

19TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO: 592.208-24

DIVISION:

LOUISIANA FEDERATION OF TEACHERS, EAST BATON ROUGE
FEDERATION OF TEACHERS, JEFFERSON FEDERATION OF TEACHERS,
VERNON L. BOLDEN, VENICE GUNNER-HOLIDAY, TERI ANN JOHNSON,
AND RACHEL RASBERY

VERSUS

STATE OF LOUISIANA
AND THE BOARD OF ELEMENTARY AND SECONDARY EDUCATION

FILED: _____
DEPUTY CLERK

PETITION FOR DECLARATORY JUDGMENT
DECLARING ACT 749 OF THE 2010 REGULAR LEGISLATIVE SESSION
AS UNCONSTITUTIONAL AND FOR ISSUANCE OF PRELIMINARY AND
PERMANENT INJUNCTION

The Petition of the Louisiana Federation of Teachers ("LFT"), East Baton Rouge
Federation of Teachers/LFT, Jefferson Federation of Teachers/LFT, Vernon L. Bolden,
Venice Gunner-Holiday, Teri Ann Johnson, and Rachel Rasbery, with respect represent:

1.

Petitioners are:

A.) LOUISIANA FEDERATION OF TEACHERS ("LFT"), an

unincorporated labor association (union) with its domicile and
principal place of business in the Parish of East Baton Rouge, State of
Louisiana, whose membership consists of teachers and other educators
employed in the public school districts and charter schools throughout
the State of Louisiana, and whose membership includes the parents of
school-age children who are enrolled as students in the public school
districts and charter schools throughout the State of Louisiana; and

B.) EAST BATON ROUGE FEDERATION OF TEACHERS, an

unincorporated labor association (union) with its domicile and
principal place of business in the East Baton Rouge Parish, State of

Louisiana, whose membership consists of teachers and other educators employed by the East Baton Rouge Parish Public School System, and whose membership includes the parents of school-age children who are enrolled as students in the East Baton Rouge Parish Public School System; and

C.) **JEFFERSON FEDERATION OF TEACHERS**, an unincorporated labor association (union) with its domicile and principal place of business in Jefferson Parish, State of Louisiana, whose membership consists of teachers and other educators employed in the Jefferson Parish Public School System, and whose membership includes the parents of school-age children who are enrolled as students in the Jefferson Parish Public School System; and

D.) **VERNON L. BOLDEN**, a person of the full age of majority domiciled in the Parish of East Baton Rouge, State of Louisiana, at all times herein a citizen taxpayer domiciled in the State of Louisiana and a Paraeducator employed by the East Baton Rouge Parish School Board and a member of the East Baton Rouge Federation of Teachers/LFT; and

E.) **VENICE GUNNER-HOLIDAY**, a person of the full age of majority domiciled in the Parish of East Baton Rouge, State of Louisiana, at all times herein a citizen taxpayer domiciled in the State of Louisiana and a teacher employed by the East Baton Rouge Parish School Board and a member of the East Baton Rouge Federation of Teachers/LFT; and

F.) **TERI ANN JOHNSON**, a person of the full age of majority domiciled in the Parish of Calcasieu, State of Louisiana, at all times herein a citizen taxpayer domiciled in the State of Louisiana and a teacher employed by the Calcasieu Parish School Board; and a member of the Calcasieu Federation of Teachers/LFT; and

G.) **RACHEL RASBERY**, a person of the full age of majority domiciled in the Parish of East Baton Rouge, State of Louisiana, at all times

herein a citizen taxpayer domiciled in the State of Louisiana and a teacher employed by the East Baton Rouge Parish School Board and a member of the East Baton Rouge Federation of Teachers/LFT.

2.

Made Defendants herein are:

A.) STATE OF LOUISIANA; and

B.) BOARD OF ELEMENTARY AND SECONDARY EDUCATION

(hereinafter, BESE), a body corporate with its domicile and principal place of business in the Parish of East Baton Rouge, created by Article 8, Section 3 of the Louisiana Constitution of 1974.

3.

Petitioners seek and are entitled to Judgment declaring that Act 749 of the 2010 Regular Session of the Louisiana Legislature is unconstitutional, and that a Preliminary and in due course a Permanent Injunction issue enjoining defendants from applying and enforcing the provisions of Act 749, for reasons as follows.

4.

