

CONTENTS

I. EXECUTIVE ORDERS

EWE-79-1—Commission to Study the Use of the Wildlife and Fisheries Building in New Orleans55
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II. RULES

Agriculture Department:	
Office of Agricultural and Environmental Sciences—Sweet potato dealer's certificate permit55
Corrections Department:	
Office of the Secretary—Disciplinary rules and procedures for adult prisoners .....	.55
Education:	
Board of Elementary and Secondary Education—Certification standards for special education examiners; use of federal funds in vocational education; adult education; building and maintenance standards; Act 18, Transportation Reimbursement; nonpublic school testing guidelines .....	.61
Governor's Office:	
Tax Commission—Assessment of oil and gas property .....	.63
Health and Human Resources Department:	
Office of Family Security—Payment of sterilizations .....	.64
Maximum allowable costs for prescription drugs .....	.64
Board of Practical Nurse Examiners—Test scores and examination fees .....	.65
Natural Resources Department:	
Office of Conservation—Implementation of the Natural Gas Policy Act of 1978 .....	.65
Revenue and Taxation Department:	
First Use Tax Regulations .....	.66

III. NOTICES OF INTENT

Agriculture Department:	
Office of Agricultural and Environmental Sciences—Supplement to the Sweet-Potato Weevil Quarantine and Regulation .....	.68
Education:	
Board of Trustees for State Colleges and Universities—Faculty advisory council .....	.69
Board of Elementary and Secondary Education—Prior approval of vo-tech extension courses by Department of Education .....	.69
Board of Regents—Criteria for selecting master planners .....	.69
Board of Supervisors of Southern University—Out-of-state fees .....	.69
Governor's Office:	
Commission on Law Enforcement and Administration of Criminal Justice—Funding guidelines and application requirements for Law Enforcement Assistance Administration monies .....	.70
Health and Human Resources Department:	
Office of Health Services and Environmental Quality—Mechanical sewage treatment plants .....	.70
Office of Hospitals—Standards for emergency medical technician training .....	.70
Office of Human Development—Comprehensive Annual Services Program Plan .....	.71
Office of the Secretary—Facilities caring for the handicapped .....	.72
Natural Resources Department:	
Office of Conservation—Implementation of the Natural Gas Policy Act of 1978 .....	.72
Transportation and Development Department:	
Implementation of the State and Local Coastal Resources Act of 1978 .....	.72

IV. POTPOURRI

Wildlife and Fisheries Department:	
Stream Control Commission—Water Quality Continuing Planning Process .....	.73

Executive Orders

EXECUTIVE ORDER EWE-79-1

WHEREAS, the Wildlife and Fisheries Building at 400 Royal Street in the City of New Orleans is owned by the State of Louisiana; and

WHEREAS, there is additional space in this building which is not being used by the Department of Wildlife and Fisheries; and

WHEREAS, a study commission to advise the Governor and Mayor Ernest Morial of New Orleans regarding the future use of the Wildlife and Fisheries Building will insure proper utilization and allocation of this available space.

NOW, THEREFORE, I, EDWIN EDWARDS, Governor of the State of Louisiana, do hereby issue this executive order and create the Commission to Study the Use of the Wildlife and Fisheries Building in New Orleans.

The Commission shall serve at the pleasure of the Governor and shall be composed of the following members: Camille Gravel, Executive Counsel to the Governor; Michael O'Keefe, Senator and President of the Senate; Samuel B. Nunez, Senator; F. E. Lauricella, Senator; Louis Charbonnet, III, Representative; Ralph Miller, Representative; J. Burton Angelle, Secretary, Department of Wildlife and Fisheries; Judge Sanford Levy; Phillip C. Ciaccio, New Orleans City Councilman; and Joseph Casey.

The Commission may use whatever resources of the state it shall deem necessary to complete its study and shall report its findings to the Governor and to Mayor Ernest Morial.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 9th day of February, A.D. 1979.

Edwin Edwards
Governor of Louisiana

Rules

RULES

Department of Agriculture Office of Agricultural and Environmental Sciences

Section VI. Requirements for sweet potato dealer's certificate permit.

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

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

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

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

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

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

Richard Carlton, State Entomologist
Office of Agricultural and
Environmental Sciences

RULES

Department of Corrections Office of the Secretary

Preface

This booklet of disciplinary rules and procedures constitutes clear and proper notice for each adult prisoner within the Department of Corrections.

This booklet is effective May 1, 1979.

This booklet supercedes any and all conflicting disciplinary rules, procedures, posted policies, and appeal decisions affecting adult prisoners.

Foreward

Discipline (internal and external) and work are necessary for an individual to function in society and for society to function. In order for our corrections society to function, the following disciplinary rules and regulations have been adopted. They must be followed at all adult facilities.

These rules, regulations, and procedures may only be changed by the Secretary of the Department of Corrections.

In the event of a genuine emergency, such as a serious disturbance disrupting normal operations or a natural disaster, the Secretary or his designee may suspend any and all disciplinary rules and procedures for the duration of the emergency. Full hearings must be held within a reasonable time after the end of the emergency for those prisoners who suffered grievous losses (transfer to Louisiana State Police (LSP), custody change, isolation, or loss of good time).

Good time not earned during a given month (up to twenty-five days) cannot be restored. There is no provision in law for anyone, including the Secretary and the Governor, to restore good time.

The pronouns "he" and "his," as they appear herein, are used for convenience only and are not intended to discriminate against female employees or prisoners.

Disciplinary Definitions

Administrative Lockdown (Adm. Ld.): A holding area, preferably a cell, where prisoners who present an immediate threat to the security of the facility through a specific act of planned or committed misbehavior are confined pending their appearance before the disciplinary board.

Appeals: An appeal to the disciplinary board may be made by a prisoner who is dissatisfied with the handling of his case by the disciplinary officer. An appeal to the Secretary may be made by or on behalf of a prisoner who is dissatisfied with the handling of his case by the disciplinary board.

Confidential Informants: Persons who secretly provide employees with information concerning misbehavior or planned misbehavior by prisoners or employees.

Counsel and Counsel Substitutes: Counsel is an attorney at law of the prisoner's choice who must be paid by the prisoner. Counsel substitutes are paralegals, usually prisoners, who aid and assist without cost an accused prisoner in the preparation and presentation of his defense and/or appeal. The aid of counsel or counsel substitute can only be had for cases which appear before the disciplinary board or are appealed to the Secretary.

Disciplinary Board: A committee composed of three ranking employees whose duty is to provide fair and impartial hearings for prisoners accused of serious misbehavior.

Disciplinary Officer: A ranking employee whose duty is to provide fair and impartial hearings for prisoners accused of minor misbehavior, and to transfer prisoners requesting protection to suitable quarters.

Disciplinary Report: A report on the approved form filed by an employee who has reason to believe of his own knowledge that a prisoner(s) has violated one or more disciplinary rules. Disciplinary reports may be heard by the disciplinary officer or the disciplinary board.

Extended Lockdown: Maximum security area for confining prisoners who have been found guilty of serious misbehavior or who require protective custody.

