

STATE BOARD OF EDUCATION
STATE DEPARTMENT OF EDUCATION
ADMINISTRATIVE CODE

CHAPTER 290-010-010
ORGANIZATION AND RULES OF PROCEDURE

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290-010-010-.01 **Department Of Education.** The Department of Education is a department of state government as provided by §16-2-1 Code of Ala. 1975, as amended, and is directly responsible to the Board for the direction and supervision of public kindergarten through twelfth grade schools.
Author: Richard W. Meadows
Statutory Authority: Code of Ala. 1975, §§16-2-1 through 4.
History: August 8, 1991. **Amended:** Effective September 13, 1991. **Amended:** Filed April 14, 1995; effective May 19, 1995.

290-010-010-.02 **Definitions.**

(1) Board. The Alabama State Board of Education.

(2) Department. The Alabama State Department of Education.

(3) Superintendent. The Alabama State Superintendent of Education.

Author: Richard W. Meadows

Statutory Authority: Alabama Constitutional Amendment 284, Code of Ala. 1975, §§16-2-1, 16-3-1, 16-3-12, 16-3-13, 16-4-1; Title 41, Chapter 22.

History: Amended: Filed April 14, 1995; effective May 19, 1995.

290-010-010-.03 Supervisory Body.

(1) The general supervision of the public schools in Alabama is vested in the Board, consisting of the Governor as an ex officio member and eight elected members.

(2) The Governor is the president of the Board. The Board elects a vice president and a president pro tem from its members annually, and the Superintendent serves as the secretary and executive officer of the Board. Should the office of the vice president become vacant during the term, the president pro tem shall become vice president and shall serve until the next annual election of officers.

(3) The Board is the chief policy making and coordinating body of public schools in Alabama.

Author: Ed Richardson

Statutory Authority: Alabama Constitutional Amendment 284; Code of Ala. 1975, §§16-3-1 through 2, 16-3-11 through 13.

History: Amended: Filed April 14, 1995; effective May 19, 1995.

Amended: Filed September 11, 2003; effective October 16, 2003.

Amended: Filed June 9, 2005; effective July 14, 2005.

290-010-010-.04 Meetings Of State Board Of Education. Unless otherwise specifically provided by law, the following are policies and procedures by which the business of the Alabama Board shall be conducted:

(1) Regular meetings of the Board shall be held at a time and on a date set by the Board. Such meetings shall be open to the public and shall be for the purpose of transacting those items of business within the power and jurisdiction of the Board

in the governance of public schools in Alabama. The presiding officer for each meeting shall be the President, and in his or her absence, the vice president. In the absence of both the president and the vice president, the president pro tem shall preside.

(2) An agenda shall be prepared by the Superintendent which shall include items he or she selects and items requested by members of the Board.

(3) Other than requests from Board members, requests for items to be placed on the agenda, including resolutions, shall be filed (together with a copy of any proposed resolution or other pertinent information items) with the Superintendent at least fourteen (14) calendar days prior to the scheduled meeting. Before each meeting, the Superintendent shall send to the Board the agenda, together with resolutions and other agenda items, and with appropriate comments and/or recommendations, for receipt seven (7) days prior to the date and time of the scheduled meeting of the Board.

(4) A quorum shall be required for the transaction of business. A majority of the total Board membership shall constitute a quorum. If a quorum is not present, the meeting shall be adjourned to be reconvened at the call of the president or vice president of the Board or the next regularly scheduled meeting of the Board. There shall be no representation of any member by proxy.

(5) An official act of the Board shall require a motion and second, and an affirmative vote of the majority of the members present. A motion may be amended by motion to amend with a second and affirmative vote of the majority of the members present. Once amended, a motion must be voted upon in its amended form only. No motion or amendment shall be voted upon without a period of discussion, the length of which shall be in the discretion of the presiding officer. Notwithstanding the foregoing, a motion to lay on the table, once made and seconded, shall be decided immediately without discussion. Voting on all matters shall be by a show of hands. All abstaining or recusing member shall so state.

(6) In matters of procedure not covered by State statute, Robert's Rules of Order, Newly Revised, shall govern all meetings of the Board. The Department's legal counsel shall serve as parliamentarian for all meetings.