During the 2010 Regular Session, the Louisiana Legislature enacted Act 749, which created La. R.S. 17:4031 through 17:4040, entitled the "Red Tape Reduction and Local Empowerment Waiver Program."¹

5.

Under the Act, superintendents of city, parish or other local public school districts, the Director of the Special School District, and the Superintendent of the Recovery School Districts may apply to defendant Board of Elementary and Secondary Education for a waiver which exempts the recipient school district from complying with any provision in Title 17 of the Revised Statutes (the Education Code) "that is applicable to public schools and to public school officers and employees,"² with certain exceptions.³

¹ Attached as "Appendix "A."

² La. R.S. 17:4031 (7) as enacted by Act 749

³ Subpart B of Part III of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1950 [School lunch programs], R.S. 17:158 [School Bus Transportation of Students], 17: 416.2 [Suspension of students/Alternative Education Programs], 17:3902 [School Personnel Evaluations] and laws, rules, and regulations identified in R.S. 17:3996(B)(1) through (23) [Charter School Exemptions] and those related to matters

6.

La. R.S. 17: 4031 (7) allows a state Board (Defendant BESE) the authority to grant waivers exempting recipient school districts from complying with "...any combination of such laws, including but not limited to those related to instructional time, curriculum, funding, personnel, student-to-personnel ratios, and student support."⁴

7.

Under the Act⁵, BESE has the authority to grant a waiver exempting the school district from complying with statutes to apply to any single school within a school district, a combination of schools within a school district, or all schools within a district.

8.

Students enrolled in Louisiana public school districts, and employees of Louisiana public school districts in every parish, benefit from state statutes passed by the legislative branch and which the legislature has mandated must apply to all school districts and all of the schools in the school districts. Examples (just to name a few) of statutes enacted by the Legislative Branch that Defendant BESE has the authority to waive under Act 749 are statutes that govern:

- Administration of medication
- Assignment and transfer of students
- Authority and composition of school boards
- Certified school nurses
- Compulsory student attendance
- Credit for time spent in military service
- Curriculum requirements
- Discipline of students, including suspensions, expulsion, removal from class, and statutes governing assaults on teachers and other school employees

identified in R.S. 17:3996(A)(1) through (17) [Charter School Exemptions] shall not be waived. Also, any limitation or restriction on outsourcing of food, clerical, custodial, or paraprofessional services shall not be waived;" La. R.S. 17:4031 (7).

⁴ La. R.S. 17:4031 (7) as enacted by Act 749

⁵ La. R.S. 17:4033 as enacted by Act 749

- Discrimination in public schools
- Drugs and Substance Abuse in Schools Act and Drug-free zones
- Early childhood education
- Free lunches for schoolchildren
- Free textbooks
- Grievance procedures for teachers
- Hazing of students
- Influence by Superintendents, principals and other on student grades
- Insurance
- Leaves of absence, including Military and Maternity Leave
- Limitation of liability and indemnification of school employees
- Maximum class size
- Performance of non-complex health procedures by school personnel
- Personnel file access
- Planning Time
- Powers and duties of School Boards and Superintendents
- Remedial education
- Reporting of school finances to the State Department of Education
- Salary schedules and other salary provisions
- Salary for teachers and other school employees who are disabled because of attacks by students.
- School attendance, including imposition of penalties for violations
- School board hiring procedures
- School bus safety
- School crisis management and response plans
- School duty as to safety and violence in schools
- Search of students' persons and property
- Teacher Bill of Rights
- Teacher-to-student class ratio
- Tenure, demotions, and reduction-in-force
- Countless other statutes in Title 17 of the Revised Statutes

9.

Unless Act 749 is declared unconstitutional and its provisions are enjoined, Defendant BESE -- not the legislative Branch of government -- will have the right to determine which of these statutes (and many others) will and will not apply in certain select parishes and even in certain selected schools within the parish or a single school within the parish.

10.

Among the objectives and mission of petitioner Louisiana Federation of Teachers is to preserve, protect and advance quality public education for all children and to protect and advance the professional well-being of those individuals dedicated to educating Louisiana's children; to work towards its core values of fairness, opportunity, access and accountability, to give mutual aid and support to Louisiana teachers in securing state and national legislation favorable to schools and classroom teachers to secure and to maintain high professional standards.

11.