Hearings: Prisoners accused of misbehavior are heard by the disciplinary officer or the disciplinary board.

Incident Report: A report on the approved form filed by an employee describing a specific instance of planned or committed misbehavior. This report is usually filed when the information is obtained through sources other than the reporting employee's first hand knowledge—sources such as confidential informants, other prisoners, nonemployees. Incident reports are heard by the disciplinary board.

Investigation Report: A report submitted for appropriate disposition to the disciplinary board by an investigative officer detailing the facts uncovered in an investigation.

Investigative Officer: An experienced (preferably senior) employee assigned by the disciplinary board or by a ranking employee to investigate a disciplinary report, incident report, or any matter felt to be worthy of investigation.

Isolation: A punitive holding area, preferably a cell, where prisoners are temporarily confined in a totally restricted situation after being so sentenced by the disciplinary board.

Posted Policy: As used herein, applies to policy memorandums detailing what behavior is required or forbidden regarding the individual needs of the facility—such as, but not limited to, count procedure, off-limits areas, ID card policy, cash money policy, and so forth.

Rehearings: A case heard by the disciplinary board may be reheard by the disciplinary board at their discretion, or when so ordered by an appropriate official. A rehearing is a full hearing and does not differ from a hearing except when it is ordered for the purpose of resentencing only.

Disciplinary Procedures

Administrative Lockdown Guidelines: Prisoners accused of serious misbehavior present a clear, immediate threat to the security of the facility and, with the approval of the shift major or senior security officer on duty, may be placed in Adm. Ld. until their disciplinary board hearings. The shift major or senior security officer on duty is responsible for reviewing the report to be sure that it describes an Adm. Ld. offense. The disciplinary board must dismiss the charges against prisoners who were improperly placed in Adm. Ld.

Except as stipulated below, no prisoner may be placed in Adm. Ld.

Disciplinary report for:

Rule 1 Contraband—only for a weapon, narcotics (including marijuana), store-bought alcohol, or manufacture of alcohol.

Rule 3 Defiance.

Rule 5 Disobedience, aggravated.

Rule 8 Escape.

Rule 9 Favoritism—only involving force or threats.

Rule 10 Fighting.

Rule 11 Fighting, aggravated.

Rule 14 Intoxication—only until he sobers up.

Rule 15 Malingering.

Rule 16 Property destruction—only willful destruction.

Rule 18 Self-mutilation.

Rule 20 Sex offenses, aggravated.

Rule 21 Theft—only serious incidents.

Rule 22 Theft, attempted—only serious incidents.

Rule 27 Work offenses, aggravated.

Incident or investigation report for:

Attempted escape, violence, threats of violence, strongarming, theft, dealing or smuggling of contraband, or any other clear, immediate threat to security.

On written request of a prisoner, he may be placed in Adm. Ld. for his protection and/or the protection of others until the disciplinary officer can transfer him to suitable quarters.

Pending possible transfer to another facility, prisoners may be held in Adm. Ld.

Procedures

Appeals to the disciplinary board: A prisoner who wants to appeal a case heard by the disciplinary officer ("low court") must appeal to the disciplinary board ("high court"). As soon as the sentence is passed, the prisoner who wants to appeal must clearly say so to the disciplinary officer who will then automatically suspend the sentence and schedule the case for the next meeting of the disciplinary board. The appeal hearing before the disciplinary board is a full hearing the same as any other hearing conducted by the board.

Appeals to the secretary: A prisoner who wants to appeal a case heard by the disciplinary board must appeal to the Secretary. The board may suspend the sentence pending appeal if they so desire. The prisoner may appeal himself or through his counsel or counsel substitute. The Secretary bases his decision on the record (tapes of the hearing, written documents for and against the prisoner, and any physical evidence—no new oral testimony is considered, either for or against the prisoner). Appeals must be clearly written, preferably typed, on regular sized paper (8½ inches by 11 inches), not legal sized, and contain the following:

1. Simple heading—"Appeal from the Disciplinary Board."
2. Full name, number, and location of appealing prisoner(s).
3. Date report was filed and original charge if it was reduced.
4. Rule number and/or charge found guilty of.
5. Date(s) case was heard by the board (this is most important).
6. Chairman and members of the board, if known.
7. Sentence imposed, and whether it was suspended.
8. Whether plea was guilty or not guilty.
9. State in clear, simple language grounds for reversal.
10. State in clear, simple language arguments for reversal.
11. State in clear, simple language what relief is desired.
12. Full name, number, and location of counsel substitute filing the appeal.
13. Date appeal is filed.
14. Copy of report should be attached, if possible, together with any other evidence considered favorable to the appealing prisoner.

Appeals must be filed within seven days of the disciplinary board decision (hearing). Appeals not in proper form may be returned to be redone. Statements of fact should be double checked as false statements damage credibility.

Counsel substitutes: Behavior of counsel substitutes and Legal Aid Office workers must be above reproach; a job change is

mandatory following conviction of a serious offense. Counsel substitutes are not required to file appeals; but, when they do not wish to, they must so inform the prisoner who wants to appeal telling him why not and explain to him, if necessary, the proper way to file an appeal.

Disciplinary Board: A committee composed of three supervisory level employees, one each from Security, Administration, and Treatment. The chairman must be a warden, associate or deputy warden, division head, LSP lieutenant colonel, LSP major, or be employed in a job category specifically approved in writing by the Secretary. The members must be supervisory level employees such as, but not limited to, security captains and lieutenants, classification officer II's and III's, records custodian, or be employed in a job category specifically approved in writing by the Secretary. A properly composed board may consist of two people: a duly authorized chairman and a duly authorized member, each representing a different element (Security, Treatment, or Administration). On two-member boards, decisions must be unanimous. On three-member Boards, decisions must be by majority vote. Any chairman/member directly or indirectly involved in the incident or who is biased for or against the accused cannot hear the case unless the accused waives recusal. Performance of a routine administrative duty does not involve the employee in the case.

Disciplinary officer: A ranking security officer—an LSP captain or above; at other facilities, a security lieutenant or above—who conducts hearings of minor violations and who may impose only minor penalties. At these hearings, the accused prisoner represents himself and is given full opportunity to speak in his behalf. The presence of counsel substitutes, witnesses, or the accusing employee is not permitted. These hearings are not taped. The disciplinary officer also hears prisoners who have signed written requests for protection, determines appropriate quarters to which they can be transferred, and transfers them (includes transfers to maximum security, if that is appropriate).

Extended lockdown: No prisoner can be placed in extended lockdown for any reason unless he had been afforded a full hearing before the disciplinary board and was found guilty of violating one or more serious rules, or of being dangerous to himself or others, or of being a serious escape risk, or of being in need of protection, or of posing a clear threat to the security of the facility, or of being the subject of an investigation conducted by noninstitutional authorities into a serious felony. The exception is when a prisoner who has signed a written request for protection is transferred there by the disciplinary officer. Prisoners in extended lockdown will be reviewed by an appropriate review board for possible release to a lesser custody status at least every ninety days.

Hearings—disciplinary board: The accused prisoner must be given a written copy of the disciplinary report or incident report describing the charges against him at least twenty-four hours before the hearing begins.