(7) Resolutions and other items of business not included in the agenda distributed by the Superintendent prior to

the meeting must have two-thirds majority consent of the Board members present to be considered.

(8) The following shall be the general order of business at all regular meetings of the Board:

- (a)I. Call to order
- (b)II. Invocation and Pledge of Allegiance to the United States Flag
- (c)III. Roll call and establishment of a quorum
- (d)IV. Approval of the agenda
- (e)V. Approval of the minutes of previous meetings
- (f)VI. Public hearings
- (g)VII. Action Items
 - 1. Unfinished Business
 - 2. New Business
- (h)VIII. Executive (includes Legal and Public Information)
- (i)IX. Superintendent's report
- (j)X. Announce date, time and place of next regular meeting

(9) Members of the public may speak or address the Board during the public hearing portion of the meeting only. Any member of the public desiring to speak or address the Board must register written notice of intent to speak prior to the beginning of the public hearing portion of the meeting. The order of speakers shall be determined by the order of sign up by issue, and the presiding officer shall rule out of order any person who attempts to speak to matters not then before the Board or who act in an inappropriate manner. Proper decorum shall be followed by all persons attending Board meetings. All speakers shall address the Board from the podium and shall first identify themselves and who they represent. All speakers shall have a maximum of two (2) minutes, unless the Board votes to allow a longer time.

(10) Special meetings of the Board may be called as provided by State law.

(11) The presiding officer of the Board may call the Board into executive session which shall be attended only by the members of the Board, the Superintendent, and those individuals named by the presiding officer. Such sessions shall be used only for those purposes permitted by State law.

(12) Special ad hoc or temporary committees of the Board as deemed advisable may be appointed by the presiding officer. The presiding officer of the Board shall serve as ex officio member of all committees appointed.

(13) The secretary and executive officer of the Board, or a designee, shall record the proceedings of each meeting.

(14) The secretary and executive officer of the Board shall keep the official minutes of the meetings of the Board, transcribe these into writing, and submit the minutes for consideration at the next regular meeting of the Board. The minutes, when approved, of each meeting of the Board shall be the official and controlling record of the meeting.

Author: Richard W. Meadows

Statutory Authority: Code of Ala. 1975, §§13-5-1; 16-3-2; 16-3-7; 16-3-12; 16-3-13.

History: New Rule: April 5, 1979. **Amended:** February 22, 1980, and April 22, 1981; August 8, 1991. **Amended:** Effective September 13, 1991. **Amended:** Filed April 14, 1995; effective May 19, 1995. **Amended:** Filed September 11, 2003; effective October 16, 2003. **Amended:** Filed September 11, 2003; effective October 16, 2003.

290-010-010-.05 Delegation Of Authority To The State

Superintendent Of Education. Pursuant to Alabama Constitutional Amendment 284 and Code of Ala. 1975, §16-3-11, the Board delegates to the Superintendent such powers as are necessary to execute each of the duties prescribed below. The powers granted herein are in addition and supplemental to any other powers delegated to the Superintendent by law or rules of the Board and shall not be construed to constitute a limitation on the powers of the Superintendent.

(1) To negotiate, execute and enter into contracts and agreements, including agencies of the federal government as required for the operation of the Department or to carry out programs approved by the Legislature or the Board.

(2) To execute contracts and orders approved by or on behalf of the Board.

(3) To enter leases of real property for departmental operations.

(4) Reserved.

(5) To initiate rule making.

(6) To perform other such functions as may be necessary to supervise, direct, conduct and administer the day-to-day duties of the Department as authorized by law or by rules and policies adopted by the Board.

Author: Richard W. Meadows

Statutory Authority: Alabama Constitutional Amendment 284, Code of Ala. 1975, §§16-3-11; 16-3-12; 16-3-13; Title 16, Chapter 4.

History: Amended: January 8, 1980, April 10, 1980, May 19, 1981; August 8, 1991. **Repealed and Reserved:** 290-010-010-.05 effective September 13, 1991. **Amended:** Filed April 14, 1995; effective May 19, 1995.