Among the objectives of petitioner East Baton Rouge Federation of Teachers, in addition to those of the LFT, is to obtain for the membership the rights to which they are entitled, and to raise the standards of the educational profession by securing the conditions essential to the best professional service.

12.

Among the objectives of Petitioner Jefferson Federation of Teachers, in addition to those of the LFT, is to protect the rights to which its members are entitled, to promote the general welfare of children by providing progressively better educational opportunities for all, and to promote professional excellence among educators.

Members of the Louisiana Federation of Teachers, East Baton Rouge Federation of Teachers, and Jefferson Federation of Teachers have associational standing⁶ to bring this action for the following reasons:

- A.) Their members will suffer harm and injury as a result of the enforcement of Act 749, consisting of loss of constitutional, statutory and contractual rights as more particularly described herein; and
- B.) The interests that they seek to protect are pertinent to and consistent with its purpose; and
- C.) Individual participation of its members is not required for proper adjudication of this litigation. The relief sought is a declaration that Act 749 is unconstitutional, and is not specific to any individual party;

14.

Each of the individual named petitioners have standing to bring this action as employees of their respective public school districts, who face loss of constitutional, statutory and contractual rights because of waivers which Defendant BESE has the authority to grant.

15.

Granting waivers that exempt entire school districts and/or selected schools or a single school within these districts from compliance with provisions in Title 17 negatively impacts the continued employment of all school employees. Under a separate Act passed during this legislative session (Act 54), the Legislature has stated its intent for teacher evaluations to be scientific, objective and standardized, linking student achievement (as measured by test scores) to the teacher evaluation process. Although Act 54 is intended to standardize the process, Act 749 will allow school districts, and even a single school within a school district, to operate under different laws, thus affecting teachers whose continued employment will be negatively affected.

⁶ *Caddo Federation of Teachers and School Personnel v Caddo Parish School Board*, 2010 WL 2509842 No. 45,357, ___ So.3d ___ (La. App. 2 Cir. 6/23/10).

COUNT 1
UNCONSTITUTIONAL DELEGATION OF AUTHORITY
OF LEGISLATIVE BRANCH

16.

Article 2, Section 1 of the Louisiana Constitution of 1974 states:

“The powers of government of the state are divided into three separate branches: legislative, executive, and judicial.”

17.

Article 2, Section 2 of the Louisiana Constitution of 1974 states:

“Except as otherwise provided by this constitution, no one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.

18.

By delegating to Defendant BESE the authority to grant waivers to certain select school districts, exempting the selected school districts from the obligation to comply with state statutes at some or all of its schools, the State has violated Article 2, Sections 1 and 2 of the Louisiana Constitution of 1974 in the following non-exclusive respects and as alleged in previous paragraphs:

- A.) The State has delegated to a state board (Defendant BESE) the authority to determine what the law shall be in certain selected parishes, in violation of Article 2, Sections 1 and 2 of the Louisiana Constitution of 1974; and
- B.) The State has delegated to a state board (Defendant BESE) the exercise of primary and independent discretion, in violation of Article 2, Sections 1 and 2 of the Louisiana Constitution of 1974.

COUNT 2
UNCONSTITUTIONAL LOCAL OR SPECIAL LAW

19.

Article 3, Section 12A and 12B of the Louisiana Constitution of 1974 states, in pertinent part:

Section 12. (A) **Prohibitions.** Except as otherwise provided in this constitution, the legislature shall not pass a local or special law:....
(8) Regulating the management of parish or city public schools, the

building or repairing of parish or city schoolhouses, and the raising of money for such purposes.

(B) Additional Prohibition. The legislature shall not indirectly enact special or local laws by the partial repeal or suspension of a general law.

20.

Article 3, Section 13 of the Louisiana Constitution of 1974 states, in pertinent part:

13. Local or Special Laws; Notice of Intent; Publication

Section 13. No local or special law shall be enacted unless notice of the intent to introduce a bill to enact such a law has been published on two separate days, without cost to the state, in the official journal of the locality where the matter to be affected is situated. The last day of publication shall be at least thirty days prior to introduction of the bill. The notice shall state the substance of the contemplated law, and every such bill shall recite that notice has been given.

21.