Before the hearing can begin, an accused prisoner must have his rights read to him. These rights are:

1. The right to present evidence and witnesses in his behalf provided it is relevant and not repetitious. (The board has the option of stipulating expected testimony from witnesses.)
2. The right to counsel or counsel substitute.
3. The right to remain silent, and that anything he does say may be used against him then or at later proceedings.
4. The right to cross-examine his accuser provided it is relevant and not repetitious. (Incident report cases—the accusing employee and accusing prisoner victim must be summoned on request; confidential informants will never be summoned. Disciplinary report cases—good reason must be given to summon the employee accuser.)
5. The right to an oral summary of the evidence and reasons for the judgment; this includes the reasons for the sentence imposed.

6. The right to a written summary of the evidence and reasons for the judgment, including reasons for the sentence imposed, when the accused pled not guilty; this will usually appear on the finalized report.

7. On written request, the right to a finalized copy of all reports introduced at the hearing, except confidential information.

8. The right to ask for a rehearing.

9. The right to appeal to the Secretary within seven days of the board decision (hearing).

Conduct of the hearing: All rights and procedural requirements must be followed unless waived by the accused. Disciplinary board hearings must be tape recorded in their entirety, and the tapes preserved for thirty days. When the prisoner intends to appeal to the courts, he should write to the Secretary asking that the tapes be preserved for possible court review within thirty days of the hearing. Hearings must be conducted as follows:

1. The accused enters his name and number into the record (the tape) as does his counsel or counsel substitute (if any) and confirms that he has been read his rights and understands them.

2. The chairman reads the disciplinary and/or incident report to the accused and asks for a plea. Available pleas are not guilty or guilty, and the accused will have full opportunity to present his entire defense. Should the accused enter no plea or attempt to enter an unavailable plea, the chairman will enter a not guilty plea for him and proceed with the case.

3. Motions, if any, by the defense should now be made. Such motions may be:

- a. To dismiss or amend the charge(s).

- b. For a continuance (must be granted on a showing of good cause; when accused did not receive adequate written notice at least twenty-four hours before the hearing, to contact an attorney, and so forth).

- c. To conduct an investigation (must be granted on a showing of a need for an investigation; for clarification, and so forth).

- d. Any other appropriate motions.

4. The board will rule on motions at the appropriate time; all motions must be ruled on before the hearing ends and reasons given for the ruling.

5. After entering his plea, the accused may then present his defense limited solely by the tests of relevancy and nonrepetition. The board may ask relevant questions of the accused, his witnesses, and/or his accuser. The accused may remain silent if he so desires; in any event, no prisoner can be compelled to incriminate himself.

6. During deliberations, everyone except the board, the bailiff, and any official observers must leave the room and the board will decide the case on the basis of the evidence presented at the hearing. Official observers must not take part in the hearing or the deliberations. The bailiff cannot participate in deciding the case or the sentence, and must not participate in the hearing at all when he is the accusing employee, unless he is summoned to testify under cross-examination. The accused's record cannot be examined to determine guilt or innocence. The accused's record may be examined following a finding or a plea of guilty in order to discover a pattern of similar misbehavior or a pending suspended sentence. The accused may want to enter his record into evidence; in this event, it may be examined at any time following the request. As a rule, the record is examined in order to determine an appropriate sentence.

7. Following the deliberations, the chairman will announce the verdict, giving an oral summary of the evidence presented and reasons for the verdict. If the verdict is guilty, the chairman will then announce the sentence, giving an oral summary of the reasons for imposing the sentence selected. The board has full authority to suspend any sentence they impose, including sus-

pending the sentence pending appeal. In conclusion, the chairman will restate to accused that he has the right to appeal to the Secretary within seven days.

Either at or following the hearing, a written summary of the evidence presented and reasons for the judgment (includes reasons for the sentence imposed) will be prepared in all cases that the accused pled not guilty and was found guilty. The convicted prisoner will automatically be given or sent a written summary. Written summaries must accurately reflect the oral summaries.

The hearing must begin within seventy-two hours of placement in Adm. Ld. Official holidays, genuine emergencies, or good faith efforts by the administration to provide a timely hearing are the only exceptions. Otherwise valid reports must be dismissed by the board on this basis alone. Except in the case of holidays or genuine emergencies, when it is not possible to provide a full hearing within seventy-two hours of placement in Adm. Ld., the accused must be brought before the board, informed of the reasons for the delay, and be remanded back to Adm. Ld. or released to his quarters after a date for a full hearing has been set.

Hearings of disciplinary reports: Before the hearing begins, the board should change the rule number to match the description of alleged misbehavior, if necessary, but may change the rule number at any point prior to the deliberations and offer the accused a continuance to prepare the defense; the continuance may be waived. (This does not apply to finding an accused guilty of a lesser, included offense.) A reviewing employee may change the rule number to fit the description prior to the hearing and ensure that the accused gets a corrected copy of the report at least twenty-four hours before the hearing begins. Rule number(s) may be added if the offense is clearly described on the report, but a prisoner cannot be charged with violating two rules for the same event. An incident may consist of several related events, each a separate, distinct rule violation.

Hearings of incident reports: When the report is based solely on information from a confidential informant, it must be corroborated by witnesses (who may be other confidential informants), the record, or other evidence. On request, the accusing employee must be summoned to testify under cross-examination about the substance of the information received and the reasons he believes it to be true, including whether he considers the informant(s) to be reliable. In order for him to attest to the reliability of the information received from a confidential informant, the informant must have been reliable in the past and must have first-hand knowledge of the present incident(s).

When the report is based solely on information from a prisoner who does not want to remain anonymous, it must be corroborated by witnesses (who may be confidential informants), the record, or other evidence. On request, the accusing prisoner must also be summoned to testify under cross-examination.

The Board must exercise caution in cases based solely on a prisoner(s) accusing another prisoner(s) as information thus obtained is a poor substitute for first-hand knowledge by an employee of prisoner misbehavior.

When a prisoner is found guilty on the basis of an incident report, he has been found guilty of being "physically dangerous to himself or others" and/or of being a clear "threat to the security of the facility," through the specific incident described. Rule numbers, definitions, or penalties for violating rules have nothing to do with incident report cases.

Isolation/Adm. Ld.: No prisoner may be confined in isolation except by action of the disciplinary board on the basis of a disciplinary report. No prisoner may be confined in isolation for more than ten consecutive days or for more than twenty days in one calendar month. Time spent in Adm. Ld. must be credited against the isolation sentence, even when the sentence is suspended. After ten consecutive days in isolation, the prisoner must be released for a period of not less than twenty-four hours.

Prisoners in Adm. Ld. must be allowed to receive all correspondence and to originate correspondence. Prisoners in isolation must be allowed to receive all letters and to originate correspondence only to communicate with the courts, legal counsel, and/or the Secretary. Prisoners in Adm. Ld. and isolation will be allowed visits, issued clean clothing daily, to have toothbrush and toothpaste, sufficient heat, light, ventilation, and toilet facilities, and to have the same meals as other prisoners. Desserts may be excluded from meals served to isolation prisoners.