290-010-010-.06 Statutory Titles And Rules.

(1) The primary statutory titles which affect operations of the Department are Code of Ala. 1975, Titles 16, 21 and 32.

(2) The administrative rules of the Department are contained in Control Number 290 of the Alabama Administrative Code.

Author:

Statutory Authority: Code of Ala. 1975, §§16-3-11, 41-22-7.

History: August 8, 1991. **Amended:** Effective September 13, 1991.

290-010-010-.07 Organization.

(1) The State Department of Education shall be organized by the State Superintendent of Education.

Author:

Statutory Authority: Alabama Constitutional Amendment 284, Code of Ala. 1975, §§16-2-1(a), 16-2-3, 16-3-11 through 12; 16-3-18 through 19; 16-4-4 through 21; 16-37-3 through 4; 16-38-5; 21-3-1; 21-6-1.

History: Revised January 17, 1978, December 12, 1978, July 26/27, 1980, May 19, 1981, July 15, 1982, September 9, 1982;

August 8, 1991. **Amended:** 290-010-010-.07(1) and repealed 290-010-010-.07(2) through (3) effective September 13, 1991.

290-010-010-.08 Reserved.

Author:

Statutory Authority: Alabama Constitutional Amendment 284, Code of Ala. 1975, §§16-2-1(a), 16-2-3, 16-4-4, 16-4-11 through 12, 16-37-3 through 4, 16-38-5, 21-3-1, 21-6-1.

History: Revised January 17, 1978, December 12, 1978, July 26/27, 1980, May 19, 1981, July 15, 1982, September 9, 1982; August 8, 1991. **Repealed and Reserved:** 290-010-010-.08 effective September 13, 1991.

290-010-010-.09 Availability Of Forms And Records.

(1) Any form or publication used by the Department in the conduct of its business with the public may be obtained in the manner prescribed by rules of the State Board of Education by contacting the office of the State Superintendent of Education, Montgomery, Alabama 36130-3901.

(2) Availability of Records.

(a) Records which may not be subject to disclosure include:

1. those records which by statute limit disclosure;
2. recorded information received by a public official in confidence, sensitive personnel records, pending criminal investigations and records, the disclosure of which would be detrimental to the best interest of the public.
3. those matters entitled to a privilege.

(b) With the exception of Alabama Administrative Code r. 290-010-010-.09(2)(a) above, records of the Department are public and are made available for inspection at the Gordon Persons Building in Montgomery, Alabama, or in an office located outside the Gordon Persons Building in Montgomery or outside of the city of Montgomery, subject to the records being located in that office.

Author:

Statutory Authority: Code of Ala. 1975, §§16-4-4, 36-12-2, 36-12-40, 41-13-1, Stone v. Consolidated Publishing Company, 404 So. 2d 678 (Ala. 1981).

History: August 8, 1991. **Amended:** Effective September 13, 1991.

290-010-010-.10 Rulemaking Proceedings. The rulemaking proceedings of the State Board of Education shall be conducted according to the provisions of Code of Ala. 1975, §§16-3-11 through 13, and 41-22-1 through 27, and the rules published in the Alabama Administrative Code. Communications regarding rulemaking proceedings should be addressed to the State Superintendent of Education, Montgomery, Alabama 36130-3901.

Author:

Statutory Authority: Code of Ala. 1975, §§16-3-11 through 13, and Title 41, Chapter 22 (1975), as amended.

History: Code of Ala. 1975, recodified.

290-010-010-.10.1 Exception(s) To Administrative Code Rule(s) -- Excepting The Administrative Code Rules Required By Law, Federal Regulations Or Court Orders.

(1) Effective July 1, 1992, the State Superintendent of Education is authorized:

(a) To receive and consider each request from each local county superintendent of education or city superintendent of schools for each exception of rule(s) published in the Alabama State Board of Education, State Department of Education Administrative Code.

(b) To study such exception request(s) especially how such exception(s) might improve student achievement, and encourage innovation, experimentation and risk taking in the public school(s) of Alabama.

