforts shall be made by students, parents,

teachers, principals, administrators, and the school board to improve student achievement at the school. There shall be three levels of Corrective Actions.

All schools in Corrective Actions I shall provide pertinent information to the Louisiana Department of Education concerning steps they have taken to improve student performance in order to document activities related to Corrective Actions I and in light of recent proposed changes in federal programs. This information shall be required on an annual basis.

Requirements for Schools in Corrective Actions I

1. A Revised or New School Improvement Plan

All Louisiana schools were required to have a School Improvement Plan in place by May of 1998. Those schools placed in Corrective Actions I shall be required to review and either revise or rewrite completely their plan, with the assistance of a District Assistance Team, and submit it to the Division of School Standards, Accountability, and Assistance. The plan shall contain the following essential research-based components:

- a. a statement of the school's beliefs, vision, and mission;
- b. a comprehensive needs assessment that shall include the following quantitative and qualitative data:
 - student academic performances on standardized achievement tests (both CRT and NRT) and performance/authentic assessment-disaggregated by grade vs. content vs. exceptionality;
 - demographic indicators of the community and school to include socioeconomic factors;
 - school human and material resources summary that includes teacher demographic indicators and capital outlay factors;
 - interviews with stakeholders: principals, teachers, students, parents;
 - student and teacher focus groups;
 - questionnaires with stakeholders (principals, teachers, students, parents) measuring conceptual domains outlined in school effectiveness/reform research;
 - classroom observations;
- c. measurable objectives and benchmarks;
- d. effective research-based methods and strategies;
- e. parental and community involvement activities;
- f. a professional development component aligned with assessed needs;
- g. external technical support and assistance;
- h. evaluation strategies;
- i. coordination of resources and analysis of school budget (possible redirection of funds);
- j. an action plan with time lines and specific activities.

2. Assurance pages

Each school in Corrective Actions I shall be required to provide assurances that it worked with a District Assistance Team to develop its School Improvement Plan, and that the plan has the essential components listed above. Signatures of the team members shall also be required.

3. A quarterly Monitoring of the Implementation of the School Improvement Plan

District Assistance Teams shall assist schools in Corrective Actions I in monitoring the implementation of their School Improvement Plan. All schools in Corrective Actions I shall be required to submit to the Louisiana Department of Education a quarterly report on the implementation of their School Improvement Plan in paper and/or electronic format.

4. An Annual Evaluation of the Level of Implementation of the School Improvement Plan

This evaluation shall be required on an annual basis. The Louisiana Department of Education shall make every effort to see that the information is collected in a manner that shall be of assistance to the schools and that shall provide feedback to them as they strive to improve student achievement.

A school shall enter Corrective Actions Level II if:

- It is Academically Unacceptable.

A school shall remain in Corrective Actions Level II if:

- It is Academically Unacceptable, made its Growth Target, and it was in Corrective Actions II the previous cycle. A school in Corrective Actions Level II shall begin the remedies required at this level upon the initial identification of the school for Corrective Actions Level II.
- If a school's initial identification for Corrective Actions Level II occurs with the summer preliminary School Performance Score release, the school shall offer choice and/or state approved Supplemental Educational Services prior to the first day of school of that school year.
- If a school's initial identification for Corrective Actions Level II occurs with the fall final School Performance Score release, the school shall offer choice and/or state approved Supplemental Educational Services in January of that school year.
- If a school is wrongly identified through the summer preliminary School Performance Score release, the school shall:
 - Continue in their choice obligations for the remainder of that school year, but shall be released from these obligations for the following school year.
 - Continue in their state approved supplemental service obligations for the remainder of the semester, but shall be released from these obligations for the following semester.

Corrective Actions Level II: All schools in Corrective Actions II are labeled Academically Unacceptable. All schools in Corrective Actions II must adhere to the requirements of schools in Corrective Actions I; however, Corrective Actions II schools must submit to the Louisiana Department of Education a Monthly Monitoring of the Implementation of the School Improvement Plan. Beginning in 2003, upon initial identification for Corrective Actions II, schools shall offer choice according to the choice provisions in section 2.006.11 of this policy.

Corrective Actions Level II: A highly trained Distinguished Educator (DE) shall be assigned to a school by the State. The DE shall work in an advisory capacity to help the school improve student performance. The DE shall make a public report to the school board of recommendations for school improvement. Districts shall then publicly respond to these recommendations.

In the interim year of each accountability cycle, Corrective Actions Level II schools that do not attain at least 40% of their Growth by the first day of the school year if the initial identification occurs with the summer preliminary School Performance Score release or in January if the initial identification occurs with the fall final School Performance Score release.

A school shall enter Corrective Actions Level III if:

- It was in Corrective Actions Level II the previous cycle, and Academically Unacceptable, and it did not make its Growth Target.

A school in Corrective Actions Level III shall begin the remedies required at this level upon the initial identification of the school for Corrective Actions Level III.

- If a school's initial identification for Corrective Actions Level III occurs with the summer preliminary School Performance Score release, the school shall continue to offer choice and shall offer state approved Supplemental Educational Services prior to the first day of school of that school year.
- If a school's initial identification for Corrective Actions Level III occurs with the fall final School Performance Score release, the school shall offer choice and state approved supplemental services in January of that school year.
- If a school is wrongly identified through the summer preliminary School Performance Score release, the school shall:
 - Continue in their choice obligations for the remainder of that school year, but shall be released from these obligations for the following school year.

* Continue in their state approved Supplemental Educational Services obligations for the remainder of that semester, but shall be released from these obligations for the following semester .

Corrective Actions Level III: Beginning in 2003, upon initial identification for Corrective Actions Level III, identified schools shall offer choice according to the choice provisions in section 2.006.11 of this policy and shall notify the parents of all students in the school of their right to state approved Supplemental Educational Services. The DE shall continue to serve the school in an advisory capacity. A district must develop a Reconstitution Plan for the school at the beginning of the first year in this level and submit the plan to the SBESE for approval by February.

If a Corrective Actions Level III school has not achieved at least 40% of its Growth Target at the end of the first year and SBESE has approved its Reconstitution Plan, then the school shall implement the Reconstitution Plan during the beginning of the next school year. If the SBESE does not approve the Reconstitution Plan AND a given school does not meet the required minimum growth, the school shall lose its State approval and all State funds.

Any reconstituted School's SPS and Growth Target shall be re-calculated utilizing data from the end of its previous year. The SBESE shall monitor the implementation of the Reconstitution Plan.

Movement in Corrective Actions

All schools that:

- Have a SPS ≥ 100.0 are exempt from Corrective Actions I, II, and III during the first ten years
- Are not Academically Unacceptable and meet or exceed their Growth Targets shall exit Corrective Actions I.
- Have a SPS \geq the applicable State Average but < 100.0 must make some growth (0.1 pts) or enter/remain in Corrective Actions I.
- Are not Academically Unacceptable but have a SPS $<$ the applicable State Average must make their Growth Targets or enter/remain in Corrective Actions I.
- Are Academically Unacceptable shall enter in Corrective Actions Level II.
- Are Academically Unacceptable and make their Growth Targets, but remain Academically Unacceptable, shall remain in Corrective Actions II.
- Are Academically Unacceptable and did not make their Growth Targets, but remain Academically Unacceptable, shall enter Corrective Actions Level III.

Determination of Academically Unacceptable schools in 2003 shall be based on the higher of two School Performance Scores: one using an average of the 2001-02 and 2002-03 accountability data, and the other using the 2002-2003 accountability data only.

Corrective Actions Summary Chart

School Level Tasks

Level I

- 1) Utilize the State's diagnostic process or another process meeting State approval to identify needs; and
- 2) Work with District Assistance Team to develop/implement a consolidated improvement plan, including an integrated budget. The process must include
 - a) opportunities for significant parent and community involvement,
 - b) public hearings, and
 - c) at least two-thirds teacher approval.

Level II

- 1) Continue to adhere to the requirements of Corrective Actions Level I schools;
- 2) Work with advisory Distinguished Educator, teachers, parents, and others to implement revised School Improvement Plan; and
- 3) Distinguished Educator works with principals to develop capacity for change

Level III

- 1) Continue to adhere to the requirements of Corrective Actions Level I schools;
- 2) Distinguished Educator continues to assist with improvement efforts and work with the advisory District Assistance Team and other district personnel to design that school's Reconstitution Plan or No State Approval/No State Funding.
- 3) If the Reconstitution Plan is approved by the SBESE: a) implement Reconstitution Plan, and b) utilize data from the end of the previous year to re-calculate the School Performance Score goals and Growth Targets.
- 4) If Reconstitution Plan is not approved, no State approval/no State funding.

District Level Tasks

Level I

- 1) Create District Assistance Teams to assist schools;
- 2) Identify existing and additional assistance being provided by districts such as funding, policy changes, and greater flexibility;
- 3) Reassign or remove school personnel as necessary and as allowed by law; and
- 4) Ensure Academically Unacceptable schools receive at least their proportional share of applicable state, local, and federal funding.

Level II

- 1) Continue to help schools through the use of District Assistance Teams;
- 2) Hold public hearing and respond to Distinguished Educator's written recommendations;
- 3) Response in writing submitted to SBESE by local boards no later than 45 days subsequent to receiving the Distinguished Educator's report:
Failure to respond to these recommendations will result in the school receiving unapproved status and being ineligible to receive federal subgrantee assistance funds until such response is received;
- 4) Reassign or remove personnel as necessary and as allowed by law; and
- 5) Beginning in 2003, notify parents of their right to send their children to another public school at the initial identification of the school for Corrective Actions Level II (Ref. 2.006.11); and
- 6) Offer state approved Supplemental Educational Services by the first day of the school year if the initial identification occurs with the summer preliminary School Performance Score release or in January if the initial identification occurs with the fall final School Performance Score release to students in schools that do not meet 40% of their Growth Targets.

Level III

- 1) Continue to help schools through the use of District Assistance Teams;
- 2) Continue notifying parents of students attending Academically Unacceptable Schools of their right to send their children to other public schools within the LEA;
- 3) Continue to offer state approved Supplemental Educational Services.
- 4) Design a Reconstitution Plan and submit to the SBESE by February; and
- 5) At the end of year one, one of the following must occur: a) schools must make adequate growth of at least 40% of the Growth Target b) the district implements the Reconstitution Plan approved by the SBESE; and c) the SBESE shall grant non-school approval status; and

Reconstitution or No State Approval/Funding

- 1) If Reconstitution Plan is approved by the SBESE, provide implementation support.
- 2) If the Reconstitution Plan is not approved, no State approval/no State funding.

State Level Tasks

Level I

- 1) Provide diagnostic process for schools;
- 2) Provide training for District Assistance Teams;
- 3) For some Academically Unacceptable Schools only, the SBESE shall assign advisory Distinguished Educators to schools; and
- 4) Work to secure new funding and/or redirect existing resources to help schools implement their improvement plans

Level II

- 1) Assign advisory Distinguished Educator to schools; and
- 2) Work to secure new funding and/or redirect existing resources to help schools implement their improvement plans

Level III

- 1) Assign advisory Distinguished Educator to schools for one additional year to assist in the development and design of the Reconstitution Plan;
 - 2) At end of Year 1, the SBESE shall approve or disapprove Reconstitution Plans. If the SBESE approves the Reconstitution Plan, the Distinguished Educator is assigned an additional year to support and assist with monitoring the implementation of the Reconstitution Plan for schools that fail to make adequate growth;
 - 3) If a school achieves the required amount of growth during its first year in Corrective Action Level III and proceeds to a second year in Level III, the Distinguished Educator will be assigned to the school for that additional year to support and assist the school in its continued improvements efforts; and
 - 4) Work to secure new funding and/or redirect existing resources to help schools implement their improvement plans
- Reconstitution or No State Approval/No Funding
- 1) If Reconstitution Plan is approved by the SBESE,
 - a) monitor implementation of reconstitution plan; and
 - b) provide additional state improvement funds; and
 - 2) If Reconstitution Plan is not approved, no State approval/State funding

School Choice

2.006.11 Parents shall have the right to transfer their children to another public school within the LEA when the school in which their children are enrolled enters Corrective Actions II. Districts, upon initial identification of a school for Corrective Actions Level II, shall notify the parents of all students who are assigned to that school of their right to transfer their children to another public school within the LEA. Parent notification will take place prior to the first week of each school year, in time for alternative school assignments to be arranged. Once final School Performance Scores are issued, the Louisiana Department of Education will revise the list of schools identified for Corrective Actions Levels II and III to reflect any additions or deletions resulting from analysis of the final School Performance Scores. Districts, upon receipt of fall final School Performance Scores, will notify parents of the final scores in December and make mid-year choice available in January in any cases where initial identification occurred with the final fall School Performance Score release.