Penalties: Sentences must fit the offense and the offender. A prisoner with a poor conduct record may receive a more severe sentence than a prisoner with a good conduct record for the same offense. Even so, minor offenses call for relatively minor penalties. Maximum double penalties or losses of good time should only be imposed for the most serious violations. A prisoner who violates more than one rule or the same rule more than once during an incident may receive a permissible penalty for each violation. After a finding of guilt of a new violation, a previously suspended sentence may be imposed as well as a new sentence. State and federal laws apply to prisoners. In addition to being punished by facility authorities, therefore, prisoners may also be prosecuted in District Court for criminal conduct. No prisoner may be punished except after a finding of guilt of a specific violation by the disciplinary officer or disciplinary board, and then only according to the penalty schedule for that violation.

Penalty schedule—disciplinary report (heard by disciplinary officer): After a finding of guilt, the disciplinary officer may impose one or two of the below penalties:

1. Reprimand.
2. Extra duty—up to four days for each violation.
3. Loss of minor privilege for up to two weeks.

Extra duty is defined as work to be performed in addition to the regular job assignment as specified by the proper authority. One day of extra duty is eight hours of work.

Minor privileges are:

1. Radio and/or TV.
2. Recreation and/or yard activities.
3. Telephone (except for emergencies).
4. Movies.
5. Up to twelve hours reduction of weekend pass or Christmas or Easter furlough.
6. Loss of canteen privileges.
7. Any other similar privilege.

Penalty schedule—disciplinary report (heard by disciplinary board): After a finding of guilt, the disciplinary board may impose one or two of the below penalties:

Schedule A

1. Reprimand.
2. Loss of minor privilege for up to two weeks.
3. Extra duty—up to four days for each violation.
4. Isolation—up to five days for each violation.
5. Loss of good time—up to ten days for each violation.
6. Quarters change.
7. Job change, if the violation involves the job.

Schedule B

1. Reprimand.
2. Loss of minor privilege for up to four weeks.
3. Loss of major privilege as designated below.
4. Extra duty—up to eight days for each violation.
5. Isolation—up to ten days for each violation or custody change to medium or maximum security status.
6. Recommendation of transfer to another facility (another institution).
7. Loss of good time—up to twenty-five days per calendar month.
8. Quarters change.
9. Job change.

Extra duty and minor privileges are defined above.

Major privileges are:

1. Loss of weekend pass for up to three months.
2. Confinement to room or cell for up to one month.
3. Visiting, if the violation involves visiting, for up to three months.
4. Loss of Christmas or Easter furlough.
5. Loss of plasma privileges for up to six weeks.
6. Any other similar privilege.

Penalty clarifications:

Privileges—Each privilege loss is a separate penalty; therefore, two privilege losses is the maximum penalty permitted for one violation. One privilege loss may be imposed in addition to another penalty, or by itself.

Good time—The date of the offense controls what month a prisoner has failed to earn good time through disciplinary action. A prisoner can only lose as much good time as he can earn. The board, therefore, should check to see if the prisoner is under Act 665 and can earn only fifteen days a month when deciding how much good time to “take.” Prisoner who cannot earn good time because of the sentence they are serving should not be sentenced to “lose” good time.

Custody change—A sentence of isolation and custody change to medium or maximum security status cannot be imposed for one violation.

Penalty schedule—incident report (heard by disciplinary board): After a finding of guilt, the disciplinary board may impose one or two of the below penalties:

1. Reprimand and/or return to quarters.
2. Quarters change.
3. Job change, if the violation involves the job, or if it is required by a quarters or custody change.
4. Custody change to medium or maximum security status.
5. Recommendation of transfer to another facility (another institution).

A custody change to maximum security or a recommendation of transfer to another facility can only be imposed on the basis of an incident report if it is necessary for the prisoner’s protection, or if the prisoner is dangerous to himself or others, or if the prisoner is a serious escape risk, or if the prisoner is a clear threat to the security of the facility.

Posted policy: Proposed posted policies must be approved by the Secretary before taking effect. Approved posted policies must be distributed and posted in such a manner that every prisoner affected is placed on clear notice as to what behavior is required or forbidden, and the action that may be taken against him should he violate the policy.

Rehearings: A prisoner may request a rehearing of his case by asking the board at the conclusion of the hearing, stating the reasons he feels a rehearing should be held. The decision of the board may be appealed to the Secretary.

Suspended sentences: The disciplinary officer or the disciplinary board may suspend any sentence they impose for a period of up to ninety days. The period of suspension begins at date of sentence. A prisoner who maintains a report-free record for ninety days after receiving a suspended sentence will have that report removed from his record.

Disciplinary Rules

A prisoner found guilty of violating one or more of the rules defined below will be punished according to the penalty schedule designated in the rule.

1. Contraband (Schedule B): No prisoner shall have under his immediate control any drugs (such as, but not limited to, heroin, LSD, amphetamines, barbiturates, marijuana), unauthorized medication, alcoholic beverage, yeast, weapon (such as, but not

limited to, firearm, knife, iron pipe), or any other item clearly detrimental to the security of the facility, or smuggle or try to smuggle such items into or out of the facility. In some facilities, where posted, cash money is contraband. No prisoner shall sell or give away any above defined contraband item. Prisoners clearly seen by employees to have contraband in their possession are in violation. The area of immediate control is a prisoner’s person, his locker(s), his cell, his room, his bed, his laundry bag, and his assigned job equipment—such as, but not limited to, his desk, his tool box, his locker at the job, his typewriter, his vehicle—unless the evidence clearly indicates that it belonged to another prisoner.

2. Contraband, attempted possession of (Schedule A): Contraband discovered in a location that raises a presumption of guilt against a specific prisoner (such as, but not limited to, at his feet, under his bed on the floor, next to him), but not discovered in the area of immediate control as defined in Rule 1, is a violation.

3. Defiance (Schedule B): No prisoner shall commit or threaten physically or verbally to commit bodily harm upon an employee. No prisoner shall curse an employee or insult his family in the employee’s presence. Cursing an employee in his absence is a violation of Rule 7 (Disrespect). No prisoner shall threaten an employee in any manner, including threatening with legal redress during a confrontation situation (this does not mean telling an employee of planned legal redress outside a confrontation situation, and certainly does not mean the actual composition or filing of a writ, suit, etc.; threatening to write to the Secretary is not a violation). No prisoner shall physically obstruct or resist an employee who is performing his proper duties. No prisoner shall try to intimidate an employee to make the employee do as the prisoner wants him to do.

4. Disobedience (Schedule A): Prisoners must obey the approved posted policies of the facility in which they are confined. Prisoners must obey the count procedures of their area. Possession of smoking materials in isolation is not permitted nor are attempts to smuggle smoking materials into isolation. At some facilities, where posted, the same applies to Adm. Ld. Prisoners must not knowingly make false statements on appeal to the Secretary.