By delegating to BESE the authority to grant waivers to certain select school districts and even certain schools within the school districts, exempting selected school districts from the obligation to comply with state statutes at some or all of its schools, the State has violated Article 3, Section 12A and Article 3, Section 13 the Louisiana Constitution of 1974 in the following non-exclusive respects and as alleged in previous paragraphs::

- A.) The State has passed a local or special law regulating the management of parish or city public schools in violation of Article 3, Section 12A of the Louisiana Constitution of 1974; and
- B.) The State has indirectly enacted local and special laws by the partial repeal of a general law passed a local or special law without a Notice of Intent in violation of Article 3, Section 13 of the Louisiana Constitution of 1974; and
- C.) The State has enacted a local or special law without publication of a Notice of Intent in violation of Article 3, Section 13 of the Louisiana Constitution of 1974.

COUNT 3

UNCONSTITUTIONAL DEPRIVATION OF PROPERTY RIGHTS
(DUE PROCESS AND EQUAL PROTECTION)

22.

Amendment 14, Section 1 of the United States Constitution states (in pertinent part):

“...nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

23.

Article 1, Section 2 of the Louisiana Constitution of 1974 states:

Due Process of Law

Section 2. No person shall be deprived of life, liberty or property except by due process of law.

24.

Article 1, Section 3 of the Louisiana Constitution of 1974 states (in pertinent part):

“No person shall be denied equal protection of the laws....”

25.

By delegating to BESE the authority to grant waivers to certain select school districts, exempting selected school districts from the obligation to comply with state statutes at some or all of its schools, the State has violated the 14th Amendment to the United States Constitution, Article 1, Section 2 and Article 1, Section 3 of the Louisiana Constitution of 1974 in the following non-exclusive respects and as alleged in previous paragraphs:

A.) Tenured employees enjoy rights and protections through various tenure statutes that grant procedural and substantive due process rights to continued employment. Act 749 allows local school districts to deprive employees of their property right to continued employment under these statutes;

B.) By allowing BESE to grant waivers that would deny the right of some teachers and other school employees to stand before the law on equal

terms and enjoy the same rights as other teachers and school employees in like situations.

26.

Act 749 provides for a process for superintendents of school districts to follow in order to apply for a waiver, and provides for a process for defendant BESE to follow in considering such requests for waivers, but petitioners affirmatively plead that these processes do not cure the constitutional defect that the state board (defendant BESE) has the ultimate decision to determine whether or not a school district must comply with a specific statute or statutes.

27.

Petitioners affirmatively plead that if the state legislature intended for particular school districts to be exempt from complying with the statutes that it enacts into law, it and it alone has the authority to state which school districts are so exempt, and delegation to a state board violates the provisions in the Louisiana Constitution as enumerated above.

28.

There are many instances where the legislature has, in fact, chosen to exempt and exclude certain entities from application of state statutes that it enacts; for example, where the legislature has enacted statutes that apply in parishes based upon the population of the parish, and also, in statutes where certain parishes or city, local or parish school boards may be exempt.

29.

In the situations described in the preceding paragraph, it is the legislature -- which has the authority to enact statutes -- that makes the determination as to what laws shall apply, rather than shifting that responsibility to a state agency or board as it has done by passage of Act 749.

30.

Petitioners seek and are entitled to Judgment declaring that Act 749 of the 2010 legislative session is unconstitutional both as applied and on its face, to the extent that it delegates its authority to defendant BESE.

31.

Petitioners also seek and are entitled to injunctive relief in the form of a Preliminary and ultimately a Permanent Injunction, enjoining the enforcement and application of Act 749 of the 2010 Regular Session of the Louisiana legislature.

32.

Because petitioners are alleging the unconstitutionality of a statute, a showing of irreparable harm is not necessary. However to any extent that the Court requires a showing of irreparable harm, petitioners allege that its unconstitutionality causes irreparable harm per se, and the Act enables defendant BESE to grant waivers that would:

A.) Exempt school districts from complying with statutes that vest property rights, such as the right to continued employment unless and until procedural and substantive due process has been afforded; and

B.) Exempt school districts from complying with statutes that vest property rights such as rights to leaves of absence; and

C.) Exempt school districts from complying with statutes that confer rights and benefits; and

D.) Exempt school districts from complying with statutes that limit the number of students in a class, resulting in overcrowding of students in large classes making it more difficult for students to learn and teachers to teach; and

E.) Exempt school districts from complying with other statutes that adversely affect petitioners and other educators.

33.