(c) To grant such request(s) for exception(s), received in accordance with Alabama Administrative Code r. 290-010-010-.10.1(1)(a) through (b), of Alabama Administrative Code rule(s) published in the Alabama State Board of Education, State Department of Education Administrative Code.

(d) To grant exception(s) for periods of one, two or three years.

(2) Effective July 1, 1992, the State Superintendent of Education shall report on a monthly basis to the Alabama State Board of Education:

(a) The number and nature of requests received before taking any action.

(3) The following procedure shall be used for granting exception(s):

(a) When the Department receives an exception request, the request is reviewed by the Assistant Superintendent of the program the request affects and sent to each State Board member.

(b) The Assistant Superintendent shall make a recommendation concerning the request to a review panel. The review panel's members shall be the Assistant Superintendent for Instructional Services, the Assistant Superintendent for General Administrative Services and the Assistant Director for Administrative and Financial Services.

(c) The review panel shall make an appropriate recommendation to the State Superintendent.

(d) Board members must present questions to the State Superintendent concerning exception request(s) within seven days of their receipt of the request. If a Board member wants the request acted upon by the Board, the request shall be placed on the agenda for the following Board meeting. Otherwise, the State Superintendent will make the final decision regarding the request.

(e) The State Superintendent shall send all Board members a summary of all requests, and the action taken, on a quarterly basis or at a Board member's request.

(4) Requests will not be granted for exceptions to: state and federal laws; regulations governing the expenditures of funds; safety requirements; civil rights requirements; or prohibitions in Alabama Administrative Code r. 290-040-040-.02 of certain teaching techniques. Requests shall not be granted for administrative convenience, although reduction of excessive paperwork and the elimination of duplication in reporting are desired goals.

(5) The process of granting exceptions will in no way violate the policy-making responsibilities of the State Legislature, the State Board of Education and local boards of education.

Author: Ashley H. Hamlett, Sec. Administrative Code

Statutory Authority: Code of Ala. 1975, §§16-3-11 through 13, as amended.

History: New Rule: May 14, 1992 effective June 22, 1992.

Amended: October 14, 1993.

290-010-010-.10.2 Public Petitions For Adoption, Repeal Or Change Of A Rule.

(1) Any person may petition the Department for the adoption of a new rule or for the repeal or change of any existing rule. A petition for such action requires the submission of a departmental Petition for a Rule Change form (or facsimile), a copy of which can be found at Alabama Administrative Code r. 290-010-010-.10.2. Copies of the form may be obtained from the Department.

(2) Action by the Department on such a petition shall be provided by Code of Ala. 1975, §41-22-8.

Author: Rick Meadows, General Counsel

Statutory Authority: Code of Ala. 1975, §41-22-8.

History: Adopted September 9, 1993, effective October 14, 1993.

ALABAMA DEPARTMENT OF EDUCATION

PETITION FOR A RULE CHANGE

1. This is a petition:

- To adopt a new rule
- To modify an existing rule
- To repeal an existing rule

2. This Petition is presented by (Petitioner):

Name: _____

Address: _____

Phone: _____

3. The person signing the petition is:

- The true party in interest and is the Petitioner
- An officer or employee of the Petitioner

State Title: _____

Other (specify): _____

4. The Petitioner's representative is:

Name: _____

Address: _____

Phone: _____

5. If this Petition proposes to modify or repeal an existing rule, specify the rule:

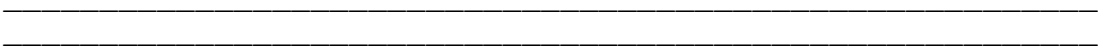
Rule No. _____

(Continued on next page)

PETITION FOR A RULE CHANGE

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6. If this Petition proposes the adoption of a new rule, specify all existing rules it would affect, and specify what chapter of the Department Administrative Code it should be a part of.



7. Attach a typed (double-spaced) narrative as to why the new rule, the modification, or the repeal is needed, specifying:

- (1) The persons or class of persons it would affect and how it would affect them.
- (2) The benefits and disadvantages of the proposed rule, modification, or repeal.
- (3) The estimated cost or cost savings to the Department.
- (4) Any other reasons why the rule, modification, or repeal should be accepted by the Department.
- (5) The legal authority for the proposed rule, modification, or change.
- (6) The names and addresses of any persons, organizations, and the identity of any class of persons who would be or could be adversely affected by the proposed rule, modification or repeal.
- (7) This is to be labeled "Exhibit A."