5. Disobedience, aggravated (Schedule B): Prisoners must obey direct verbal orders cooperatively and promptly; not debate, argue, or ignore them before obeying. When orders conflict, the last order received must be obeyed. Even “illegal” orders must be obeyed; grievances must be pursued through proper channels. Sentences imposed by the disciplinary officer or the disciplinary board are to be carried out by the prisoner. Prisoners are required to obey all conditions of the furlough/pass agreement, including returning on or before the designated time. The only valid excuse for disobedience or aggravated disobedience is when the immediate result of obedience would be bodily injury (this includes incapacity by virtue of a certified medical reason).

6. Disorderly conduct (Schedule A): All disruptive and excessively boisterous behavior is forbidden. This includes, but is not limited to, rowdy horseplay, or to booing, whistling, or shouting in the mess hall, the visiting room, or during counts, and to continuous hollering (except among spectators at live sporting events such as the rodeo, boxing, or football). Prisoners shall not jump ahead or cut into lines at the store, movie, mess hall, or during group movements of prisoners. Visitors shall be treated courteously and not be subjected to insults, cursing, or other clearly disorderly or intrusive conduct. Prisoners shall not holler into or out of cellblocks. Prisoners must not try to communicate with tower guards in any manner, except in case of emergency or when ordered to do so.

7. Disrespect (Schedule A): No prisoner shall make or write derogatory or degrading remarks about an employee. Employees shall not be subjected to insults, unwarranted and uncalled for remarks, or other clearly intrusive verbal behavior when in the performance of their proper duties. Employees shall not be subject

to unsolicited, nonthreatening, abusive conversation, correspondence, or phone calls. Prisoners shall address employees by proper title or by "Mr.," "Ms.," "Miss," or "Mrs.," whichever is appropriate. No prisoner shall curse an employee in his absence.

8. Escape (Schedule B): An attempt to escape from a facility or from the custody of an employee outside a facility, successful or not, or the failure to return from a furlough or pass, or being absent from a facility without leave, is a violation, as is an escape attempt involving weapons, violence, or threat of violence.

9. Favoritism (Schedule B): No prisoner shall bribe, influence, or coerce anyone to violate institutional policies, procedures, rules, or state or federal laws, or attempt to do so.

10. Fighting (Schedule A): Fist fighting is not permitted.

11. Fighting, aggravated (Schedule B): Prisoners shall not fight with each other using any object as a weapon (such as, but not limited to, knives, ball bats, iron pipes, chairs, boards, glass jars, gasoline, acid, broom handles, mop wringer handles). When two or more prisoners attack another prisoner without using weapons, the attackers are in violation of this rule, as are all participants in a group or "gang" fight. No prisoner shall intentionally inflict serious injury or death upon another prisoner.

Self defense clarification: Self defense is a complete defense and can be established to the board by demonstrating that his actions did not exceed those necessary to protect himself from injury.

12. Gambling (Schedule A): No prisoner shall operate or participate in any game of chance involving bets or wagers of goods or other valuables. Possession of one or more gambling tickets or stubs for football or any other sport is a violation.

13. Habitual offender (Schedule B): A prisoner who has established a documented pattern of behavior indicating that he is an escape risk or that he is dangerous to himself or others is a habitual offender, as is a prisoner who has established a documented pattern of hostile, disruptive behavior by accumulating three major violations or a total of five violations in a six-month period. Major violations are: Rules 1, 2, 3, 5, 8, 9, 11, 15, 16, 18, 20, 21, 22, 27, and/or incident reports concerning escape, violence, strongarming, theft, or smuggling of contraband.

Implementation: No disciplinary report can be filed for violation of this rule. An accelerated penalty schedule (Schedule B) may be used by the board at their discretion following conviction of a disciplinary or incident report. This rule is properly invoked to impose Schedule B penalties following conviction of a Schedule A offense or an incident report. Use of this rule must be documented in the oral and written summaries, and cannot be used to impose an additional penalty—a prisoner cannot be sentenced for the violation itself then given an additional sentence for being a habitual offender.

14. Intoxication (Schedule A): No prisoner shall be under the influence of an intoxicating substance.

15. Malingering (Schedule B): No prisoner shall feign illness or grossly exaggerate an ailment to avoid work or for any other reason. Medical opinion is controlling. If a doctor finds nothing wrong with a prisoner seeking medical attention, he is in violation. A prisoner may also be in violation if he seeks emergency medical attention for a minor ailment that should be handled at sick call, in the opinion of medical staff.

16. Property destruction (Schedule B): No prisoner shall destroy the property of others or of the state either willfully or through gross negligence. Possession of a "stinger" (a home-made electrical device used to heat water) is a violation. The shaking of cell doors ("racking down") is not permitted; the cellblock officer's attention must be secured by other means as the door-locking mechanisms are destroyed by prolonged shaking. Standing or sitting on face bowls is a violation. Except as stipulated above, damage must be evident before a prisoner is charged with violating this rule.

17. Radio/TV abuse (Schedule A): Radios must be used in accord with the approved posted policies of the facility. TVs must be played at a reasonable volume so as not to disturb others. This rule also applies to tape decks, record players, etc. Violations of approved posted policies about radios, TVs, etc., are to be processed under this rule. In addition to any penalty that may be imposed by the disciplinary officer or the disciplinary board, the ranking employee on duty may confiscate the radio (etc.) for a period of up to thirty days, and he will be responsible for it and for its return. For repeated violations, the radio will be confiscated and the prisoner will have thirty days to furnish postage to send it to an address of his choice, or the radio (etc.) will be destroyed. The prisoner will not be permitted to have a similar item sent to him for one year.

18. Self-mutilation (Schedule B): No prisoner shall deliberately inflict an injury upon himself, upon a consenting prisoner, or consent to have an injury inflicted upon himself.

19. Sex offenses (Schedule A): Two or more prisoners who have obviously been interrupted immediately before or after carnal copulation are in violation. The same applies to one or more prisoners with an animal(s). Visitors shall not be subjected to excessive displays of affection. No prisoner shall invade the privacy of an employee with unsolicited, nonthreatening, affectionate, or overtly sexual conversation, correspondence, or phone calls. Prisoners must not make clearly obscene gestures or offensive sexual references to an employee.

20. Sex offenses, aggravated (Schedule B): Carnal copulation by two or more prisoners with each other, or by one or more prisoners with an animal(s), is not permitted. Use of the genital organ of one of the prisoners, regardless of sex, is sufficient to constitute the offense. Overt sexual activity in the visiting room, involving use of the genital organ of the visitor or prisoner, is not permitted. No prisoner shall invade the privacy of an employee with sexual threats in conversation, or by correspondence or phone calls. No prisoner shall deliberately expose himself and/or masturbate in clear view of a female employee or visitor. No prisoner shall sexually assault a person by force or threat of force.

21. Theft (Schedule B): No prisoner shall steal from anyone. Forgery, a form of theft, is the unauthorized altering or signing of a document(s) to secure material return and/or special favors or considerations. Fraud, a form of theft, is the deliberate misrepresentation of fact to secure material return and/or special favors or considerations. Neither is permitted. No prisoner shall have stolen items under his immediate control. No prisoner shall have institutional property under his immediate control unless he has specific permission; this includes institutional foodstuffs in excess of what he might reasonably be expected to eat at one sitting. Please refer back to Rule 1 for the definition of "area of immediate control."