Petitioners seek and are entitled to attorneys' fees and costs for bringing this action.

WHEREFORE, petitioners Louisiana Federation of Teachers, East Baton Rouge Federation of Teachers, Jefferson Federation of Teachers, Vernon L. Bolden, Venice Gunner-Holiday, Teri Ann Johnson and Rachel Rasbery pray that:

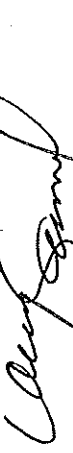
A.) After due proceedings had, there be judgment in favor of petitioners, and against Defendants State of Louisiana and the Board of

Elementary and Secondary Education declaring unconstitutional Act 749 of the 2010 Regular Session of the Louisiana Legislature, and

- B.) This Court compel Defendants State of Louisiana and Board of Elementary and Secondary Education to show cause at a date and time to be established by this Honorable Court why a Preliminary Injunction should not issue, enjoining, restraining, and prohibiting defendants from enforcing and applying the provisions of Act 749 of the Regular Session of the 2010 legislature; and
- C.) In due course, that a Permanent Injunction issue, in the form and substance of the Preliminary Injunction herein prayed for; and
- D.) Defendants be compelled to reimburse petitioners' attorney fees and costs; and
- E.) For all other general and equitable relief.

Respectfully submitted,

RITTENBERG, SAMUEL & PHILLIPS, LLC



LARRY SAMUEL (No. 11678)

WILLIAM E. RITTENBERG (No. 11287)

Attorneys for Petitioners

715 Girod Street, Suite 100

New Orleans, Louisiana 70130

Phone: (504) 524-5555

Fax: (504) 524-0912

Email: samuel@rittenbergsamuel.com

PLEASE SERVE:

State of Louisiana
Through Governor, Bobby Jindal
State Capitol
Baton Rouge, Louisiana

Attorney General
Honorable James D. "Buddy" Caldwell
1885 North 3rd Street
Baton Rouge, LA 70802

Board of Elementary and Secondary Education
Through its President, Keith Guice
1201 North 3rd Street
Baton Rouge, Louisiana, 70804

ENROLLED

Regular Session, 2010

HOUSE BILL NO. 1368

BY REPRESENTATIVES JANE SMITH, BOBBY BADON, HENRY BURNS, TIM BURNS, CARMODY, CARTER, CHAMPAGNE, CONNICK, DOVE, GISCLAIR, HARDY, HOFFMANN, KATZ, LABRUZZO, LIGI, NOWLIN, ROBIDEAUX, SIMON, SMILEY, WILLIAMS, AND WOOTON AND SENATORS APPEL, BROOME, DONAHUE, DUPLESSIS, MARTINY, AND QUINN

AN ACT

1
2 To enact Chapter 44 of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 17:4031 through 4039, relative to public elementary and secondary
4 education; to authorize the State Board of Elementary and Secondary Education to
5 exempt school districts from various laws and regulations pertaining to education;
6 to provide procedures regarding request for and approval of such waivers; to provide
7 for terms and conditions on such waivers; to provide with respect to schools within
8 the jurisdiction of the Recovery School District and schools which may be
9 transferred to that jurisdiction; to provide for reports; and to provide for related
10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Chapter 44 of Title 17 of the Louisiana Revised Statutes of 1950,
13 comprised of R.S. 17:4031 through 4039, is hereby enacted to read as follows:

14 CHAPTER 44. RED TAPE REDUCTION AND LOCAL

15 EMPOWERMENT WAIVER PROGRAM

16 §4031. Definitions

17 As used in this Chapter, unless otherwise clearly indicated, the following
18 terms mean:

19 (1) "Board" means the State Board of Elementary and Secondary Education.

20 (2) "Department" means the state Department of Education.

21 (3) "District" means any city, parish, or other local public school district, the

22 Recovery School District, and the Special School District.

CODING: Words in struck through type are deletions from existing law; words underscored are additions.

1 (4) "Governing authority" means the governing authority of any public
2 elementary or secondary school.

3 (5) "Low-performing school" means an academically unacceptable school
4 as determined by the board.

5 (6) "Superintendent" means the superintendent of any city, parish, or other
6 local public school district, the director of the Special School District, and the
7 superintendent of the Recovery School District.