8. Attach as "Exhibit B" etc., any other documents, reports or studies that you want to be considered in connection with your petition.

Date this the _____ day of _____, 19__.

Signature of Petitioner
or Representative

Note: The original form and five (5) copies must be submitted to: Administrative Procedure Act Secretary, Alabama Department of Education, 50 North Ripley Street, Montgomery, Alabama 36130

ALABAMA DEPARTMENT OF EDUCATION

APPOINTMENT OF REPRESENTATIVE

I appoint _____ (Name)
 _____ (Address)

 _____ (Phone)

to act as my representative in connection with:

- Petition for a Rule Change
- Petition for a Declaratory Ruling

I hereby authorize my representative to fully act in my stead in connection with the petition involved. This appointment shall remain in full force and effect until I notify the Department of Education in writing that my representative's authority has been withdrawn.

Date _____ Signature _____
(Petitioner)

Address: _____

Phone: _____

(Continued on next page)

ALABAMA DEPARTMENT OF EDUCATION

ACCEPTANCE OF APPOINTMENT

I, _____, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before the Department of Education; that I am not, as an officer or employee of the State of Alabama, disqualified or otherwise exempted by law from acting as the petitioner's representative.

My relationship to the petitioner is _____ (attorney, legal guardian, relative, etc.)

Date _____ Signature _____

(Representative)

Address: _____

Phone: _____

Note: The original form must be submitted to: Administrative Procedure Act Secretary, Department of Education, 50 North Ripley Street, Montgomery, Alabama 36130.

290-010-010-.11 **Declaratory Rulings.** The rules of procedure of the State Board of Education for filing, consideration, and disposition of declaratory rulings shall be the provisions of Code of Ala. 1975, Title 41, Chapter 22, and the rules published in the Alabama Administrative Code.

Author:

Statutory Authority: Code of Ala. 1975, §§16-3-11 through 12, and Title 41, Chapter 22, as amended.

History: Code of Ala. 1975, recodified.

290-010-010-.12 **Contested Cases.** The procedures of the State Board of Education proceedings in contested cases shall be conducted according to the provisions of Code of Ala. 1975, Title 41, Chapter 22, and the rules published in the Alabama Administrative Code.

Author:

Statutory Authority: Code of Ala. 1975, §§16-3-11, 41-22-12 through 18.

History: Code of Ala. 1975, recodified.

290-010-010-.13 **Licensing.** The procedure of the State Board of Education for licensing (certification, private schools, etc.) shall be conducted according to the provisions of Code of Ala. 1975, §§16-3-11 through 13, 16-3-16, 16-23-2, 32-14-23; Title 16, Chapter 46, and Title 41, Chapter 22, and rules published in the Alabama Administrative Code.

Author:

Statutory Authority: Code of Ala. 1975, §§16-3-11 through 13, 16-3-16, 16-23-2, 32-14-23, Title 16, Chapter 46, and Title 41, Chapter 22, as amended.

History: **New Rule:** December 19, 1978. **Amended:** May 8, 1979, October 14, 1980, September 16, 1981.

290-010-010-.14 **Designation Of Agency Secretary.**

(1) The State Superintendent of Education shall designate the Department Secretary for the filing of all proceedings for administrative review and all proceedings under Code of Ala. 1975, Title 41, Chapter 22.

(2) The Secretary has the following duties:

- (a) Receive, docket, and maintain all filings.
 - (b) Respond to request for information or copies of filings.
 - (c) Maintain a case accounting system.
 - (d) Maintain a subject index of department rulings.
- (3) Within the Department of Education, the original and all copies of all rulings, together with the official Department file, shall be filed with the Department Secretary who shall date the ruling and disperse copies as may be required.

Author:

Statutory Authority: Code of Ala. 1975, §§16-3-11, and 41-22-6 through 7, as amended.

History: August 8, 1991. **Amended:** Effective September 13, 1991.