22. Theft, attempted (Schedule A): Attempts to steal or to perpetrate a fraud or forgery are not permitted. This rule applies to such attempts in which the perpetrator received absolutely no return for his effort. Stolen property, unauthorized institutional property (including large amounts of institutional foodstuffs), discovered in a location that raises a presumption of guilt against a specific prisoner, but not discovered in his area of immediate control as defined in Rule 1, shall be a violation of this rule.

23. Unauthorized area (Schedule A): A prisoner must be in the area in which he is authorized to be at that particular time and date or he is in an unauthorized area. No prisoner shall go into any housing unit other than that to which he is assigned—this includes standing in the doorway—unless he has permission. Whether this rule or Rule 8 (Escape) applies must be determined by the circumstances of the incident. Absent a clear intent to escape, this rule usually applies.

24. Unauthorized food (Schedule A): No prisoner shall have under his immediate control any food not sold by the prisoner canteen or not otherwise permitted. No prisoner shall have institu-

tional foodstuffs under his immediate control outside the mess hall without specific permission. No prisoner shall take extra portions of rationed food items at the serving counter. This rule, not Rule 21, applies to unauthorized possession of institutional foodstuffs not exceeding that which the prisoner could reasonably be expected to eat at one sitting. Please refer back to Rule 1 for the definition of "area of immediate control."

25. Unsanitary practices (Schedule A): Prisoners must not spit or drop litter or cigarette butts anywhere but into a proper receptacle. Prisoners must not smoke in the immediate area where food is being prepared or served. Prisoners must maintain themselves, their clothing, and their shoes in as presentable a condition as possible under prevailing circumstances. Each prisoner is responsible for keeping his bed and bed area reasonably clean, neat, and sanitary. Beds will be made according to the approved posted policy of the facility. Tattoos are not to be placed upon the body of a prisoner during his incarceration. Prisoners must wear shoes/boots and cannot wear shirts that leave the ampits exposed or shorts into the mess hall, or chew gum in the mess hall.

26. Work offenses (Schedule A): Prisoners must perform their assigned tasks with reasonable speed and efficiency. Though prisoners have specific job assignments, it may be required that they do work other than what their job assignments require; this work shall also be done cooperatively and with reasonable speed and efficiency. Prisoners operating state vehicles or machinery will do so in a cautious and safe manner in conformity with state laws and institutional policies. Minor field misbehavior (such as, but not limited to, talking instead of working, loafing around and not keeping up with co-workers, leaving too much grass on the row) is a violation of this rule. Being present, but not answering at the proper time at work roll call is a violation.

27. Work offenses, aggravated (Schedule B): A prisoner who flatly refuses to work or to go out to work, or who asks to go to Adm. Ld. rather than work, is in violation of this rule, as is a prisoner who disobeys repeated instructions as to how to perform his work assignment. Hiding out from work is a violation. Falling far short of fulfilling reasonable work quotas is not permitted. Being absent from work roll call without a valid excuse (such as no duty or callout) is a violation, as is not reporting for extra duty assignment. Being late to work (includes being late to school assignment) is a violation. Prisoners on maintenance status must perform their work assignments cooperatively and satisfactorily. Prisoners on work release status who violate a condition of the signed work release agreement are in violation.

C. Paul Phelps, Secretary
Department of Corrections

RULES

Board of Elementary and Secondary Education

Rule 3.01.70.v (24)

The Board adopted certification standards for qualified examiners for special education as required by Act 754 of 1977, for incorporation as an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*.

Certification for Qualified Examiners

Evaluation Coordinator—Must have certification as:

- A. School psychologist, or
- B. School psychological assistant, or
- C. Credentials as a competent authority: (1) to assist in the delivery of psychological services, or (2) educational consultant.

Assessment Teacher—Must have certification as educational consultant. Note: The Competent Authority Credentialing Com-

mittee will be reduced to psychologists only for the purpose of credentialing persons at the masters level to assist in the delivery of psychological services.

Speech Pathologist.

Provisional Certificate in Speech Pathology—(Valid for three years, nonrenewable): Master's Degree in speech pathology or equivalent as specified in Bulletin 746. Must work under supervision of a speech pathologist.

Qualified—(Valid provided the holder maintains current Louisiana licensure): licensed speech pathologist or Type B or Type A Louisiana Certificate as a speech, language, and hearing specialist under the new certification requirements.

Audiologist.

Provisional Certificate in Audiology—(Valid for three years, nonrenewable): Master's Degree in audiology or equivalent as specified in R.S. 37:2651, et seq. Must work under supervision of a licensed audiologist.

Qualified—(Valid provided the holder maintains current Louisiana licensure as an audiologist): licensed audiologist.

School Psychologist.

Provisional—(Valid for three years, nonrenewable) Level B Certificate as specified in Bulletin 746.

Qualified—Level A Certificate as specified in Bulletin 746.

Social Worker.

Provisional Certificate in School Social Work—(Valid for three years, nonrenewable): Qualifies to begin pursuit of two years work experience necessary to take examination for licensure under Act 706.

A. Graduate from an accredited social work program with a Master's Degree plus field experience in the social work practice settings listed below and an approved plan for a minimum of one hour per week supervision by a social worker licensed under Act 706; or

B. Graduate from an accredited social work program with a Master's Degree with a minimum of three hours per week supervision for the first six months of employment. Must work under supervision of a licensed social worker qualified as below. The field experience and plan of supervision to be approved by the Louisiana State Board of Board Certified Social Work Examiners.

Qualified School Social Worker (Valid provided the holder maintains current licensure as a social worker):

I. Licensure in accordance with Act 706 of the 1972 Legislature and

II. Experience (either A or B):

A. Work experience in one or more of the following social work practice settings within the past five years:

1. School setting.
2. Mental health clinic.
3. Psychiatric hospital.
4. Family service/community service agency where psychiatric consultation was available to agency staff.
5. Child service agency.
6. Medical social services where social services were delivered to families and children.
7. Private practice which is clinical in nature and delivered to adults, children, and families.

B. Graduate social worker field experience in the above social work practice settings plus two years work experience in any social work practice setting. The field experience to be judged by the Louisiana State Board of Board Certified Social Work Examiners.

Interim Requirements for Certification as Educational Consultant.

1. A minimum of Master's Degree in education, with certification in at least one area of special education in accordance with the regulations of the State Board of Elementary and Secondary Education.

2. A type B teaching certificate with at least one year classroom teaching experience in a properly certified area of special education.

3. Three semester hours in diagnosis and remediation of reading problems which may be undergraduate. (Secondary majors must have three semester hours in foundations of reading in addition to this requirement.)

4. A minimum of the following graduate level courses.

A. Three semester hours in applied learning theory.

B. Six additional semester hours from one of the following areas of special education which shall be outside the area of initial certification in special education required under item one above:

- (1) Deaf and/or hard of hearing.
- (2) Learning disabled.
- (3) Mentally retarded.
- (4) Socially maladjusted and emotionally disturbed.
- (5) Blind/partially sighted.
- (6) Gifted and talented.
- (7) Severe language disordered.
- (8) Orthopedically handicapped/children with special health problems.