8 (7) "Waiver" means a waiver granted pursuant to and in accordance with this
9 Chapter which exempts the recipient district from any provision of this Title or from
10 any rule, regulation, or policy of the board that is applicable to public schools and
11 to public school officers and employees. A waiver may be granted for any
12 combination of such laws, rules, regulations, or policies, including but not limited
13 to those related to instructional time, curriculum, funding, personnel, student-to-
14 personnel ratios, and student support; however, Subpart B of Part III of Chapter I of
15 Title 17 of the Louisiana Revised Statutes of 1950, R.S. 17:158, 416.2, 3902 and
16 laws, rules, and regulations identified in R.S. 17:3996(B) and those related to matters
17 identified in R.S. 17:3996(A) shall not be waived. Also, any limitation or restriction
18 on outsourcing of food, clerical, custodial, or paraprofessional services shall not be
19 waived.

20 §4032. Authority of the board to grant waivers

21 Notwithstanding any provision of law to the contrary, the board may, upon
22 receipt of a waiver application from a governing authority as set forth in this Chapter
23 and with the goal of improving quality of instruction and student academic
24 achievement, issue a waiver to any district.

25 §4033. Requests for waivers

26 A. A governing authority may request a waiver for any school, any
27 combination of schools, or all schools under his district's jurisdiction. However, a
28 governing authority shall not request a waiver for any school unless a majority of the
29 classroom teachers employed in the school, voting by secret ballot, vote in favor of
30 inclusion of such school in the waiver request.

1 B. A governing authority requesting a waiver shall submit to the board a
2 written waiver request that does all of the following:
3 (1) Identifies the specific laws, rules, regulations, and policies from which
4 waiver is sought.
5 (2) Identifies the school or schools that will be covered by the waiver.
6 (3) Describes the policies and procedures that will be instituted as a
7 substitute for the waived provisions.
8 (4) Describes how the proposed waiver will accomplish all of the following:
9 (a) Increase the quality of instruction for students.
10 (b) Improve the academic achievement of students.
11 (c) Improve teaching effectiveness within schools.
12 (5) Describes, for each school year, specific, measurable educational goals
13 and the methods to be used annually to measure progress in meeting such goals.
14 §4034. Terms and conditions of waivers for low-performing schools
15 A. The board shall require any low-performing school covered by a waiver
16 to meet certain terms and conditions aimed at improving teacher effectiveness,
17 quality of instruction, and student academic achievement. The governing authority
18 of such school shall:
19 (1) Ensure the effectiveness of the school's teachers pursuant to Part II of
20 Chapter 39 of Title 17 of the Louisiana Revised Statutes of 1950.
21 (2) Ensure the improvement of quality of instruction and student academic
22 achievement by implementing one of the following four intervention options at each
23 low-performing school covered by the waiver:
24 (a) Turnaround: Put in place new leadership and a majority of new staff,
25 new governance, and improved instructional programs, and provide the school with
26 sufficient operational flexibility such as the ability to select staff, control its budget
27 as approved by the school's governing authority, and increase learning time.
28 (b) Restart: Convert the school to a charter school. However, every teacher
29 employed in such school prior to its conversion to a charter school, who has been
30 determined to be effective in accordance with the provisions of Part II of Chapter 39

1 of Title 17 of the Louisiana Revised Statutes of 1950, shall be given the option to
2 remain at the school or to be reassigned by the governing authority to another school
3 under its jurisdiction.

4 (c) School Closure: Close the school and place its students in a high-
5 performing school within the district.

6 (d) Transformation: Hire a new principal and implement a suite of best
7 practices including comprehensive instructional management reform and measures
8 of effective teaching. The board shall not grant a waiver to a district that proposes
9 to use this option for more than fifty percent of the low-performing schools covered
10 by the waiver.

11 (3) A district that has implemented one or more of the interventions
12 described in Paragraph (2) of this Subsection for its low-performing schools in the
13 two academic years immediately preceding the waiver application is not eligible to
14 receive a waiver for such schools unless both of the following apply:

15 (a) The school has met its statewide accountability growth target or
16 surpassed the statewide growth average during such two-year period of
17 implementation.

18 (b) The district agrees to implement any remaining conditions of school
19 intervention as required by the board.