Transfers shall not be made to any school undergoing Corrective Actions Level II or Level III.

Upon parental request, districts shall transfer the child to the nearest acceptable school.

If no academically acceptable school in the district is available, the student may transfer to a neighboring district. Parents shall provide the transportation to the school. State dollars shall follow the child when such a transfer occurs.

Schools and districts may refuse to accept a student if there is insufficient space, if a desegregation order prevents such a transfer, or if the student has been subjected to disciplinary actions for behavioral problems.

An LEA must develop a policy for student transfers (School Choice Policy) for schools in Corrective Actions II and III. An LEA shall state its capacity for offering student transfers. The SBESE shall approve or disapprove an LEA's School Choice Policy.

An LEA shall declare Lack of Capacity when all of the attendance zones under its jurisdiction are unable to provide school choice to eligible students (i.e., desegregation order).

An LEA shall declare Limited Capacity when some students in some or all of the attendance zones under its jurisdiction may be provided school choice in an attendance zone (i.e., limited seating capacity in receiving schools).

An LEA declaring *Lack or Limited Capacity* shall request a waiver from the SBESE and shall submit the following with its waiver request:

- a description of the general transfer policy or desegregation order (See State's *Guidance on LEAs' Development of School Choice Policies for Public Schools in Louisiana*. Transfer policies must include:
 - 1) a method for determining transfer capacity or evidence of Lack of Capacity to transfer;
 - 2) transfer options for as many eligible students as possible in the Academically Unacceptable schools in Corrective Actions II or III to other Academically Acceptable schools;
 - 3) equal educational opportunities for all students eligible to transfer, including students with disabilities and Limited English Proficiency (LEP) and in compliance with all civil rights laws pertaining to eligible students;
 - 4) a method for selecting transfer students from the entire eligible student population in cases of *Limited Capacity* (i.e., lottery);
 - 5) a method for communicating to parents the option and wherewithal of School Choice;
 - 6) a method for maintaining a file for all communication involving all interested parties in School Choice;
 - 7) A method for providing transportation for transfer students; and
 - 8) A method for transferring student records, including assessment results and their interpretations.

If the SBESE determines that an LEA has demonstrated sufficient evidence of lack of or limited capacity to transfer, then the requesting LEA must submit the following information for the SBESE's approval:

- a description of the School/District Plan for those schools having to offer School Choice that addresses the following:
 - 1) Educator Quality
 - Principal Certification/Qualifications
 - Principal Leadership and Effectiveness
 - Teacher Qualifications/Certification
 - 2) Professional Development
 - To address teacher professional learning based on student data
 - To address uncertified/inexperienced teacher professional learning if certified/experienced teachers are unavailable for placement in the school
 - 3) Alignment of Curriculum, Instruction and Assessment with State Content Standards;
 - 4) Teacher/Pupil Ratio;
 - 5) Early Intervention/Remediation Programs;
 - 6) Time on Task/Extended Learning Opportunities;
 - 7) Parental Involvement; and
 - 8) Discipline/Safety/Health Issues;
 - 9) Renovation/Capital Improvement.

If the SBESE approves an LEA's School Choice Policy, the LEA must comply with the following conditions:

- 1) The LEA must submit a quarterly status report to the SBESE regarding the implementation and progress of the District's School Choice policy.
- 2) The LEA's School Choice Policy will be reviewed, re-evaluated, and subject to amendment or revision annually, all at the discretion of the SBESE.
- 3) The LEA must formally approve (and provide to the SBESE written proof thereof) the following:
 - a. the implementation of the School Choice Policy submitted to the SBESE; and
 - b. the assurance that as a part of its approval of the School Choice Policy the Superintendent (or interim Superintendent), or his/her designee, shall be the sole decision maker with regard to the assignment, removal, or replacement of all personnel involved, directly or indirectly, in the administration and implementation of the School Choice policy including personnel in the central office and relevant schools covered by the plan.
- 4) In the event that the LEA uses preliminary data supplied by the LDE or testing contractor and determines in good faith that a school is not required by state or federal law to provide choice to students, but final School Performance Scores (as determined by the LDE) would require the school provide choice, the LEA shall provide choice (in accordance with the provisions of the approved School Choice Plan) at the end of the school year in which the final SPS are determined by the LDE.

If the SBESE fails to approve an LEA's School Choice Plan, the implicated schools will lose their School Approval status.

Weegie Peabody
Executive Director

0309#023

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School
Administrators C Unsafe School Choice Option Policy
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, Louisiana Handbook for School Administrators, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The Unsafe School Choice Option (USCO) [Section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965,

as amended by the No Child Left Behind Act of 2001], requires that each state receiving funds under the ESEA establish and implement a statewide policy requiring students attending a persistently dangerous public school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:1812 (September 2003).

Louisiana's Unsafe School Choice Option Policy Students Who Are Victims of Crimes of Violence

A student at a public elementary school, middle school or high school who becomes a victim of a crime of violence, as defined by Louisiana Revised Statute 14:2, while on school property, on a school bus or at a school-sponsored event must be given the option to transfer to a public school within the school district in which the student's current school is located, which offers instruction at the student's grade level and which is not persistently dangerous, if there is such a school within that school district.

A student who is enrolled in an alternative school or a special school and who becomes a victim of a crime of violence, as defined by Louisiana Revised Statute 14:2, while on school property, on a school bus or at a school-sponsored event must be given the option to transfer to another such public school within the school district in which the student's current school is located, which offers instruction at the student's grade-level, for which the student meets the admission requirements and which is not persistently dangerous, if there is such a school within that school district.

However, a student who has been assigned to a particular school, such as an alternative school or a special school, by court order shall not have the option to transfer.

A student who has been the victim of a crime of violence and who must be given the option to transfer should generally be given the option to transfer within 10 calendar days from the date on which the crime of violence occurred.

Persistently Dangerous Schools

Students attending a persistently dangerous public elementary school, middle school or high school shall be given the option to transfer to a public school within the school district in which the student's current school is located, which offers instruction at the students' grade level and which is not persistently dangerous, if there is such a school within that school district.

A student who is enrolled in an alternative school or a special school which is persistently dangerous must be given the option to transfer to another such public school within the school district in which the student's school is located, which offers instruction at the student's grade-level, for which the student meets the admission requirements and which is not persistently dangerous, if there is such a school within that school district.

However, a student who has been assigned to a particular school, such as an alternative school or a special school, by court order shall not have the option to transfer.

The school district in which the persistently dangerous school is located must, in a timely manner, notify parents of each student attending the school that the school has been identified as persistently dangerous, offer the students the opportunity to transfer and complete the transfer. Although timely implementation of these steps depends on the specific

circumstances within the school district, students should generally be offered the option to transfer within 20 school days from the time the school district is notified that the school has been identified as persistently dangerous. Although the transfer may be temporary or permanent, the transfer must remain in effect for at least as long as the school is identified as persistently dangerous.

Schools must meet two of the following criteria for two consecutive school years to be identified as persistently dangerous. For purposes of these criteria, "enrolled student body" means the number of students enrolled in a school as of the October 1 student enrollment count, and "firearm" means a firearm as defined by the federal Gun-Free Schools Act.

1. 1 percent or more of the enrolled student body is expelled for possession of a firearm on school property, on a school bus, or for actual possession of a firearm at a school-sponsored event;

2. 4 percent or more of the enrolled student body has been expelled for a crime of violence as defined by Louisiana Revised Statute 14:2 occurring on school property, on a school bus or at a school-sponsored event;

3. 6 percent or more of the enrolled student body has been expelled pursuant to Louisiana Revised Statute 17:416 for the following types of misconduct in the aggregate occurring on school property, on a school bus or at a school-sponsored event:

- a. immoral or vicious practices;
- b. conduct or habits injurious to associates;
- c. possession of or use of any controlled dangerous substance, in any form, governed by the Uniform Controlled Dangerous Substances Law;
- d. possession of or use of any alcoholic beverage;
- e. cutting, defacing or injuring any part of a school building, any property belonging to the buildings or any school buses owned by, contracted to or jointly owned by any city or parish school board;
- f. possession of knives or other implements which can be used as weapons, the careless use of which might inflict harm or injury;
- g. throws missiles liable to injure others;
- h. instigating or participating in fights.

School districts with one or more schools meeting two of these three criteria during one school year must identify the problem, submit a corrective action plan to the Department of Education for approval and implement the corrective action. A school district should generally develop a corrective action plan within 20 school days from the time it is notified of the need for the corrective action plan.

School districts with one or more schools identified as persistently dangerous schools, must submit a new corrective action plan to the Department of Education for approval and must implement the new corrective action. A school district should generally develop a corrective action plan within 20 calendar days from the date the school district is notified of the need for the corrective action plan.

The Department of Education shall annually reassess persistently dangerous schools. If a school no longer meets

the criteria for a persistently dangerous school, taking into account the most recent completed school year and the school year immediately preceding the most recent completed school year, the school will not be deemed persistently dangerous.

Interdistrict Agreements

Nothing herein shall prohibit school districts from entering into agreements with one another allowing students who become the victims of crimes of violence while on school property, on a school bus, or at a school-sponsored event or who are attending persistently dangerous schools in one school district the option to transfer to a school, which is not persistently dangerous, in another school district.

However, a student who has been assigned to a particular school, such as an alternative school or a special school, by court order shall not have the option to transfer.

Weegie Peabody
Executive Director

0309#024

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Minerals Criteria Revision for Vermilion River,
Bayou Teche, Bayou Courtableau, and
West Atchafalaya Borrow Pit Canal
(LAC 33:IX.1123)(WQ048)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1123 (Log #WQ048).

The Rule is intended to set site-specific chlorides (Cl), sulfates (SO₄), and total dissolved solids (TDS) criteria for Bayou Courtableau, West Atchafalaya Borrow Pit Canal, Bayou Teche, and the Vermilion River. Respectively, these are subsegments 060204, 060211, 060301, and two subsegments for the Vermilion River, 060801 and 060802. Designated uses will remain as listed in LAC 33:IX.1123.Table 3. General and numerical criteria not specifically excepted in LAC 33:IX.1123.Table 3 shall apply. This action is required to establish proper and protective minerals criteria for subsegments 060204, 060211, 060301, 060801, and 060802. A site-specific criteria

analysis was conducted in accordance with state and federal water quality regulations, policies, and guidance to develop appropriate site-specific criteria for these water bodies. Specifically, these water bodies are largely affected by fresh water diversions from the Atchafalaya River. The water chemistry in these systems is therefore more reflective of Atchafalaya River water. This Rule recognizes the influence of the diverted water.

Analyses of use attainability are conducted by the department to determine the uses and criteria an individual water body can attain. According to the regulations, a Use Attainability Analysis (UAA) is defined as "a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." (See 40 CFR 131.3(g) and LAC 33:IX.1105.) The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for the Rule are to establish site-specific Cl, SO₄, and TDS criteria for Bayou Courtableau (060204), West Atchafalaya Borrow Pit Canal (060211), Bayou Teche (060301), and Vermilion River (060801 and 060802).

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Chapter 11. Surface Water Quality Standards §1123. Numerical Criteria and Designated Uses

A. - C.2. ...

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "Designated Uses."

- A – Primary Contact Recreation
- B – Secondary Contact Recreation
- C – Propagation of Fish and Wildlife
- L – Limited Aquatic Life and Wildlife Use
- D – Drinking Water Supply
- E – Oyster Propagation
- F – Agriculture
- G – Outstanding Natural Resource Waters

Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

Table 3.									
Numerical Criteria and Designated Uses									
A - Primary Contact Recreation; B - Secondary Contact Recreation; C - Propagation of Fish and Wildlife; D - Drinking Water Supply; E - Oyster Propagation; F - Agriculture; G - Outstanding Natural Resource Waters; L - Limited Aquatic Life and Wildlife Use									
Code	Stream Description	Designated Uses	Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
ATCHAFALAYA RIVER BASIN (01)									

[See Prior Text In 010101 – 050901]									
VERMILION-TECHE RIVER BASIN (06)									

[See Prior Text In 060101 – 060203]									
060204	Bayou Courtableau - origin to West Atchafalaya Borrow Pit Canal	A B C	65	70	[22]	6.0-8.5	1	32	440

[See Prior Text In 060206 – 060210]									
060211	West Atchafalaya Borrow Pit Canal - from Bayou Courtableau to Henderson, La., includes Bayou Portage	A B C	65	70	5.0	6.0-8.5	1	32	440

[See Prior Text In 060212]									
060301	Bayou Teche – Headwaters at Bayou Courtableau to Keystone Locks and Dam	A B C	65	70	5.0	6.0-8.5	1	32	440

[See Prior Text In 060401 – 060703]									
060801	Vermilion River - Headwaters at Bayou Fusilier-Bourbeaux junction to New Flanders (Ambassador Caffery) Bridge, Hwy. 3073	A B C F	230	70	5.0	6.0-8.5	1	32	440
060802	Vermilion River - from New Flanders (Ambassador Caffery) Bridge, Hwy. 3073, to Intracoastal Waterway	A B C F	230	70	[6]	6.0-8.5	1	32	440

[See Prior Text In 060803 – 120806]									

ENDNOTES:

[1] – [22] ...

[23]. Designated Naturally Dystrophic Waters Segment. The following criteria apply: no more than 20% reduction in the total above-ground wetland productivity as measured by tree, shrub, and/or marsh grass productivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1123 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division LR 25:2401 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1814 (September 2003).

James H. Brent, Ph.D.
Assistant Secretary

0309#005

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Radiation Protection
(LAC 33:XV.212, 320, 545, 590, 2504, and 2506)(RP033)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection regulations,

LAC 33:XV.212, 320, 545, 590, 2504, and 2506 (Log #RP033).

The Rule adds notification requirements regarding modification of any license information, clarifies that a quarterly physical inventory is required on sealed sources and registered devices that are received or possessed under the license or registration, adds the use of collimators on x-ray devices, corrects the title of LAC 33:XV.212, clarifies the need to file a renewal application with payment of fees, and clarifies that the fee will also allow reciprocal recognition of a registration. The amendments will clarify requirements that are necessary to ensure the health and safety of the persons conducting work with radiation equipment and make the regulations consistent with media program needs. The basis and rationale for this Rule are to protect the health and safety of those persons working in the field of radiation.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part XV. Radiation Protection

Chapter 2. Registration of Radiation Machines and Facilities

§212. Reciprocal Recognition of Out-of-State Radiation Machines

A. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), LR 29:1815 (September 2003).

Chapter 3. Licensing of Radioactive Material

Subchapter B. Licenses

§320. Types of Licenses

A. Licenses for radioactive materials are of two types: general and specific.

1. General licenses provided in this Chapter are effective without the filing of application with the Office of Environmental Services, Permits Division or the issuance of licensing documents to the particular persons, although the filing of certain information with the Office of Environmental Services, Permits Division may be required by the particular general license. The general licensee is subject to all other applicable portions of these regulations and to any limitations of the general license.

2. Specific licenses require the submission of an application to the Office of Environmental Services, Permits Division and the issuance of a licensing document by the administrative authority. The licensee is subject to all applicable portions of these regulations as well as to any limitations specified in the licensing document. The licensee shall notify the Office of Environmental Services, Permits Division in writing before making any change that would render the information contained in the application for license no longer accurate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2566 (November 2000), LR 29:1816 (September 2003).

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

Subchapter A. Equipment Control

§545. Quarterly Inventory

A. Each licensee and registrant shall conduct a quarterly physical inventory to account for all sealed sources and licensed or registered devices received or possessed under his or her license or registration, including devices containing depleted uranium. The records of the inventories shall be maintained for inspection by the department for at least three consecutive years from the date of the inventory and shall include the quantities and kinds of radioactive material, the location of sealed sources and/or devices, the date of the inventory, the name of individual(s) performing the inventory, the manufacturer, the model number, and the serial number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2582 (November 2000), LR 27:1233 (August 2001), LR 29:1816 (September 2003).

Subchapter C. Precautionary Procedures in Radiographic Operations

§590. Specific Requirements for Radiographic

Personnel Performing Industrial Radiography

A. - B. ...

C. Collimators shall be used in industrial radiographic operations that use crank-out devices and/or xray devices, except when physically impossible.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 23:1139 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2584 (November 2000), LR 27:1237 (August 2001), LR 28:1952 (September 2002), LR 29:36 (January 2003), LR 29:1816 (September 2003).

Chapter 25. Fee Schedule

§2504. Application Fees

A. ...

B. Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. License renewal applications must be filed in accordance with LAC 33:XV.333.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:1816 (September 2003).

§2506. Reciprocal Agreements C Licenses and Registrants

A. Persons operating within Louisiana under the provisions of LAC 33:XV.212 or LAC 33:XV.390 shall submit to the Office of Environmental Services, Permits Division the annual fee of the applicable category before the first entry into the state. The fee will allow reciprocal recognition of the license or registration for one year from the date of receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2607 (November 2000), LR 29:1816 (September 2003).

James H. Brent, Ph.D.
Assistant Secretary

0309#008

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Site-Specific Criteria Adjustment for Bayou
Chinchuba and Tchefuncte River Wetlands
(LAC 33:IX.1123)(WQ049)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1123 (Log #WQ049).

The Rule is intended to set site-specific criteria for wetlands in the Bayou Chinchuba and Tchefuncte River watersheds. The included wetlands will receive secondarily treated effluent from the City of Mandeville. This Rule will result in the creation of two new subsegments: 040805 (Chinchuba Swamp Wetland) and 040806 (East Tchefuncte Marsh Wetland). Tree, shrub, and/or marsh grass productivity are determined to be the appropriate criteria. Designated uses are secondary contact recreation and fish and wildlife propagation. General and numerical criteria not specifically excepted in LAC 33:IX.1123.Table 3 shall apply. This action is required to establish protective site-specific criteria and designated uses for the affected Bayou Chinchuba and Tchefuncte River wetlands (subsegments 040805 and 040806) in Louisiana's water quality standards. A Use Attainability Analysis (UAA) was conducted in accordance with state and federal water quality regulations, policies, and guidance to develop site-specific criteria and designated uses for the wetland.

Analyses of use attainability are conducted by the department to determine the uses and criteria an individual water body can attain. According to the regulations, a UAA is defined as "a structured scientific assessment of the

factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." [See 40 CFR 131.3(g) and LAC 33:IX.1105.] The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for the Rule are to establish site-specific criteria and designated uses for the affected Bayou Chinchuba and Tchefuncte River wetlands (subsegments 040805 and 040806), developed as a result of the UAA conducted for the site.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY**

Part IX. Water Quality

Chapter 11. Surface Water Quality Standards

§1123. Numerical Criteria and Designated Uses

A. - C.2. ...

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "Designated Uses."

- A – Primary Contact Recreation
- B – Secondary Contact Recreation
- C – Propagation of Fish and Wildlife
- L – Limited Aquatic Life and Wildlife Use
- D – Drinking Water Supply
- E – Oyster Propagation
- F – Agriculture
- G – Outstanding Natural Resource Waters

Numbers in brackets, e.g. [1], refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
A - Primary Contact Recreation; B - Secondary Contact Recreation; C - Propagation of Fish and Wildlife; D - Drinking Water Supply; E - Oyster Propagation; F - Agriculture; G - Outstanding Natural Resource Waters; L - Limited Aquatic Life and Wildlife Use									
Code	Stream Description	Designated Uses	Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
	ATCHAFALAYA RIVER BASIN (01)								
*** [See Prior Text In 010101 - 031201]									
	LAKE PONTCHARTRAIN BASIN (04)								
*** [See Prior Text In 040101 - 040804]									
040805	Chinchuba Swamp Wetland – forested wetland located 0.87 miles southwest of the City of Mandeville, southeast of the Sanctuary Ridge, and north of Lake Pontchartrain	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
040806	East Tchefuncte Marsh Wetland – fresh water and brackish marsh located just west of the City of Mandeville, bounded on the south by Lake Pontchartrain, the west by the Tchefuncte River, the north by Hwy 22, and the east by the Sanctuary Ridge	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
*** [See Prior Text In 040901 - 120806]									

ENDNOTES:

[1] - [22] ...

[23] . Designated Naturally Dystrophic Waters Segment. The following criteria apply: no more than 20% reduction in the total above-ground wetland productivity as measured by tree, shrub, and/or marsh grass productivity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1123 (November 1996), LR 24:1926 (October 1998), amended by the Office of Environmental Assessment, Environmental Planning Division LR 25:2401 (December 1999), LR 27:289 (March 2001), LR 28:462 (March 2002), LR 28:1762 (August 2002), LR 29:1817 (September 2003).

James H. Brent, Ph.D.
Assistant Secretary

0309#009

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**Waste Tire Fee Reporting
(LAC 33:VII.10519)(SW036)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste regulations, LAC 33:VII.10519 (Log #SW036).

The Rule cleans up and clarifies existing language, including identification of classes of dealers affected by the Rule, requires the exclusive use of Form WT02, and clarifies the requirement for submittal of Form WT02 on or before the twentieth of every month, regardless of whether or not any fees have been collected. Review of the existing regulatory language revealed a possible lack of clarity regarding reporting requirements. The basis and rationale for this Rule are to clarify the existing waste tire fee reporting requirements.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 2. Recycling**

Chapter 105. Waste Tires

§10519. Standards and Responsibilities of Generators of Waste Tires

A. - C. ...

D. Each dealer of passenger/light truck tires, medium truck tires, or off-road tires shall remit all waste tire fees collected as required by LAC 33:VII.10535.B and C to the

department on a monthly basis on or before the twentieth day following the month during which the fees were collected. The fees shall be remitted to the Office of Management and Finance, Financial Services Division. Each such dealer shall also submit a Monthly Waste Tire Fee Report (Form WT02, available from the Office of Management and Finance, Financial Services Division), to the Office of Management and Finance, Financial Services Division, on or before the twentieth day of each month for the previous month's activity, including months in which no fees were collected. Each tire dealer required to make a report and remit the fee imposed by this Section shall keep and preserve records as may be necessary to readily determine the amount of fee due. Each such dealer shall maintain a complete record of the quantity of tires sold, together with tire sales invoices, purchase invoices, inventory records, and copies of each Monthly Waste Tire Fee Report for a period of no less than three years. These records shall be made available for inspection by the administrative authority at all reasonable hours.

E. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000), LR 27:830 (June 2001), LR 27:2227 (December 2001), LR 28:1953 (September 2002), LR 29:1818 (September 2003).

James H. Brent, Ph.D.
Assistant Secretary

0309#007

RULE

**Office of the Governor
Division of Administration
Office of Group Benefits**

**EPO Plan of Benefits CEmployer Responsibility
(LAC 32:V.417)**

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the EPO Plan Document relative to employer responsibility with respect to re-employed retirees in order to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment.

Accordingly, OGB has adopted the following Rule to become effective upon promulgation.

Title 32
EMPLOYEE BENEFITS

Part V. Exclusive Provider (EPO) Plan of Benefits
Chapter 4. Uniform Provisions

§417. Employer Responsibility

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A *participant employer* shall immediately inform the OGB Program whenever a retiree with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any participant employer that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1817 (October 1999), amended LR 29:1819 (September 2003).

A. Kip Wall
Chief Executive Officer

0309#050

RULE

Office of the Governor
Division of Administration
Office of Group Benefits

PPO Plan of Benefits Employer Responsibility
(LAC 32:III.417)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001,

vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the PPO Plan Document relative to employer responsibility with respect to re-employed retirees in order to avoid sanctions or penalties from the United States in connection with the administration of claims for Medicare covered retirees who return to active employment.

Accordingly, OGB has adopted the following Rule to become effective upon promulgation.

Title 32
EMPLOYEE BENEFITS

Part III. Preferred Provider (PPO) Plan of Benefits
Chapter 4. Uniform Provisions

§417. Employer Responsibility

A. It is the responsibility of the *participant employer* to submit enrollment and change forms and all other necessary documentation on behalf of its employees to the *program*. Employees of a *participant employer* will not by virtue of furnishing any documentation to the *program* on behalf of a *plan member*, be considered agents of the *program*, and no representation made by any such person at any time will change the provisions of this *plan*.

B. A participant employer shall immediately inform the OGB Program whenever a *retiree* with OGB coverage returns to full-time employment. The employee shall be placed in the *re-employed retiree* category for premium calculation. The *re-employed retiree* premium classification applies to retirees with Medicare and without Medicare. The premium rates applicable to the *re-employed retiree* premium classification shall be identical to the premium rates applicable to the classification for *retirees* without Medicare.

C. Any *participant employer* that receives a Medicare Secondary Payer (MSP) collection notice or demand letter shall deliver the MSP notice to the Office of Group Benefits, MSP Adjuster, within 15 days of receipt. If timely forwarded to OGB, then OGB will assume responsibility for any medical benefits, interest, fines or penalties due to Medicare for a *covered employee*. If not timely forwarded to OGB, then OGB will assume responsibility only for *covered plan document* medical benefits due to Medicare, for a *covered employee*. The *participant employer* will be responsible for any interest, fines or penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1837 (October 1999), amended LR 29:1819 (September 2003).

A. Kip Wall
Chief Executive Officer

0309#049

RULE

**Office of the Governor
Division of Administration
Racing Commission**

Worker's Compensation Insurance
(LAC 46:XLI.531)

The Louisiana State Racing Commission has amended LAC 46:XLI.531 Worker's Compensation Insurance as follows.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLI. Horseracing Occupations

**Chapter 5. Assistant Trainers and Other Employees
§531. Worker's Compensation Insurance**

A. In addition to all other requirements for a trainer's license, each applicant therefor must furnish an individual certificate of insurance issued in his or her name only, of an insurance company licensed and/or authorized to do business in the state of Louisiana, showing he or she has worker's compensation insurance covering his or her employees and which names the Louisiana State Racing Commission as a certificate holder for purposes of coverage and cancellation of policy. Any exceptions to the form and content of the certificate may be considered on timely request.

B. Engaging in the profession of training horses on the grounds of any association licensed by the Racing Commission without proper worker's compensation insurance may result in a fine of not less than \$500 and/or suspension or revocation of license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148 and R.S. 4:150.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 4:274 (August 1978), amended by the Office of the Governor, Division of Administration, Racing Commission, LR 29:1820 (September 2003).

Charles A. Gardiner III
Executive Director

0309#027

RULE

**Department of Health and Hospitals
Board of Nursing
and
Department of Public Safety and Corrections
Office of the Secretary**

Administration of Medications to Children
in Detention Facilities (LAC 22:I.509)

The Louisiana State Board of Nursing (herein referred to as the board) and the Department of Public Safety and Corrections (herein referred to as department), pursuant to the authority vested in the board by R.S. 37:918(K), and 15:911 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended Rules to provide for procedures and training that must be in place before any staff member other than any

registered nurse, licensed practical nurse or licensed medical physician can be required to administer medication to children in detention facilities and shelters; to provide for definitions; to provide for the establishment of guidelines for training and the administration of medication; to provide for the rights and responsibilities of employees assigned to detention facilities relative to the administration of medication; and to provide for related matters. The Rules are set forth below.

**Title 22
CORRECTIONS, CRIMINAL JUSTICE
AND LAW ENFORCEMENT
Part I. Corrections**

**Chapter 5. Administration of Medications to
Children in Detention Facilities**

**§509. Role of the Professional Staff in the
Administration of Medications**

A. Either a registered nurse with a current Louisiana license to practice in accordance with The Nurse Practice Act and the board's rules, specifically LAC 46:XLVII.3701-3703 and 3901-3915, or a physician shall be responsible for the delegation of medication administration by trained unlicensed detention center personnel. The duties of the professional staff regarding the administration of medication, include, but are not limited to the following:

1. the development of policies and procedures regarding administration of medication in detention centers, in consultation with the detention center's director;
2. supervision of the implementation of medication administration policies to ensure the safety, health, and welfare of the juveniles in collaboration with the director and appropriate staff;
3. verification that the following conditions have been met before requiring unlicensed trained personnel to administer a medication to a juvenile:
 - a. that the health status of the juvenile has been assessed to determine that the administration of medication can be safely delegated;
 - b. only oral, pre-measured aerosols for inhalation, topical medications, and emergency medications are administered by unlicensed trained personnel;
 - c. child specific training has been provided;
 - d. except in life-threatening situations, unlicensed trained employees are not allowed to administer injectable medications;
 - e. controlled substances are administered only after authorization, and with additional training, supervision and documentation;
4. developing and implementing procedures for:
 - a. handling, storing, and disposing of medication;
 - b. missing (stolen) medication;
5. training unlicensed personnel to administer medications. The six hours of general training include at minimum:
 - a. legal role differentiation in medication delivery;
 - b. classification of medications and general purposes of each;
 - c. proper procedures for administration of medication;
 - d. handling, storage, and disposal of medications;
 - e. appropriate and correct record keeping;

- f. appropriate actions when unusual circumstances occur;
- g. appropriate use of resources;
- 6. child specific training includes at minimum:
 - a. desired and adverse effects of the medication;
 - b. recognition and response to an emergency;
 - c. review of the individual's medication;
 - d. observation of the juvenile;
 - e. unique individual requirements for administration of medication;
- 7. additional training may be required as follows:
 - a. handling and administering controlled substances;
 - b. measuring growth, taking vital signs, and other specific procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918(K), and 15:911.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary and Department of Health and Hospitals, Board of Nursing, LR 28:1785 (August 2002), amended LR 29:1820 (September 2003).

Barbara Morvant, MN, RN
Executive Director
and
Richard L. Stalder
Secretary

0309#057

RULE

Department of Health and Hospitals Emergency Medical Services Certification Commission

EMS Certification
(LAC 46:XXXVIII.Chapters 1-7)

Under the authority of the Department of Health and Hospitals R.S 40:2017.10 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Emergency Medical Services, Certification Commission has adopted Rules to establish procedures to provide direction in the transaction of the business of administering and implementing the spirit and intent of the law governing the practice of emergency medical services professionals.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part XXXVIII. Emergency Medical Services Professionals

Subpart 1. Rules of Procedure

Chapter 1. General

§101. Statement of Purpose

A. The Louisiana Emergency Medical Services Certification Commission is a legally created administrative commission acting within the governmental structure of the state and possessing legal power. To safeguard life and health of the citizens of Louisiana, the law governing the practice of Nationally Registered and State Certified Emergency Medical Services professionals, Louisiana Revised Statutes of 1950, R.S. 40:1232 et seq., as re-enacted and amended, delegates to this commission the

responsibility to establish and publish standards of out-of-hospital practice; to regulate the scope of practice of Emergency Medical Services professionals, to discipline and regulate the practice of Emergency Medical Services professionals and to establish standards for educational programs preparing individuals for out of hospital practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1821 (September 2003).

Chapter 3. Registration and Certification

§301. State and National Certification

A. State certification by the Bureau of Emergency Medical Services is mandatory for practicing as a certified first responder.

B. National registration and state certification is mandatory for practicing as a certified emergency medical technician.

C. State certification as a certified Emergency Medical Services professional shall be issued only to an applicant who qualifies by examination or endorsement in accordance with R.S. 40:1231, et seq. All applicants shall meet the same standards.

D. The commission shall render an opinion to the Bureau of Emergency Medical Services on whether the applicant meets the requirements of certification in all questionable cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1821 (September 2003).

§303. Denial of Certification, Reinstatement, or the Right to Practice EMS as a Student

A. Applicants for certification, reinstatement, or the right to practice as an EMS student may be denied approval for certification, reinstatement, receipt of a temporary permit, eligibility for the National Registry exam, or entry or progress into any clinical or field internship aspects of an EMS course, if the applicant:

1. knowingly falsifies any documents submitted to the bureau, commission or the EMS educational facility; or
2. has pled guilty, nolo contendere, been convicted of, or committed a: "crime of violence" as defined in R.S. 14:2(13), or any of the following crimes:
 - a. first degree feticide;
 - b. second degree feticide;
 - c. aggravated assault with a firearm;
 - d. stalking;
 - e. false imprisonment (offender armed with a dangerous weapon);
 - f. incest;
 - g. aggravated incest;
 - h. molestation of a juvenile;
 - i. sexual battery of the infirm; or
 - j. crime which involves felony drug charges.

B. For purposes of this Section, a pardon, suspension of imposition of sentence, expungement, or pretrial diversion or similar programs shall not negate or diminish the requirements of this Section.

C. Applicants who are denied certification, reinstatement, or the right to practice EMS as a student shall

not be eligible to submit a new application, unless the ground for denial is falsification of records and until the following conditions are met.

1. A minimum of two years has passed since the denial was issued.

2. The applicant presents evidence that the cause for the denial no longer exists.

3. A hearing or conference is held before the commission to review the evidence, to afford the applicant the opportunity to prove that the cause for the denial no longer exists, and to provide an opportunity for the commission to evaluate changes in the person or conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1821 (September 2003).

§305. Delay of Certification, Reinstatement, or the Right to Practice EMS as a Student

A. Applicants for certification, reinstatement, and for practice as a EMS student shall have approval delayed for certification, for reinstatement, to receive a temporary working permit, to be eligible for National Registry Exam, or to enter or progress into any clinical EMS course, if the applicant:

1. has any pending disciplinary action or any restrictions of any form by any licensing/certifying entity in any state; or

2. has a pending criminal charge that involves any violence or danger to another person, or involves a crime which constitutes a threat to patient care; or

3. has pled guilty, nolo contendere, been convicted of or committed a crime that reflects on the ability of the person to practice EMS safely, and the conditions of the court have not been met, or is currently serving a court ordered probation or parole. If the crime is a "crime of violence" as defined in R.S. 14:2(13) or any of the following crimes: first degree feticide, second degree feticide, aggravated assault with a firearm, stalking, false imprisonment-offender armed with a dangerous weapon, incest, aggravated incest, molestation of a juvenile, sexual battery of the infirm, or a crime that involves felony drug charges, the applicant shall be denied.

B. For purposes of this Section, a pardon, suspension of imposition of sentence, expungement, or pretrial diversion or similar programs shall not negate or diminish the requirements of this Section.

C. Applicants who are delayed certification, reinstatement, or the right to practice EMS, as a student shall not be eligible to submit a new application until the following conditions are met:

1. the applicant presents sufficient evidence that the cause for the delay no longer exists; and

2. a hearing or conference is held before the commission to review the evidence, to afford the applicant the opportunity to prove that the cause for the delay no longer exists, and to provide an opportunity for the commission to evaluate changes in the person or conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1822 (September 2003).

Chapter 5. Disciplinary Proceedings; Alternative to Disciplinary Proceedings

§501. Disciplinary Proceedings Before the Commission

A. The Emergency Medical Services Certification Commission has the responsibility to consider and determine the action necessary upon all charges of conduct which fail to conform to R.S. 40:1231 et seq., as re-enacted and amended, or to the rules and regulations promulgated to carry out the provisions of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1822 (September 2003).

§503. Proceedings against Certified EMS Professional or Certified EMS Professional Applicants

A. The commission may direct the Bureau of Emergency Medical Services to deny, revoke, suspend, probate, limit, reprimand, or restrict any certification to practice as a certified EMS professional or otherwise discipline an individual in accordance with R.S. 40:1232.6.

B. Every individual subjected to disciplinary proceedings shall be afforded an opportunity for a hearing before the commission or its duly appointed hearing officer or committee.

C. A complaint that an individual has engaged in, or is engaging in, any conduct proscribed by R.S. 40:1232.6, may be made by any person, staff, agency or the commission. Such complaints shall be in writing, and on a form prescribed by the commission or affixed to the form prescribed by the commission.

D. Grounds for disciplinary proceedings against a certified EMS professional are specified in R.S. 40:1232.6:

1. is guilty of selling or attempting to sell, falsely obtaining, or furnishing to a person a certified emergency medical technician or certified first responder certification document;

2. is guilty of a felony or is convicted of a crime or offense which reflects the inability to practice EMS with due regard for the health and safety of clients or patients or enters a plea of guilty or nolo contendere to a criminal charge regardless of final disposition of the criminal proceeding, including, but not limited to, expungement, non-adjudication or pardon;

3. is unfit or incompetent by reason of negligence, habit, or other cause;

4. is habitually intemperate in the use of or abuses alcohol or habit-forming drugs;

5. has demonstrated actual or potential inability to practice EMS with reasonable skill and safety to individuals because of use of alcohol or drugs; or has demonstrated inability to practice EMS with reasonable skill and safety to individuals because of illness or as a result of any mental or physical condition;

6. is mentally incompetent;

7. has had a certification to practice EMS or to practice as another health care provider denied, revoked, suspended, or otherwise restricted;

8. is guilty of moral turpitude;

9. has violated any provision of this Subpart;

10. is guilty of aiding or abetting another person in the violation of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1822 (September 2003).

§505. Proceedings Involving Students Enrolled in EMS Courses

A. The commission may direct the Bureau of Emergency Medical Services to deny, revoke, suspend, probate, limit, reprimand or restrict any student enrollment in EMS courses, or otherwise discipline a student enrolled in EMS courses or attempting to enroll in EMS courses as part of its duties and responsibilities in regulating the practice of EMS in Louisiana and in overseeing the administration of the curriculum and operation of EMS education programs in the state of Louisiana.

B. Every student enrolled or attempting to enroll in EMS courses subjected to the proceedings set forth above, shall be afforded an opportunity for a hearing before the commission or its duly appointed hearing officer.

C. Information obtained by the commission that a EMS student enrolled or attempting to enroll in EMS courses is or has engaged in any conduct prescribed by R.S. 40:1232.6., shall be received in a form prescribed by the commission. This information may be furnished by any person, staff, agency or by the commission.

D. Grounds for proceedings against a student enrolled or attempting to enroll in EMS courses are:

1. all of the grounds for disciplinary proceedings against certified EMS professional listed in Section D. of Proceedings Against Certified EMS Professional or Certified EMS Professional Applicants;

2. has been denied a request to enroll in EMS courses or has been denied a certification to practice in any health care field or had such privileges revoked, suspended or otherwise restricted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1823 (September 2003).

§507. Definition of Terms

A. The commission in the exercise of its disciplinary authority has adopted the following meaning for the following terms.

Aiding and Abetting Cto intentionally assist anyone by condoning, or to apply positive or negative force to assist anyone in violating the Emergency Medical Services Practice Act or the rules and regulations of the commission or bureau.

Deny Cto refuse for cause.

Habit Ca mode of behavior, which an individual acquires over a period of time.

Limit Cto confine within certain bounds.

Mentally Incompetent Ca court judgment of legal insanity or incompetence or a medical diagnosis indicating insanity or incompetence.

Moral Turpitude Can act, which is dishonest, or contrary to good morals.

Negligence Ca breach of duty of care owed to an individual.

Other Causes Cincludes, but is not limited to:

a. failure to practice EMS in accordance with the standards of EMS practice;

b. possessing a physical impairment or mental impairment, which interferes with the judgment, skills or abilities required for the practice of EMS;

c. failure to utilize appropriate judgment;

d. failure to exercise technical competence in carrying out EMS care;

e. violating the confidentiality of information or knowledge concerning the patient;

f. performing procedures beyond the authorized scope of EMS or any specialty thereof;

g. performing duties and assuming responsibilities within the scope of the definition of EMS practice when competency has not been achieved or maintained, or where competency has not been achieved or maintained in a particular specialty;

h. improper use of drugs, medical supplies or equipment, patient's records, or other items;

i. misappropriating items of an individual, agency, or entity;

j. falsifying records;

k. failure to act, or negligently or willfully committing any act that adversely affects the physical or psychosocial welfare of the patient;

l. delegating or assigning EMS care, functions, tasks, or responsibilities to others contrary to regulations or failing to adequately supervise EMS tasks assigned to others during the course of providing EMS care;

m. leaving a EMS assignment where there was a duty to act without properly notifying appropriate personnel;

n. failing to report to the Bureau of Emergency Medical Services, through the proper channels, facts known regarding the incompetent, unethical, or illegal practice of any EMS professional;

o. has violated a rule or an order adopted by the commission or the bureau, or a state or federal law relating to the practice of professional EMS, or a state or federal narcotics or controlled substance law;

p. inappropriate, incomplete or improper documentation;

q. use of or being under the influence of alcoholic beverages, illegal drugs or drugs which impair judgment while on duty;

r. failure to cooperate with the commission or bureau by:

i. not furnishing in writing a full and complete explanation covering a matter requested in writing by the commission or bureau; or

ii. not responding to subpoenas issued by the commission in connection with any investigation or hearing;

s. exceeds professional boundaries, including but not limited to sexual misconduct; and

t. use of any advertisement or solicitation which is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

Probate Cto stay a sentence of certification suspension during good behavior and placing under supervision of Bureau for a period of time. Certification is marked "probated" and specific requirements are identified.

Professional Boundaries—the limits of the professional relationship that allow for a safe therapeutic connection between the professional and the patient.

Reprimand—written communication to the individual stating the commission's concerns, and public notification of the individual's name and reason for the reprimand.

Restrict—to limit or restrain EMS practice by settings, types of patients, or other means.

Reasonable Skill and Safety—practicing EMS in accordance with the standards of EMS practice.

Revoke—to annul or make void by calling back. Revocation of certification shall be indefinite as to the practice of EMS in Louisiana.

Sexual Misconduct—an extreme boundary violation which involves the use of power, influence and/or knowledge inherent in one's profession in order to obtain sexual gratification, romantic partners and/or sexual deviant outlets. Any behavior that is seductive, sexually demeaning, harassing or reasonably interpreted by a patient as sexually inappropriate, is a violation of the EMS professional's fiduciary responsibility to the patient.

Suspend—to hold certification to practice as a certified EMS professional in abeyance for a definite or an indefinite period of time.

Unfit or Incompetent—unsuitable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1823 (September 2003).

§509. Disciplinary Process and Procedures

A. The provisions of the Administrative Procedure Act shall govern proceedings on questions of violation of R.S. 40:1231 et seq., as re-enacted and amended.

1. A disciplinary proceeding, including the formal hearing, is less formal than a judicial proceeding. It is not subject to strict rules and technicalities, but must be conducted in accordance with considerations of fair play and constitutional requirements of due process.

2. The purpose of a disciplinary proceeding is to determine contested issues of law and fact; whether the individual did certain acts and, if he did, whether those acts violated the Emergency Medical Services Practice Act or rules and regulations of the commission or bureau; and to determine the appropriate disciplinary action.

3. Any disciplinary action shall also be forwarded to the National Registry of Emergency Medical Technicians (NREMT), as applicable, and any other certification agency and/or required reporting entity.

B. Investigation

1. The process of a disciplinary proceeding shall include certain steps and may include other steps as follows.

a. The bureau or commission receives information alleging that an individual has acted in violation of the Emergency Medical Services Practice Act. Communications from the informant shall be privileged and shall not be revealed to any person unless such documents will be offered for evidence in a formal hearing, or unless those documents are subpoenaed by a court, or requested by other regulatory or law enforcement agencies.

b. The information is investigated by the bureau's staff to determine if there is sufficient evidence to warrant disciplinary proceedings. Information received by the bureau

or commission shall not be considered a complaint until the individual furnishing that information provides the information in writing. The commission chair or designee may issue a subpoena prior to the filing of charges if, in the opinion of the chair, such a subpoena is necessary to investigate any potential violation or lack of compliance with R.S.40:1231 et seq., or the rules, regulations, or orders of the bureau or commission. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

2. An agreement worked out between the complainant and the individual does not preclude disciplinary action by the commission. The nature of the offense alleged and the evidence before the commission must be considered.

C. Informal Disposition of with No Disciplinary Action

1. Some allegations may be settled informally by the commission and the individual, without formal disciplinary action. The following types of informal dispositions may be utilized.

a. Disposition by Correspondence

i. For less serious allegations, the chair, or a designee of the commission, may write to the individual explaining the nature of the information received. The individual's subsequent response may satisfactorily explain that no violation of the Emergency Medical Services Practice Act, or rules, or order of the commission or bureau occurred, or that the matter does not rise to the level requiring formal disposition at this time, and the matter may be dropped. If the situation is not satisfactorily explained, it shall be investigated and disposed of through another informal means or brought before the commission for a formal hearing.

b. Informal Conference

i. The chair, or a designee of the chair, and another member of the commission or a bureau staff member may hold a conference with the individual, in lieu of, or in addition to correspondence, in cases of less serious allegations. If the respondent can satisfactorily explain that no violation of the Emergency Medical Services Practice Act, or rules, or order of the commission or bureau occurred, or that the matter does not rise to the level requiring formal disposition at this time, then the matter may be dismissed.

ii. The individual shall be given adequate notice of the fact that information brought out at the conference may later be used in a formal hearing.

iii. Referral to an alternative to the disciplinary process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1824 (September 2003).

§511. Formal Disciplinary Action

A. A decision to initiate formal disciplinary proceedings is made if one or more of the following conditions exist:

1. the complaint is sufficiently serious;
2. the individual fails to respond to the commission's correspondence concerning the complaint;
3. the individual's response to the commission's letter or investigative demand is not convincing that no action is necessary;

4. an informal approach is used, but fails to resolve all of the issues.

B. Informal Procedures

1. The matter may be resolved without a formal administrative hearing by either a voluntary surrender of certification, Consent Order, or Settlement Order. These actions shall constitute disciplinary action and shall be a public record of the commission. The commission shall publish the individual's name, a brief description of the violation, and the disciplinary action.

C. Voluntary Surrender of Certification. An individual who is under investigation for violation of the practice act or rules of the commission or bureau may voluntarily surrender his certification to the bureau. The voluntary surrender invalidates the certification at the time of its relinquishment. An individual practicing as a certified EMS professional during the period of voluntary certification surrender is considered an illegal practitioner and is subject to the penalties provided by this chapter and RS 40.1231 et seq.

1. Any certification surrender shall not be deemed to be an admission of the alleged facts of any pending investigation or complaint. The fact of certification surrender shall be deemed a disciplinary action and shall be reported and distributed in the same manner as final decisions of the commission.

2. Surrender or non-renewal of certification shall not preclude the commission from investigating or completing a disciplinary proceeding based upon the individual's conduct prior to or subsequent to the surrender of certification.

3. Individuals who surrender their certification are not eligible for reinstatement of certification for a minimum of two years and until meeting the requirements for reinstatement of certification as described in this chapter.

D. Consent Order

1. An order involving some type of disciplinary action may be made by the commission with the consent of the individual.

2. The chair or the Bureau of EMS Director is authorized to offer the individual the choice of a consent order in lieu of an administrative hearing.

3. A consent order signed by an individual is an irrevocable offer by the individual until approved, or rejected, by the commission chair or designee.

4. A consent order requires formal approval of a quorum of the commission. All actions of the bureau shall be reported to the commission at its next regularly scheduled meeting.

5. A consent order is not the result of the commission's deliberation; it is the commission's formal approval of an agreement reached between the commission and the individual. The order is issued by the commission to carry out the parties' agreement.

a. Should the commission require evidence before arriving at a decision, the individual shall be notified and given an opportunity for a hearing.

b. Should the commission revise the terms of the agreement, said revised agreement shall be presented for the individual's acceptance. The commission may formulate its order contingent upon the individual's acceptance.

c. The commission shall have the right to refer any case directly to an administrative hearing without first offering a consent agreement.

E. Settlement Order

1. Disciplinary Settlement Committee, consisting of the chair, or a designee of the chair, and another member of the commission or a bureau staff member, is delegated the authority to render a final decision regarding settlement of a contested administrative matter by offering a settlement order in lieu of an administrative hearing. The settlement order shall be deemed an order of the commission, effective immediately upon signature of all parties to the agreement.

a. The disciplinary settlement shall be submitted to the commission for review at the next regularly scheduled disciplinary hearing.

b. Should the Disciplinary Settlement Committee be unable to successfully resolve a case, or should the committee believe that the public would be better protected by a decision rendered by the entire commission, the matter will be forwarded to the commission for a formal hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1824 (September 2003).

§513. Formal Hearing

A. The commission has the authority, granted by R.S. 40:1232.3, to bring administrative proceedings to certified EMS professionals, applicants for certification, individuals seeking enrollment or progression in an approved EMS program, and individuals practicing EMS without certification. The commission and the individual are the parties to the proceeding. The individual has the right to appear and be heard, either in person or by counsel; the right of notice, a statement of what accusations have been made; the right to present evidence and to cross-examine; and the right to have witnesses subpoenaed.

B. Notice and Service

1. The chair or a designee fixes a time and place for a hearing.

2. At least 15 days prior to the date set for the hearing, a copy of the charges and a notice of the time and place of the hearing are sent by certified mail, return receipt requested, to the individual's address of record. Notice to an individual is effective and service is complete when sent by certified mail to the individual's address of record.

3. At least five working days prior to the scheduled hearing date, the individual shall respond in writing as to his intention to appear or not appear at the scheduled hearing. At least five working days prior to the scheduled hearing date, the individual shall also file with the commission a written response to the specific allegations contained in the notice of charges. Allegations not specifically answered shall be deemed admitted.

4. If the individual does not appear, in person or through counsel, after proper notice has been given, the individual has waived these rights and the commission may proceed with the hearing without the presence of the individual.

C. Motions for Continuance

1. The commission shall not postpone cases that have been scheduled for hearing absent good cause. A written motion by a certified EMS professional, applicant, or student for a continuance shall be filed with the commission five working days prior to the time set for the hearing, except for

extreme emergencies. The motion shall contain the reason for the request, which reason must be based upon good cause and have relevance for due process. Requests for continuances may be approved or denied by the chair or designee. No more than three requests for continuance shall be granted.

D. Subpoenas

1. The chair, or a designee of the commission, issues subpoenas for the commission for disciplinary proceedings, and when requested to do so, may issue subpoenas for the other party. Subpoenas include:

- a. a subpoena requiring a person to appear and give testimony;
- b. a subpoena duces tecum, which requires that a person produce books, records, correspondence, or other materials over which he has control.

E. Hearing

1. The hearing is held, at which time the commission's primary role is to hear evidence and argument, and to reach a decision. Any commission member, who because of bias or interest is unable to assure a fair hearing, shall be recused from that particular proceeding. The reasons for the recusal are made part of the record. Should the majority of the commission members be recused for a particular proceeding, the governor shall be requested to appoint a sufficient number of pro tem members to obtain a quorum for the proceeding.

2. The commission shall be represented by a Department of Health and Hospitals' attorney. Evidence is presented that disciplinary action should be taken against the individual. The individual may present evidence personally or through an attorney, and witnesses may testify on behalf of the individual.

3. Evidence includes the following:

- a. oral testimony given by witnesses at the hearing, except that, for good cause, testimony may be taken by deposition (cost of the deposition is borne by requesting party) and/or by sworn affidavits;
- b. documentary evidence, i.e., written or printed materials including public, business or institutional records, books and reports; such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference, if the incorporated materials are available for examination by the parties before being received into evidence;
- c. visual, physical and illustrative evidence;
- d. admissions, which are written or oral statements of a party made either before or during the hearing;
- e. facts officially noted into the record, usually readily determined facts making proof of such unnecessary.;
- f. All testimony is given under oath. If the witness objects to swearing, the word "affirm" may be substituted.

4. The chair of the commission presides and the customary order of proceedings at a hearing is as follows.

- a. The chair of the commission presents the case against the individual.
- b. The individual, or his attorney, makes an opening statement, explaining why he believes that the charges against him are not legally founded.
- c. The individual commission members ask relevant questions.

d. The individual, or his attorney, may make any statements or questions to the commission.

e. The chair of the commission makes the final statement.

f. The commission may impose reasonable time limits on all sides in a hearing, provided that limits will not unduly prejudice the rights of the parties.

g. The commission may exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record.

h. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

i. Motions may be made before, during, or after a hearing. All motions shall be made at an appropriate time, according to the nature of the request. Motions made before or after the hearing shall be in writing. Those made during the course of the hearing may be made orally since they become part of the transcript of the proceeding.

5. The records of the hearing shall include:

- a. all papers filed and served in the proceeding;
- b. all documents and other materials accepted as evidence at the hearing;
- c. statements of matters officially noticed;
- d. notices required by the statutes or rules, including notice of the hearing;
- e. affidavits of service or receipts for mailing or process or other evidence of service;
- f. stipulations, settlement agreements or consent orders, if any;
- g. records of matters agreed upon at a pre-hearing conference;
- h. orders of the commission and its final decision;
- i. actions taken subsequent to the decision, including requests for reconsideration and rehearing;
- j. a transcript of the proceedings, if one has been made, or a tape recording or stenographic record.

k. The record of the proceeding shall be retained until the time for any appeal has expired, or until the appeal has been concluded. The record is not transcribed unless a party to the proceeding so requests, and the requesting party pays for the cost of the transcript. A party who appeals a decision of the commission shall pay all of the costs incurred by the Department of Health and Hospitals for preparation of the original and any certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

6. The decision of the commission shall be reached according to the following process:

- a. determine the facts in the issue on the basis of the evidence submitted at the hearing;
- b. determine whether the facts in the case support the charges brought against the individual;
- c. determine whether charges brought are a violation of the Emergency Medical Services Practice Act or rules and regulations of the commission or the bureau.

7. The vote of the commission shall be recorded. Minority views may be made part of the record.

8. Sanctions against the individual who is party to the proceeding are based upon the findings of fact and

conclusions of law determined by the hearing. The party is notified by certified mail of the decision of the commission.

F. Disciplinary Sanctions

1. The type of disciplinary sanctions and length of time specified for the sanctions shall be determined on an individual basis, considering all facts pertinent to the case.

2. The commission sets forth guidelines with ranges of disciplinary sanctions from which disciplinary penalties may be imposed. These guidelines are intended to serve only as a guide for staff and commission members when considering penalties, which could be imposed for specific violations of the Emergency Medical Services Practice Act. Guidelines are in no way binding on the commission when dealing with disciplinary matters. The commission may order certification sanctions.

3. The disciplinary guidelines are based upon a single count violation. Multiple counts of violations of the same action, or other unrelated violations contained in the same complaint will be grounds for enhancement of penalties. Each day of a continuum of violations may be treated as a separate violation.

4. In determining sanctions, the staff shall consider aggravating or mitigating circumstances identified by the commission in addition to any other factors. The list of aggravating and mitigating circumstances in the guidelines is not to be considered an exclusive list of circumstances.

a. Aggravating circumstances may result in the commission issuing maximum sanctions, or they may justify enhancement of a penalty beyond the maximum guidelines.

b. Mitigating or extenuating circumstances may justify lessening of the sanctions below the minimum guidelines. Certification suspensions may be stayed with stipulated probations in some extenuating circumstances.

5. The Order may stipulate remedial education, specific evaluation and therapy, and other sanctions as deemed necessary and appropriate to the case.

G. Reconsideration or Rehearing

1. The commission shall reconsider a matter when ordered to do so by a higher administrative authority or when the case is remanded for reconsideration or rehearing by a court to which the commission's decision has been appealed.

2. The commission may reconsider a matter which it has decided. This may involve rehearing the case, or it may involve reconsidering the case on the basis of the record. Such reconsideration may occur when a party files a petition requesting that the decision be reconsidered by the commission and specifies the particular grounds therefore.

3. A petition by a party for reconsideration or rehearing must be in proper form and filed within 10 days from the date of entry of the decision. A decision is deemed to be entered when it is signed by the chair or designee and sent by certified mail to the individual's address of record. The petition shall set forth the grounds for the rehearing, which include one or more of the following:

a. the commission's decision is clearly contrary to the law and the evidence;

b. there is newly discovered evidence, which was not available to the individual at the time of the hearing and which may be sufficient to reverse the commission's action;

c. there is a showing that issues not previously considered ought to be examined in order to dispose of the case properly;

d. it would be in the public interest to further consider the issues and the evidence;

e. upon the commission's receipt of a petition for rehearing or reconsideration, the commission may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the above stated reasons. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

H. Emergency Action

1. If the commission finds that public health, safety, and welfare requires emergency action and a finding to that effect is incorporated in its order, summary suspension of a certification may be ordered by the chair or designee pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined at the next regularly scheduled commission meeting.

I. Disciplinary Proceedings in another Licensing Jurisdiction

1. When a certified EMS professional has his certification revoked, suspended, denied or sanctioned in other ways for disciplinary reasons by the original certification/licensing jurisdiction or by a subsequent certification/licensing authority that certified EMS professional shall be notified that his Louisiana Certification is automatically suspended, except for the following:

a. nonpayment of fees;

b. a person in a recovery program for chemical dependency receives permission of the state of origin to transfer to another state;

c. the certified EMS professional is issued a reprimand and the certified EMS professional agrees to having his Louisiana Certification reprimanded identically to, or in excess of, the said jurisdiction's reprimand; and

d. the certification is encumbered with a reprimand with stipulations and the certified EMS professional agrees to having his Louisiana Certification probated with stipulations that are identical to, or exceed, the stipulations in said jurisdiction.

2. The certified EMS professional may have his certification reinstated provided that the certified EMS professional:

a. provides evidence of an unencumbered certification by the involved certification/licensing authority and all subsequent certification/licensing authorities; and

b. meets requirements for reinstatement of certification as described in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1825 (September 2003).

§515. Appeal from Commission Decision

A. Any person whose certification has been revoked, suspended, denied, or otherwise disciplined by the bureau shall have the right to have the proceedings of the commission reviewed by the court having jurisdiction over

the commission, provided that such appeal is made within 30 days after the date indicated on the registered mail receipt of the written notice of the commission's decision. The commission's decision is enforceable in the interim unless the court orders a stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1827 (September 2003).

§517. Reinstatement of Certification

A. Application for reinstatement of a suspended or surrendered certification shall be in writing.

B. The application for reinstatement of a suspended certification does not require satisfaction of the requirements for initial certification. However, the requirements of LAC 46:XXXVIII shall be met.

C. Prior to reinstatement of a certification previously suspended (except for nonpayment of fees), a hearing or conference is held before the commission to afford the applicant with the opportunity to present evidence that the cause for the revocation or suspension no longer exists and to provide an opportunity for the commission to evaluate changes in the person or conditions. In certain situations, the certification may be reinstated by consent order or settlement order. The burden of proof is on the applicant to prove that conditions that led to the suspension no longer exist and/or no longer affect applicant's ability to practice safely. If reinstatement is granted, a period of probation with stipulations may be imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1828 (September 2003).

§519. Definition of Terms Applying to EMS Practice as used in this Chapter

AccountabilityCbeing answerable for one's actions or inactions. The certified EMS professional answers to self, patient, agency, medical director, profession and society for the effectiveness and quality of EMS care rendered. It is the personal responsibility of each individual to maintain competency in practice. If the assigned EMS professional does not possess the specialized EMS knowledge, skills and abilities required to provide the required care, said professional shall notify the appropriate supervisory EMS personnel.

Additional ActsCactivities beyond those taught in basic EMS education programs. Additional acts are authorized by the commission through rules and regulations or declaratory statements interpreting the legal definition of EMS. Certified EMS professional are accountable for attaining and maintaining competency when performing approved additional acts.

AssessmentCidentifying human responses, which indicate existing, or potential abnormal condition through the patient history, physical examination, and observation, in accordance with the standards of EMS of practice.

AssignmentCdesignating EMS activities to be performed by an individual consistent with his scope of practice.

Carrying Out the Medical Orders of a Physician Licensed in Louisiana

1. certified EMS professionals may, based on their individual judgment of each situation, accept verbal orders initiated by a licensed physician, provided the order is related to the said practitioner's scope of practice;

2. certified EMS professionals may execute standing orders of a licensed physician.

CollaboratingCa process involving two or more health care professionals working together, though not necessarily in each other's presence, each contributing one's respective area of expertise to provide more comprehensive care than one alone can offer.

Delegating EMS InterventionsCcommitting or entrusting the performance of selected EMS tasks by the certified EMS professional to other competent EMS personnel in selected situations. The certified EMS professional retains the accountability for the total EMS care of the individual.

EMS ServicesCactivities designed to resolve, diminish, or prevent the needs that are inferred from the individual's problem; includes the planning, implementation and evaluation of said activities in accordance with the Standards of EMS practice.

Expanded Scope of PracticeCthose functions, procedures and activities which are currently not part of the approved National EMS curriculum, but have been approved by the EMS Certification Commission as appropriate for the various levels of EMS professionals.

Field DiagnosisCprehospital evaluation of the patient's condition and its causes.

Maintaining EMS Care Rendered Directly or IndirectlyCpreserving the continuity of safe and effective EMS care, including the delegated EMS activities.

Managing and Supervising the Practice of EMSCthose activities which serve to fulfill the accountability of the certified EMS professional for the total EMS care of the individual when tasks in the EMS care are delegated to other EMS personnel. These activities include:

1. judging the priority of EMS needs of the individual(s);

2. determining actions required to meet the needs;

3. assigning personnel, including self, qualified to implement the prescribed EMS care components of that care;

4. providing information needed by personnel for the implementation of the assigned EMS care and ascertaining the assimilation of same information;

5. directing the EMS care and evaluating the outcomes of that care;

6. determining and initiating changes in EMS care or in assignment of EMS personnel.

Medical DiagnosisCthe conclusion reached in identification of the patient's disease, especially the art of distinguishing among several possibilities with the intent of prescribing relevant treatment.

Medical InterventionsCall functions, activities, medications and medical treatments of therapeutic or corrective nature approved by the Bureau of EMS and the EMS Certification Commission.

Preventive Instruction Those EMS measures that provide health information and explanation to the public to reduce the incidence of death and injury.

Scope of Practice The range of duties and skills EMS professionals are expected to perform.

Specialized Knowledge and Skills Required for the practice of EMS means the current theory and practice taught in basic EMS education programs preparing persons for EMS professional certification as well as information in the biological, physical and behavioral sciences.

Specialty Care Transport Paramedic Those individuals who have met the requirements as approved by the EMS Certification Commission.

Student EMS Professional A person who is engaged in learning experiences in a program of study leading to candidacy for certification to practice as a certified EMS professional. The term applies only when the person is participating in an integral part of the program of study.

Teaching of EMS Instructing EMS professional students and providing continuing EMS education to certified EMS professionals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2017.10.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Medical Services Certification Commission, LR 29:1828 (September 2003).

Chapter 7. Administrative Provisions

Subchapter A. Fees and Costs

Reserved.

Gene Salassi
Chairman

0309#034

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services

Home and Community Based Services Waiver Program
Standards of Participation
(LAC 50:XXI.Chapter 1)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services promulgates the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH MEDICAL ASSISTANCE

Part XXI. Home and Community Services Waivers

Subpart 1. General Provisions

Chapter 1. Standards for Participation

§101. Provider Requirements

A. In order to be reimbursed by the Louisiana Medicaid Program, a service provider agency must comply with all of the requirements of this Part XXI.

B. General Provisions

1. For the purposes of this Part XXI, providers enrolled with the Department of Health and Hospitals

(DHH) as a Home and Community-Based Waiver (HCBW) service provider on the effective date of this rule shall have two years to comply with these standards, including attending the Bureau of Community Supports and Services (BCSS) provider orientation for HCBW prior to requesting a provider enrollment visit by the Bureau of Community Supports and Services (BCSS).

2. If a provider is not accessible in their DHH geographical region, individuals and/or families may seek a provider outside of the DHH region with prior approval of BCSS. This approval must be documented in the individual's approved comprehensive plan of care (CPOC) and Freedom of Choice Form (FOC).

3. Providers are responsible for submitting written notification by certified mail to BCSS and Medicaid of any changes in address and/or telephone numbers within 10 days of the change.

4. In addition to agency internal employer reporting requirements, any employee or consultant/contractor of the enrolled provider who witnesses, learns of, is informed of, or otherwise has reason to suspect that an incident of abuse, neglect, or exploitation has occurred must report such incident in accordance with BCSS critical incident reporting, child and/or adult protection laws, and fully cooperate with the investigation of the incident.

C. Physical Facilities and Equipment

1. The provider shall maintain an office site in each region of operation.

a. Each site must house the case records and billing information for all individuals served by that office.

b. Each regional site must maintain a toll-free telephone line with 24-hour accessibility and manned by an answering service. The toll-free number must be given to individuals at intake or at the first meeting.

c. The provider must have daytime office hours that conform to the usual and customary operating hours of the local business community.

d. The provider must maintain a current brochure that outlines provider services, address and telephone numbers for distribution to the public.

2. The provider must obtain and maintain computer equipment, internet accessibility, and software as specified below:

a. IBM-compatible PC with a Pentium Processor 4 or later version, and/or capable of using specific software required by BCSS:

b. 1.44 MB 3.5 inch disk drive;

c. 32 MB of RAM or more;

d. 25 MB free hard drive space or more;

e. color monitor;

f. printer;

g. modem (28.2k or faster);

h. CD-ROM;

i. Windows 95 operating system or later version;

j. internet account with e-mail and web-browser software.

D. Provider Training

1. New providers shall attend the BCSS provider orientation for HCBW providers and meet all required standards prior to being enrolled as a waiver service provider. BCSS provider orientation will be held in January and June.

2. All enrolled providers will be required to attend an annual BCSS training conducted to continue enrollment. Additional training may be required by BCSS if deemed necessary.

3. Those employees having direct contact with recipients must obtain no less than 16 hours of basic orientation in addition to any individualized, specialized training needed to work with a recipient on a daily basis prior to becoming solely responsible for implementing that recipient's support plan.

4. All provider training shall be competency-based (results driven).

5. Training shall include, but is not limited to, the following:

- a. abuse/neglect/incident reporting;
- b. staff ethic, including the strict prohibition against soliciting consumers from other provider agencies, respectful interactions with people being supported, and the use of People First Language;
- c. confidentiality, privacy rights, and HIPAA;
- d. human and civil rights;
- e. person centered planning;
- f. personal outcomes;
- g. consumer direction/self determination philosophy;
- h. infection control/universal precautions, first aid and emergency procedures;
- i. environmental emergency procedures;
- j. provider policies and procedures;
- k. documentation of services, progress notes, service logs, etc.

6. The provider shall have an employee designated as a training coordinator whose responsibilities include, but are not limited to, the following duties:

- a. staff training;
- b. staff development; and
- c. maintenance of training records.

E. Personnel and Human Resources

1. Program or Executive Director

a. The program director or executive director shall meet the following requirements:

i. be a registered nurse (RN) and have one year of verifiable experience in direct service work with persons with disabilities;

ii. have a bachelor's degree in a human services field (such as, but not limited to, hospital or nursing home administration, physical therapy, occupational therapy, speech therapy, social work or psychology) or is currently enrolled in an accredited college and pursuing a bachelor's degree in a human services field. The individual will have a period of three years to complete the course of study; and

iii. have a minimum of one year verifiable work experience, post degree or have one year of experience while working on the degree, in planning and providing direct support to:

- (a). persons with mental retardation or other developmental disabilities; or
- (b). disabled adults; or
- (c). elderly persons with chronic disabling illness; or

b. in the absence of having an employee that meets the qualifications in §101.E.1, the provider must have a

contract with a person so qualified to serve as program director to assure that services are delivered as described in the approved CPOC.

2. Direct Support Staff. Direct support personnel/staff shall possess validated direct care abilities, skills and knowledge to adequately provide the care and support required by a recipient receiving waiver support services.

a. Direct support staff shall be at least 18 years old and possess a high school diploma, GED, a trade school diploma in the area of human services, demonstrated competency, or have verifiable work experience in providing support to individuals with disabilities.

3. The provider shall develop and implement policies and procedures for the recruitment, hiring, and retaining of qualified, competent personnel including:

a. obtaining at least three references from previous employers and/or work supervisors;

b. strategies to recruit and employ staff representative of the cultural and ethnic groups supported;

c. conducting criminal background checks on all employees prior to allowing the employee to work directly with individuals receiving HCBW services;

d. strategies for retaining competent staff and staff development;

e. compliance with Fair Labor and Child Labor laws;

f. agency backup plans for staff coverage when direct care staff fail to report for duty as scheduled. The plan must include strategies to assure that backup direct support staff have been trained in the individualized, specialized care and support needed;

g. protocol outlining how the agency will have staff available during emergencies or unexpected changes in the recipient's schedule;

h. a staff evaluation process that addresses the quality of the staff's support to individuals served and includes consumer satisfaction information from the recipient/guardian or authorized representative;

i. policies outlining the chain of command and supervisory roles including:

i. protocol for staff supervision;

ii. protocol for investigation and resolution of complaints regarding the staff's performance.

4. The provider must have an approved Quality Assurance/Quality Improvement (QA/QI) plan. The QA/QI plan shall include the following:

a. a process for obtaining input from recipient/guardian/authorized representative and family members of those receiving waiver supports;

b. a process for identifying the risk factors that put the recipients at high risk and affect or may affect or may affect health, safety, and/or welfare of individuals being supported;

c. accepted methods for data collection, frequency of collection, source of data, identification of thresholds, analysis of data and identification of trends and patterns in service delivery:

i. the provider shall develop strategies to benchmark service improvement over time;

ii. the QA/QI program outcomes shall be reported to the program director for action as necessary for any identified systemic problems.

5. The QA/QI plan must be submitted to BCSS in accordance with the following time schedule.

a. The QA/QI plan is due 60 days after documented QA/QI training by BCSS and annually thereafter.

b. Self-evaluation of QA/QI plan is due six months after the approval by BCSS of the QA/QI plan.

c. A self evaluation of the QA/QI program is to be submitted annually thereafter to BCSS.

6. The provider shall develop and implement system accountability for billing in keeping with generally accepted accounting principles and provide annual cost reports as requested by BCSS for systems evaluation.

F. License Documentation

1. The provider must adhere to all licensure regulations. The provider shall maintain a current license for all applicable areas of service provision and shall provide BCSS with current documentation of licensing including all deficiencies, corrective action plans and follow-up licensing reviews.

2. Providers not adhering to licensing regulations and/or not attending scheduled re-enrollment will be denied new referrals by Freedom of Choice. If the provider does not comply with these requirements, steps will be taken to disenroll the agency as a Medicaid provider for HCBW.

3. Providers operating under a provisional license or under an extended license due to noncompliance with licensing regulations must demonstrate satisfactory progress toward correction of the deficient practices in order to maintain provider standing for continued enrollment as a waiver service provider. Providers possessing provisional licenses due to noncompliance shall be removed from the Freedom of Choice list until all deficiencies have been corrected and a full license has been obtained.

4. Staff transporting an individual receiving HCBW services shall have a valid (current) driver's license, current liability insurance, and the vehicle shall be in safe operating condition as determined by a current inspection sticker.

G. Fiscal Accountability

1. The new provider (applicant) shall establish a business plan which includes cash flow projections and which has been reviewed by a fiscal entity (e.g., a CPA) who attests to the adequacy of the plan for meeting the provider's monthly overhead and payroll requirements on an ongoing basis. A notarized letter from the fiscal entity will serve as evidence and shall be available for review upon request by BCSS.

2. Existing providers shall have an established relationship with a fiscal entity (i.e., a bank) to assure fiscal stability and documentation in the form of liquid assets or the ability to secure approval for a line of credit.

3. Requirements for average rates of pay and/or benefit packages for direct support staff will be responsive to the overall funding of the services to the program by the DHH.

H. Records and Documentation

1. The provider shall comply with the Health Insurance Portability and Accountability Act of 1996, (HIPAA) as defined by the Centers for Medicare and Medicaid Services.

2. A complete and separate record for each individual served shall be maintained, including:

a. planning meeting minutes;

b. CPOCs;

c. service logs;

d. billing records;

e. progress notes;

f. eligibility records; and

g. all other pertinent documents.

3. The provider shall provide all case records and billing documents to BCSS as required for monitoring activities and investigations upon request on site or within two hours if records are stored off site.

4. The provider will maintain the following documents and provide them to BCSS upon request:

a. copies of the current approved CPOC, the current service plan and all CPOC revisions in the individual's case record and in the individual's home. (Note: These documents must be current and available);

b. documentation of payroll and services delivered within a time period must agree. Documentation of services delivered within a pay period will be recorded in the individual's home record;

c. updated and implemented service plan to meet the service changes warranted by CPOC revisions within five calendar days of receiving a copy of the approved CPOC revision;

d. a copy of the behavior support plan, if one is required, in the recipient's home.

5. The provider shall maintain documentation to support that services were rendered as per the approved CPOC and service plan. The provider shall:

a. maintain documentation of the day-to-day activities of the recipient (service logs and progress notes);

b. maintain documentation detailing the recipient's progress towards his/her personal outcome;

c. maintain documentation of all interventions used to ensure the recipient's health, safety and welfare. (Note: interventions may include, but are not limited to, medical consultations, environmental and adaptive interventions, etc.)

6. The provider shall develop written policies and procedures relative to the protection of recipient's rights which include, but are not limited to:

a. human dignity/respectful communications;

b. person-centered planning/personal outcomes;

c. community/cultural access;

d. right to personally manage his/her financial affairs, unless legally determined otherwise or he/she gives informed consent;

e. right to refuse service/treatment;

f. civil rights (such as right to vote).

I. Discharges and Transfers

1. The provider's responsibilities for voluntary planned transfers or discharges from their agency shall include:

a. obtaining of a written request for transfer to another agency and the expected transfer date/time from the individual or his/her authorized representative;

b. notifying the recipient's case manager within 24 hours for planning to begin;

c. allowing the case manager no less than two weeks (14 calendar days) and up to 30 days (if needed) for planning the transfer, unless it is for an emergency placement;

d. participating in the planning meeting facilitated by the case manager who assures the availability of appropriate services through the receiving agency; and

e. with the written consent from the recipient, both the transferring and the receiving agencies shall share responsibilities for ensuring the exchange of medical and program information which shall include:

- i. current CPOC;
- ii. current service plan;
- iii. a summary of behavioral, social, health and nutritional status; and
- iv. any other pertinent information.

2. The provider must have written policies and procedures for the management of involuntary discharges/transfers from their agency.

a. Involuntary transfers/discharges from their services may occur for the following reasons:

- i. medical protection of the well being of the individual or others;
- ii. emergency situations (i.e., fire or weather related damage); or
- iii. any direct threat to the recipient's health, safety and/or welfare.

b. Involuntary transfers/discharges may occur when a provider identifies an inability to provide the services indicated in the recipient's CPOC, but only after documented reasonable accommodations have been tried and have failed.

c. Provider responsibilities include submission of a written report to the BCSS regional office, detailing the circumstances leading up to the decision for an involuntary transfer/discharge and provision of the documentation of the provider's efforts to resolve issues encountered in the provision of services.

d. All team conferences shall reflect a person-centered process and be conducted with the recipient, guardian or authorized representative, case manager and the appropriate provider personnel to develop or update the CPOC.

e. The recipient, guardian or authorized representative will be notified in writing at least 15 calendar days prior to the transfer or discharge from the provider agency. The individual's rights shall be assured throughout the process. The written notification shall include:

- i. the proposed date of transfer/discharge;
- ii. the reason for the action; and
- iii. the names of personnel available to assist the individual throughout the process.

f. The service provider shall provide the recipient, guardian, or authorized representative with information on how to request an appeal of the decision for involuntary discharge.

i. The recipient may request reconsideration through the service provider's grievance policy and procedures.

ii. The recipient may request an informal reconsideration hearing with BCSS and the discharging service provider.

iii. If the recipient is not satisfied with the results of the informal reconsideration hearing, an appeal

may be filed with the DHH Appeals Section by notifying the regional BCSS office or the DHH Bureau of Appeal.

J. Emergency Situations

1. Immediate jeopardy situations shall be handled immediately and the recipient's guardian or authorized representative, BCSS regional office, and the case manager must be notified immediately, no later than 48 hours after the provider's direct support staff and/or the provider's administrative staff learns of the immediate jeopardy situation.

a. The notification shall include:

- i. the anticipated action;
- ii. that the action will take place within 48 hours unless an emergency situation exists; and
- iii. the names of personnel available to assist the individual and/or their family through the process.

b. A critical incident report and investigation must begin as soon as possible after the individual is safe.

2. Critical incidents shall be reported to all appropriate law enforcement agencies as directed by state law and as directed in the Bureau's critical incident policy and to BCSS within two hours of the agency's Executive Director or his/her designated representative's first knowledge of the incident. If after business hours, a message shall be left on the BCSS toll-free line voice mail and a critical incident report must be sent via FAX on the next business day.

a. Critical incident updates shall be sent to BCSS within 72 hours and a final report to BCSS up to the 30 days from the incident.

b. The waiver service provider's responsibilities for critical incident reporting are:

- i. immediately assuring the recipient's health and safety;
- ii. reporting the incident to BCSS and the case manager;
- iii. conducting an internal investigation;
- iv. cooperating with all critical incident investigations;
- v. resolution of all critical incidents and complaints against the provider; and
- vi. implementing a plan of correction for problems identified in the course of critical incident investigations.

K. Recipient Provisions and Rights

1. The center-based respite provider may serve recipients residing in other regions other than the region in which it is located. The selection should be approved by BCSS and included in the recipient's CPOC.

2. An individual is linked to a provider for a period of six months at a time.

a. The recipient may not transfer to a different provider until after the six-month period without "Good Cause."

b. The provider shall not refuse to serve any individual who chooses their agency, unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide services and supports have failed and there is no option but to refuse services. The BCSS must be notified of the circumstances.

c. Requirements in Paragraph 2.a-b above can only be waived by BCSS.

3. The BCSS toll-free help line number must be included in the contact packets left in the recipient's home.

4. The provider shall encourage and support the recipient in the development of the CPOC and provider service plan by:

a. obtaining the recipient's personal choices, vision, and preferences and incorporating them into the individual's person-centered CPOC;

b. assessing the recipient's:

i. skills;

ii. needed supports; and

iii. health, safety and welfare needs.

c. development of strategies to meet the recipient's service needs and timely development of the service plan to implement the strategies; and

d. the development of a process to monitor the ongoing implementation of the plan.

L. Case Management. The provider shall have a written working agreement with the case management agency serving the recipient. The agreement shall include:

1. written notification of the time frames for CPOC planning meetings;

2. the timely notification of the meeting dates and time to allow for provider participation;

3. how agencies will exchange information, such as notification of changes in the CPOC or in service delivery; and

4. assurance that the provider sends the appropriate provider representative to the planning meetings as invited by the recipient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:1829 (September 2003).

§103. Agency Responsibilities

A. Both federal and state laws and regulations authorize the Department of Health and Hospitals to maintain the programmatic and fiscal integrity of the Medicaid Home and Community-Based Services Waiver Program. The Bureau of Community Supports and Services is charged with the responsibility to set the standards, monitor the outcomes and apply administrative sanctions for failures by service providers to meet the minimum standards for participation. All failures to meet minimum standards shall result in a range of required corrective actions including, but not limited to, removal from the Freedom of Choice listing, a citation of deficient practice, a request for a corrective action plan and/or administrative sanctions. Continued failure to meet minimum standards shall result in loss of referral of new HCBW recipients and/or continued enrollment as a home and community-based waiver service provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:1833 (September 2003).

David W. Hood
Secretary

0309#101

RULE

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Medicaid Eligibility CTANF Elimination of Work Related Sanctions

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing eliminates the consideration of Temporary Assistance to Needy Families work requirements in determining Medicaid eligibility.

Implementation of this Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

David W. Hood
Secretary

0309#100

RULE

Department of Social Services Office of Family Support

Child Care Assistance Program (CCAP) Conditions of Eligibility; Activity Hours; Payment (LAC 67:III.5103 and 5109)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 12, Child Care Assistance Program.

To ensure that funding is available to as many low-income families as possible, the agency has decreased the percentage of child care costs paid for by the agency and increased the number of required activity hours for parents receiving low-income child care. The agency has also amended §5109.B.1.c.ii to change "casehead" to "head of household" and §5109.D for technical reasons only.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter B. Child Care Assistance Program

§5103. Conditions of Eligibility

A. ...

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria.

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration disability benefits, Supplemental Security Income, Veteran's Administration disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed a minimum average of 25 hours per week effective April 1, 2003, and all countable work hours must be paid at least at the Federal minimum hourly wage; or

b. attending a job training or educational program that is legally authorized by the state for a minimum average of, effective April 1, 2003, 25 hours per week (attendance at a job training or educational program must be verified, including the expected date of completion); or

c. engaged in some combination of employment which is paid at least at the Federal minimum hourly wage, or job training, or education as defined in §5103.B.4.b that averages, effective April 1, 2003, at least 25 hours per week;

d. exception: a household in which all of the members described in §5103.B.4 meet the disability criteria is not eligible for child care assistance unless one of those members meets, effective April 1, 2003, the required minimum average of 25 activity hours per week.

B.5. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1833 (September 2003).

§5109. Payment

A. The sliding fee scale used for non-FITAP recipients is subject to adjustment based on the state median income and poverty levels which are published annually. A non-FITAP household may pay a portion of its child care costs monthly in accordance with the sliding fee scale, and this shall be referred to as a "copayment." The sliding fee scale is based on a percentage of the state median income.

Sliding Fee Scale for Child Care Assistance Recipients 75 Percent of Projected Median Income

Number in Household	2	3	4	5	6	DSS %
Monthly Household Income	0-968	0-1219	0-1471	0-1723	0-1974	70%
	969-1535	1220-1908	1472-2281	1724-2654	1975-3027	50%
	1536-2101	1909-2596	2282-3090	2655-3585	3028-4079	30%
	above 2101	above 2596	above 3090	above 3585	above 4079	0%

Number in Household	7	8	9	10	11	DSS %
Monthly Household Income	0-2226	0-2478	0-2729	0-2981	0-3233	70%
	2227-3199	2479-3372	2730-3543	2982-3716	3234-3888	50%
	3200-4172	3373-4265	3544-4357	3717-4450	3889-4543	30%
	above 4172	above 4265	above 4357	above 4450	above 4543	0%

Number in Household	12	13	14	15	16	DSS %
Monthly Household Income	0-3484	0-3736	0-3988	0-4239	0-4491	70%
	3485-4060	3737-4232	3989-4405	4240-4577	4492-4749	50%
	4061-4636	4233-4728	4406-4821	4578-4914	4750-5006	30%
	above 4636	above 4728	above 4821	above 4914	above 5006	0%

Number in Household	17	18	19	20		DSS %
Monthly Household Income	0-743	0-4994	0-5246	0-5498		70%
	744-4921	4995-5093	5247-5266			50%
	4922-5099	5094-5192	5267-5285			30%
	above 5099	above 5192	above 5285			0%

NOTE: Effective April 1, 2003, the department's percentage of payments for low-income child care cases has been adjusted as reflected in the above tables.

B. - 1.c.i. ...

ii. the number of hours the head of household, the head of household's spouse, or the minor unmarried parent is working and/or attending a job training or educational program each week, plus on hour per day for travel to and from such activity. For households with more than one TEMP, the hours of the TEMP with the smallest number of activity hours are used.

B.2. - C. ...

D. Payment may be made to more than one provider for the same child if the combined payment does not exceed the maximum allowable per child.

E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 December 1999), LR 26:2828

Gwendolyn P. Hamilton
Secretary

0309#058

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Boating Safety (LAC 76:XI.301)

The Wildlife and Fisheries Commission has enacted regulations governing the Rules of the Road for Boating Safety in the State of Louisiana (LAC 76:XI.301).

Title 76

WILDLIFE AND FISHERIES

Part XI. Boating

Chapter 3. Boating Safety

§301. Rules of the Road for Vessels

A. The following regulations shall dictate the operation of vessels upon the waters of the state and shall set forth a standard of operation. In construing and complying with these Rules, due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from the Rules necessary to avoid immediate danger.

B. Any violation of the Rules of the Road as referred to in this Section shall be prima facie evidence of careless or reckless operation.

C. Boating accidents caused by deviation from the Rules of the Road shall be documented as such in accident reports.

D. The Rules of the Road for vessels upon the waters in the state shall be as follows.

1. Vessels passing head-on shall each keep to their respective right.

2. A vessel overtaking another vessel may do so on either side, but must grant the right of way to the vessel being overtaken.

3. When vessels are passing at right angles, the vessel on the left will yield right-of-way to vessel on the right.

4. Motorboats shall yield right-of-way to non-motor powered boats except as follows:

- a. when being overtaken by non-powered vessels;
- b. for deep draft vessels that have to remain in narrow channels;
- c. when vessel is towing another vessel.

5. Motorboats must maintain a direct course when passing sailboats.

6. A vessel approaching a landing dock or pier shall yield the right-of-way to any departing vessel.

7. A vessel departing shoreline or tributary shall yield right-of-way to through traffic and vessels approaching shoreline or tributary.

8. Vessels will not abruptly change course without first determining that it can be safely done without risk of collision with another vessel.

9. If an operator fails to fully comprehend the course of an approaching vessel he must slow down immediately to a speed barely sufficient for steerageway until the other vessel has passed.

10. Vessels yielding right-of-way shall reduce speed, stop, reverse, or alter course to avoid collision. Vessel with right-of-way shall hold course and speed. If there is danger of collision, all vessels will slow down, stop, or reverse until danger is averted.

11. Vessels will issue warning signals in fog or weather conditions that restrict visibility.

12. No mechanically propelled vessel shall be operated so as to traverse a course around any other vessel underway or any person swimming.

13. In a narrow channel, vessels will keep to the right of mid-channel.

14. Vessels approaching or passing another vessel shall be operated in such manner and at such a rate of speed as will not create a hazardous wash or wake.

15. No vessel shall obstruct or interfere with take-off, landing, or taxiing of aircraft.

16. All vessels shall be operated at reasonable speeds for given conditions and situations and must be under the complete control of the operator at all times.

17. No person shall, under any circumstances, operate a vessel in excess of an established speed or wake zone.

18. No vessel or person shall obstruct or block a navigation channel, entrance to channel, mooring slip, landing dock, launching ramp, pier or tributary.

19. Vessels shall keep at least 100 feet clearance of displayed diver's flag.

20. Operator shall maintain a proper lookout.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:851.27.A.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 29:1835 (September 2003).

Terry D. Denmon
Chairman

0309#026