C. Six semester hours in educational diagnosis: theory and supervised practicum. (This course must include the administration of individualized educational tests, implications for educational intervention through the development of the individualized educational plan.)

Requirements for Certification as Educational Consultant. (Mandatory requirement effective for all individuals beginning their college training on or after the beginning of the fall semester 1980.)

1. A minimum of Master's Degree in education, special education, early childhood or child development.

2. Certification in at least two areas of special education in accordance with the requirements of the State Board of Elementary and Secondary Education.

3. A minimum of a type B teaching certificate with at least one year classroom teaching experience in a properly certified area of special education.

4. Three semester hours in diagnosis and remediation of reading problems which may be undergraduate course work. (Secondary education majors must have three semester hours in foundations of reading in addition to this requirement.)

5. A minimum of the following graduate level courses.

A. Three semester hours in applied learning theory.

B. Six semester hours in test theory and educational diagnosis. (These courses must include the administration, scoring, and interpretation of standardized individual educational tests and implications for educational intervention through the development of the individualized educational program.)

C. Three semester hours in supervised practicum in educational diagnosis which must include one hundred child contact clock hours.

D. Three semester hours in diagnostic-prescriptive teaching.

Rule 5.00.50.e

The Board adopted a policy statement regarding use of federal funds which assures compliance with Section 104.301 of the Vocational Rules and Regulations as follows: Where federal funds are used in vocational education projects and/or programs, all provisions of federal laws and regulations, including the Department of Health, Education, and Welfare, Office of Education's General Provisions for Programs, Administrative and Fiscal Requirements, as found in the *Federal Register*, Volume 38, No. 213, Part 3, Appendix B, Page 30694, will be complied with and followed.

Rule 3.01.51q

The Board adopted an addition to the adult education requirements as outlined in Bulletin 741, *Handbook for School Administrators*, as follows:

Veterans or members of the United States Armed Forces (Definition):

a. A person is considered a veteran if he has served at least ninety days in active military service and been honorably discharged from such service.

b. A person is considered a "member of the armed forces" if he is engaged in active military duty in the Army, Navy, Air Force, Marine Corps or Coast Guard. A member of the National Guard is not considered a "member of the armed forces" unless his unit has been federalized by the U. S. Government.

Rule 3.01.51r

The Board adopted an amendment to Bulletin 741, *Handbook for School Administrators*, page 83, Item 3, last sentence to read as follows: "The physical facilities shall conform to current federal, state, and local building, fire, safety, and health codes." This statement change is necessary to bring into conformity building and maintenance standards of schools.

Rule 5.01.31c

The Board adopted Guidelines for Implementation of Act 18 of 1977, Transportation Reimbursement to Parents.

Guidelines for Act 18

To be eligible for full or partial reimbursement:

1. The student must live more than one mile from the school of attendance.

2. The student must avail herself/himself of the transportation that is available to the school of attendance. If transportation is available and a student chooses not to use it, she/he is ineligible for reimbursement.

3. The student must be attending a school which is approved by the State Board of Elementary and Secondary Education and said school must also be in compliance with the mandates of the *Brumfield vs. Dodd* Court Order.

Amount of reimbursement:

1. To be eligible for full reimbursement a student must attend a minimum of one hundred forty days (and/or meet the minimum attendance requirements of the State Board of Elementary and Secondary Education).

2. To be eligible for one-half of reimbursement (fifty dollars) a student must attend a minimum of 70 days and not more than 139 days.

3. Kindergarten children that are not being provided transportation are eligible for full reimbursement of one hundred dollars per child and not more than two hundred dollars per family.

4. Kindergarten children being provided transportation one-way are eligible for fifty dollars per child reimbursement.

Responsibility of principal (public and nonpublic):

1. Attest to the enrollment and attendance of the student(s) on the affidavit.

2. Attest that the student(s) listed on the affidavit lives more than one mile from school of attendance. (The one mile limit shall be determined in accordance with the procedure set forth in Bulletin 1191, Section XVI, Item 1, "Eligible Pupil," page 55.)

Responsibility of (civil) parish superintendent: Superintendent of local system in which student is domiciled must validate the nonavailability of transportation to the student. Superintendent is attesting that transportation is not available to the school of attendance.

Responsibility of parent. (Failure to comply with any of these requirements will result in the affidavit being voided.)

1. Complete the affidavit in its entirety with no erasures or strikeouts. (The affidavit is a legal document; therefore, it must be filled out correctly and accurately.)

2. Obtain signature of school principal.
3. Have affidavit signed and sealed by notary public.

Dates for submitting affidavits:

April 1, of each year is the opening date for filing affidavits.
 June 1, of each year is the closing date in the local school system for accepting affidavits. (Affidavits received by the local school system after June 1 and those received by the Bureau of School Transportation not bearing postmark of June 5 or earlier will not be eligible for reimbursement.)

June 5, affidavits must be postmarked by this date each year and sent to the Bureau of School Transportation. (Affidavits received by the local school system after June 1 and those received by the Bureau of School Transportation not bearing postmark of June 5 or earlier will not be eligible for reimbursement.)

Rule 4.01.50a

The Board adopted Nonpublic School Testing Guidelines.

Nonpublic School Testing Guidelines

Section I.

Rationale.

The purpose of this program is to assess the sustained curriculum or course of study in nonpublic schools through the use of standardized instruments.

A systematic auditing of these results will give some measure of the progress achieved by the individual pupil, a local school and the system as a unit.

Such an audit would assist in assessing the variation of effectiveness of different instructional procedures and/or different curricular arrangements. The program would assist in assessing the degree to which fixed goals and objectives are accomplished.

The program would make available standardized testing for pupils in Grades Kindergarten through 12 to evaluate the sustained curriculum or course of study.

Definition of Terms. For our purposes:

School—approved nonpublic school which is not classified as part of an organized system.

System—approved nonpublic schools functioning under a diocesan staff.

LDE (Louisiana Department of Education)—nonpublic school testing staff.

BESE—Louisiana State Board of Elementary and Secondary Education.

Goals:

1. Assessment of program evaluation as an educational priority.

2. Assessment of effective pupil learning.

Objectives:

1. Indications that have real meaning in terms of effectiveness that can be communicated to provide BESE and other interested persons data by which they can evaluate the sustained curriculum or course of study in approved nonpublic schools.

2. Identification of programs that work for both students and teachers.

3. Development of conclusions drawn from hard data that help decision makers refine, expand, or drop programs.

Section II.

Basic Design of Testing Program:

A. Selection of Instrument. The school or system will identify one type of norm-referenced instrument to be used for testing from the approved list of test publishers, as established by the Advisory Council for Nonpublic School Testing.

B. Name and Publisher of Instrument. The school or system will submit the name and publisher of the instrument to be used for testing students to LDE by February 5, 1979. In addition,

they will submit by grade level the number of students participating in the school program.