20 B. A school implementing any of the intervention options prescribed in
21 Paragraph (A)(2) of this Section shall not be subject to transfer to the Recovery
22 School District for the duration of the waiver period. Upon termination of the waiver,
23 a school that has not met its growth targets as established by the school and district
24 accountability system shall be transferred to the jurisdiction of the Recovery School
25 District or the governing authority of such school shall enter into a memorandum of
26 understanding with the Recovery School District which shall govern the operation
27 of the school.

28 C. A school that entered into a memorandum of understanding with the
29 Recovery School District prior to receipt of a waiver and which upon expiration of
30 the memorandum of understanding or termination of the waiver has not met its

1 growth targets as established by the school and district accountability system, shall
2 be transferred to the jurisdiction of the Recovery School District.

3 D. A school under the jurisdiction of the Recovery School District which has
4 been granted a waiver, and upon termination of the waiver has not met its growth
5 targets as established by the school and district accountability system, shall be
6 subject to one of the following actions as determined by the board:

7 (1) A school that is directly operated by the Recovery School District shall
8 be converted to a charter school. If the school is a charter school, the Recovery
9 School District shall terminate the school's charter and enter into a contract with a
10 new chartering group for the operation of the school. Such schools shall remain
11 under the jurisdiction of the Recovery School District.

12 (2) The school shall be closed and its students transferred to a higher
13 performing school within the Recovery School District.
14 §4035. Grant, denial, or extension of waivers

15 A. If the requirements provided in this Chapter are met, the board may grant
16 a waiver as requested or grant a waiver subject to specified modifications. The
17 waiver shall be effective for a specified period of up to four years unless terminated
18 sooner by the board.

19 B. The terms and conditions of any waiver granted pursuant to this Chapter
20 shall be reduced to writing by and approved by the board and agreed to and signed
21 by the superintendent, subject to the approval of the governing authority, in the
22 manner prescribed by the board. The written document containing the terms and
23 conditions of the waiver shall not constitute a contract between the board and the
24 governing authority.

25 C. The board may, upon request from the governing authority and a
26 recommendation from the department, extend the waiver period if it determines that
27 the waiver has been effective in enabling the school to carry out the activities for
28 which the waiver was requested and the waiver has contributed to improved quality
29 of instruction and student academic achievement. Any such extension shall not

1 prevent a school otherwise eligible from being subject to transfer to the Recovery
2 School District.

3 §4036. Reporting requirements

4 A. The governing authority of any school that receives a waiver pursuant to
5 this Chapter shall provide periodic reports on progress in achieving specific
6 benchmarks set forth by the board and shall provide, upon the request of the board,
7 periodic reports on the uses and effectiveness of the waiver.

8 B. Not later than March first of each year, the board shall submit a report to
9 the Senate Committee on Education and the House Committee on Education:

10 (1) Summarizing the uses of waivers granted pursuant to this Chapter.

11 (2) Describing whether such waivers:

12 (a) Increased the quality of instruction to students.

13 (b) Improved the academic achievement of students.

14 (3) Recommending any proposed legislative changes, if district success in
15 improving quality of instruction and academic achievement under a waiver indicates
16 that changes in an existing provision of law would be appropriate for all districts.

17 §4037. Termination of waivers

18 A. The board shall terminate a waiver, either completely or with respect to
19 individual schools, if the board determines that the performance of the schools has
20 been inadequate to justify a continuation of the waiver or if the waiver is no longer
21 necessary to achieve its original purposes.

22 B. The board shall terminate a waiver as applied to a low-performing school
23 if the school has failed to implement the requirements set forth in R.S. 17:4034
24 within two years of the granting of the waiver and may terminate a waiver as applied
25 to a low-performing school that has not met its statewide accountability growth
26 targets for three consecutive years while under the waiver or has not met any other
27 required condition or benchmark.

28 §4038. Rules

29 The board shall adopt and promulgate rules and regulations in accordance
30 with the Administrative Procedure Act to implement the provisions of this Chapter.

1 §4039. Other waiver provisions

2 The provisions of this Chapter shall not be applicable to any waiver otherwise
3 provided for by law or rule.

4 Section 2. Beginning with the effective date of this Act, no city, parish, or other local
5 public school board shall be required to comply with any unfunded mandate imposed by
6 state law or any rule, regulation, or policy promulgated by the State Board of Elementary
7 and Secondary Education.

8 Section 3. This Act shall become effective upon signature by the governor or, if not
9 signed by the governor, upon expiration of the time for bills to become law without signature
10 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
12 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____