



November 30, 2023

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Dr. Boffy,

We are attorneys with the Pelican Center for Justice, a Louisiana public interest law firm that challenges government overreach and barriers to human flourishing in the courts.

This letter notices you that the Pelican Center for Justice plans to file a complaint against you personally and in your official capacity as President of the Board of Elementary and Secondary Education (BESE) for your unlawful attempt to promulgate, as an Emergency Rule, a policy creating a graduation appeals process for students who fail to pass required LEAP 2025 assessments unless you change course. This lawsuit will seek a temporary restraining order and a declaratory judgment that the declaration of an emergency and promulgation of an emergency rule exceeds your authority under the Louisiana Constitution and the Louisiana Administrative Procedure Act. It will also seek damages and attorneys' fees, to the fullest extent available under the law.

La.R.S 49:962(A)(1) sets out the circumstances under which a state agency may adopt an emergency rule. In part, the statute provides that BESE may adopt an emergency rule without prior notice or a public hearing to prevent imminent peril to the public health, safety, or welfare. Courts have found that the COVID-19 virus¹ and natural disasters² created emergency conditions imperiling the health, safety, or welfare of Louisianans and justified the declaration of a state of emergency or the adoption of emergency rules. Students who do not meet the present requirements to earn a diploma are in no immediate peril as the statute requires and thus no emergency exists.

Furthermore, La.R.S 49:962(A)(2) prohibits a state agency from adopting a rule as an emergency rule "if the agency is acting in the normal course and scope of fulfilling its mission, [or] failed to take necessary steps in the administration of the agency to avoid an emergency." An emergency declaration cannot be used to circumvent the rulemaking process. As you are aware, BESE has been working to craft a graduation appeals process since June 2023; the proposed rule was never discussed as a solution to address an emergent situation. Adopting the rule only became an emergency when you realized that Governor-Elect Landry would likely veto the final rule, and when BESE became aware of an unaddressed and unfunded fiscal impact that would jeopardize the rule's adoption.

¹ *In re Welch*, No. 21-C-624 (La. Ct. App. Jan. 26, 2022)

² *Neil v. Lafourche Parish Council*, No. 2013-CA-0587 (La. Ct. App. Feb. 7, 2014)

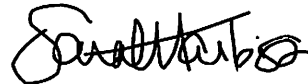
Finally, Superintendent Cade Brumley correctly stated in his memo to Governor John Bel Edwards that BESE code does not confer authority for emergency rulemaking to the board president if the state superintendent has not proclaimed that a state of emergency exists. The code is clear that Dr. Brumley alone may make a request for the board or the board president to act in an emergency. Dr. Brumley has appropriately advised school systems to disregard your policy.

We urge you to withdraw the proposed emergency rule. The lack of a graduation appeals process will not cause "imminent peril to the welfare of students." Rather, your unlawful action and defiance of the law shows callous disregard for Louisiana students, families, and educators and creates chaos and confusion in our school systems. You are on notice.

Sincerely,



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Cc: Ms. Shan Davis
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