C. Acquisition of Materials. The school or system will notify the LDE of their test recommendations. The LDE staff will then issue a purchase order to the publisher authorizing delivery of the tests to the schools.

D. Reporting Format. Percentile rank by subtest based on national norms will be reported. Raw score, standard score and NCE score will be furnished LDE for analysis. Summary results of hand scored tests must be provided the LDE by the school or system. After each school has administered the tests and returned them to the publisher for scoring, the results will be sent to the LDE with copies to the school by June 15, 1979.

E. Fiscal Administration. The school or system will provide the LDE with the name of the selected instrument, the vendor, the number of students to be tested at each grade level. A purchase order will be issued by the LDE to the selected vendor for each school. The school will notify the LDE upon receipt of the materials so that partial payment may be made if required. Upon receipt of the test results (a copy of which will be supplied the LDE) the school or system will notify the LDE and final payment will be made.

Section III.

Administration of Testing Program:

A. Test Dates.

1. For 1978-79 school year—spring, preferably in accordance with publisher's norming dates.

2. Future school years—option: fall, winter, or spring.

B. Grade Levels to be Tested. Standardized testing to evaluate sustained curriculum or course of study, grades Kindergarten through 12.

C. Testing Exclusions. Any exceptional child who, with the aid of any available related services, is capable of participating in the approved nonpublic school testing program, and who meets the criteria established by the Department of Education's office of special education for participation in such program, shall participate.

Section IV.

A. Board Reporting. A summary report of data by selected instrument will be provided by LDE to the Board of Elementary and Secondary Education. This summary report may also be provided to the Elementary and Secondary Education Bureaus of the Department of Education for purposes of evaluating the sustained curriculum.

B. Release of Test Data. Data relative to test results of individual students, teachers, classes, or school will only be released in accordance with the Buckley Amendment and Attorney General's Opinion 77-1340.

Section V.

Advisory Council. The approved Nonpublic School Testing Advisory Council appointed by the Board of Elementary and Secondary Education will continue to function in an advisory capacity throughout the duration of the program.

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

RULES

Office of the Governor Tax Commission

In accordance with the provisions of the Administrative Procedures Act (R.S. 49:951-968) the following changes have been adopted in the assessment of oil and gas property on Page 13 of the Tax Commission Guidelines:

Producing Depths	Fair Market Value Per Foot	Assessment Per Foot
0-1250 feet	\$1.68	\$.25
1251-2500 feet	\$2.00	\$.30

C. Gordon Johnson, Chairman
Tax Commission

RULE

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, has adopted policy that will govern the payment of sterilizations under the Medical Assistance Program. This policy was originally adopted as an emergency rule, effective March 8, 1979. A sterilization is defined as "any medical procedure, treatment or operation for the purpose of rendering an individual permanently incapable of reproducing." The following regulations apply to medically indicated procedures which result in sterility, as well as to those sterilizations done solely for family planning purposes.

For the Louisiana Medical Assistance Program to pay for a sterilization under the new policy:

The patient must sign a consent form at least thirty days, but no more than one hundred eighty days before the date of the sterilization, excepting premature delivery or emergency abdominal surgery.

The patient may consent to sterilization at the time of premature delivery or emergency abdominal surgery if seventy-two hours have passed since he or she gave informed consent to the sterilization. In the case of premature delivery, the informed consent must have been given thirty days before the expected date of delivery.

The patient must be at least twenty-one years old when consent is obtained.

The patient must give informed consent to the sterilization and the consent form published in the federal regulations must be used.

Informed consent may not be obtained when the individual to be sterilized is in labor or childbirth, seeking to obtain or obtaining an abortion, or under the influence of alcohol or other substances affecting the individual's state of awareness.

The patient must be mentally competent.

The patient cannot be institutionalized.

Three copies of the consent form must be filled out: one for the patient, one for the physician and one for attachment to the claim form.

The federal regulations governing sterilizations, include regulations governing payment of hysterectomies under the Medical Assistance Program. According to the regulations, the Louisiana Medical Assistance Program cannot pay "for the performance of any hysterectomy solely for the purpose of rendering an individual permanently incapable of reproducing or where, if there is more than one purpose to the procedure, the hysterectomy would not be performed but for the purpose of rendering the individual permanently incapable of reproducing."

In other words, payment is not available for hysterectomies done for sterilization purposes for which there are also some medical indications which are themselves insufficient to justify the performance of a hysterectomy.

If a hysterectomy is performed for purposes other than sterilization, payment can be made only if the patient is informed orally and in writing that the hysterectomy will render her permanently incapable of reproducing and she has signed a written acknowledgement of receipt of this information. The written acknow-

ledgement should be attached to the claim form submitted when requesting payment for these medical services.

The acknowledgement reads as follows:

I hereby acknowledge that I have been informed orally and in writing that a hysterectomy (surgical removal of the uterus) will render the individual on whom the procedure is performed permanently incapable of bearing children.

Signature of Recipient

Date

or Designated Representative

Note: It is necessary that the acknowledgement statement appear above the signature of the recipient or her designated representative and that the statement be dated before the actual time of the surgical procedure.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

RULE

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, has adopted maximum allowable costs (MACs) for the following drugs when dispensed on prescription. These maximum allowable costs were adopted as an emergency rule, effective January 25, 1979.

Acetaminophen w/codeine 30 mg. tabs.	\$0.0780 per tablet
Acetaminophen w/codeine 60 mg. tabs.	0.1545 per tablet
*Ampicillin 250 mg. caps.	0.0595 per capsule
*Ampicillin 500 mg. caps.	0.1103 per capsule
Doxepin HCL 10 mg. caps.	0.0950 per capsule
Doxepin HCL 25 mg. caps.	0.1161 per capsule
Doxepin HCL 50 mg. caps.	0.1765 per capsule
Erythromycin Stearate 250 mg. tabs.	0.0697 per tablet
Erythromycin Stearate 500 mg. tabs.	0.1250 per tablet
Penicillin G Potassium 400 mu. tabs.	suspended
Penicillin G Potassium 800 mu. tabs.	suspended
Phenylbutazone 100 mg. tabs.	0.0750 per tablet
Phenylbutazone Alka 100 mg. caps.	0.0940 per capsule
Probenecid 0.5 gm. tabs.	0.0644 per tablet

*These MACs reflect a reduction in the MACs established on June 27, 1977.

In no case may a recipient be required to provide payment for any difference in a prescription price that may occur with the implementation of MAC, nor may our office use a cost which exceeds the established maximums except as follows.

The Department of Health, Education and Welfare's regulations provide that when a physician certifies that a specific brand is medically necessary for a particular patient then the MAC limitations for that medication will not apply. In this case their specific guidelines provide that:

1. The certification must be in the physician's handwriting.
2. The certification may be written directly on the prescription, or on a separate sheet which is attached to the prescription.
3. A standard phrase written on the prescription, such as "brand necessary" will be acceptable.
4. A printed box on the prescription blank that could be checked by the physician to indicate brand necessity is unacceptable.
5. A handwritten statement transferred to a rubber stamp and then stamped on the prescription blank is unacceptable.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources