



DECISION TIME: QUESTIONS AND ANSWERS ABOUT THE RETURN OF SCHOOLS TO LOCAL CONTROL - AUGUST 2010 -

During a special legislative session in the fall of 2005, legislators created “Act No. 35”—a piece of legislation that enabled the Recovery School District (RSD) to take over and control the operations of more than 100 New Orleans public schools. Act 35, now codified as La. R.S. 17:10.7, mandates that the RSD must retain jurisdiction over these schools for no less than five school years. At the end of those five years, the Louisiana Board of Elementary and Secondary Education (BESE) must initiate a process to decide whether to “return” the schools to the Orleans Parish School Board (OPSB) or “continue” the schools in the RSD. Section 10.7 outlines the procedures and timeline the RSD and BESE must follow prior to making this decision.

What the Law Makes Clear

Section 10.7 requires the RSD to control any transferred school for five years—not including the school year the school was initially transferred to the RSD. This means that the first year of the five-year cycle for the New Orleans schools transferred in the fall of 2005 began in the fall of 2006. Thus, the RSD’s control of these schools is scheduled to expire at the end of the 2010-2011 school year.

However, the RSD must make a report to BESE about the status of each transferred school nine months prior to the expiration of this initial transfer period. Assuming the 2010-2011 school year ends on June 30, 2011, then the RSD must submit the report no later than September 30, 2010. The report must detail information and the RSD’s recommendation for each transferred school. It must include the following details for each school:

- the school’s status;
- the nature of its faculty and administration;
- the demographics and size of its student body;
- the organizational and management structure; and
- the amount and reasons for improvement or decline in student academic performance.

The recommendation by the RSD must be one of the following:

- continue the school in the RSD in its reported operational status;
- continue the school in the RSD with a change in its reported operational status;
- close the school; or
- return the school to the transferring system (the OPSB).





If the RSD recommends that BESE close the school, then the report must also describe the reasons for closure. Likewise, if the RSD recommends the school continue in the RSD with a change in operational status, the RSD must include in the report “the nature of the recommended change.” Finally, if the RSD recommends a school be returned to OPSB, the RSD must provide a list of proposed stipulations and conditions for the return of the school.

After the RSD has made its report to BESE, no later than six months prior to the expiration of the initial transfer period, BESE must hold a public hearing within the jurisdiction of the transferred school district to discuss the impending return, closure, or continuance of the school. Assuming the 2010-2011 school year ends on June 30, 2011, BESE must hold this hearing in Orleans Parish before December 31, 2010. It may be assumed that the public hearing will provide community members, school leaders, parents, and any other interested parties an opportunity to present oral testimony regarding the future of the RSD schools.

The law also states that no later than six months prior to the expiration of the initial transfer period, BESE must take action on the recommendations of the RSD. This may mean that BESE will choose to hold the public hearing in New Orleans well before the December 31st deadline and vote on the RSD’s recommendation for each school at a subsequent regular school board meeting (perhaps the regular BESE meeting scheduled for mid-December). However, since the law does not specify that BESE’s return vote must be held at a regular board meeting, it is possible that BESE may vote at the conclusion of the public hearing. The law states that BESE may continue a school in the RSD for an additional five years by a simple majority vote of its membership. After this additional five years (December 2015), BESE will once again determine whether the school should be returned to the OPSB or continued in the RSD. As the law is currently written, there is no limit to the number of five year cycles BESE may approve to continue a school in the RSD.

Therefore, assuming the five-year transfer period expires on June 30, 2011, the following should occur within the next school year:

Before September 30, 2010

- The RSD will submit a report to BESE detailing the status and recommendations for each school that was initially transferred to the RSD in Orleans Parish during the fall of 2005.

Before December 31, 2010

- BESE will hold a public hearing in Orleans Parish regarding whether the schools should be continued in the RSD or returned to the OPSB.
- BESE will vote and take action based on the recommendations of the RSD and the public comments made at the hearing.



Unanswered Questions

Although the law lays out the basic process by which a school may be “returned” or “continued,” below are the ambiguities that need to be clarified.

When can we expect the RSD and BESE to begin the decision process?

It is unclear the exact timeline BESE will choose to follow. While education policymakers and stakeholders often use June 30th as the official end of the school year, section 10.7 does not specify or reference a particular date. Thus, it is possible that the RSD and/or BESE will rely on a different end of school year date, resulting in either the advance or delay of the deadlines mentioned above.

What type of public hearing can we expect?

The law does not provide any guidance for the format of the requisite public hearing. “Public hearings” can range from extremely formal proceedings, complete with evidence, testimony, and expert witnesses, to very informal meetings, with procedures similar to that of a local school board meeting. Also, La. R.S. 17:10.7 does not specify whether BESE must have a separate public hearing for each transferred school. As the law is written, it is possible that BESE may choose to hold only one public hearing to determine the fate of all the transferred schools. However, it would appear nearly impossible for BESE to expect to hold just one hearing. As with any public BESE meeting, there will likely be many people who will want to speak and express their thoughts and opinions. Thus, one meeting will probably not be able to accommodate all interested community members. Likewise, it would appear logistically impossible for BESE to hold one public hearing for each school—over 100 separate hearings. Ideally, BESE will hold several meetings in different locations throughout the city, with each meeting specifically addressing the transferred schools within that particular neighborhood.

What changes might BESE require schools to make?

Section 10.7 specifies that in the RSD’s report to BESE, the RSD may recommend the school be “[c]ontinued in the recovery district with a change in its operational status and the nature of the recommended change.” It is unclear what exactly a “change in operational status” is. This phrase appears nowhere else in Louisiana education law or BESE policy. Perhaps a change in operational status merely means a change in some aspect of the school’s operations. For example, perhaps the RSD will recommend that a particular school move to another building or add an additional grade. Or, perhaps a change in operational status means something more significant, such as a recommendation that an RSD direct-run school be converted to a charter school. If the latter is the case, the RSD may be able to use this decision process to gain BESE approval to make broad, sweeping changes to many of the RSD’s schools.

Similarly, Section 10.7 permits the RSD to recommend that a school be “returned to the administration and management of the transferring system with proposed stipulations and conditions for return.” This seems to suggest that BESE will not return a school to OPSB completely until the OPSB first completes a series of required tasks. Section 10.7 provides no guidance about the form or content of these stipulations. One could assume that the stipulations might be something simple, such as building renovations or the purchase of new instructional



materials. But, the RSD may recommend more considerable stipulations. For example, perhaps the RSD will recommend a stipulation that requires the OPSB to grant a charter to the current charter operator of the RSD school. Conditions and stipulations suggest that BESE's decision to return a school to the OPSB is a contractual relationship. If so, then BESE's decision to return a school to the OPSB is really contingent upon the OPSB's desire to once again control the school. It would appear that the OPSB may simply choose to ignore the stipulations and conditions for return if the board does not wish to regain control of a particular school.

What will BESE decide concerning schools that have been not been reopened?

In the fall of 2005, over 100 schools were transferred to the RSD, but the RSD chose not to reopen many of those schools. Since then, the RSD has had the responsibility of maintaining and paying any costs associated with these vacant buildings. Under the language of Section 10.7, the RSD's report must include information and "[t]he status of each school transferred" along with an accompanying recommendation for each school. This suggests that BESE must make a return decision for every school transferred to the RSD under 10.7, including schools that were subsequently closed. But, the Section 10.7 criteria for the RSD's report are only applicable to open, functioning schools (the school's status, nature of its faculty and administration, student size and demographics, organizational and management structure, improvement in academic performance). In contrast to the inclusive language mentioning "each transferred school," this omission seems to indicate that BESE will not make a "return" decision for these schools—once BESE closes a school, the school remains closed forever. At the very least, if BESE does make a "return" decision for closed schools, BESE will have to base its decision on other criteria, not specified by law. Furthermore, if BESE decides to return a closed school to the OPSB, it would, in effect, merely be returning a vacant building. Presumably, the OPSB would be able to utilize these returned buildings in any capacity it chooses, including re-opening the school. However, under the language of the law, it is possible that BESE might choose to return a school building to the OPSB under condition that the OPSB will keep that particular school closed. It may be assumed though that the OPSB would not agree to undertake the responsibility to pay for a school building's maintenance without the power to control the use of the building.

How will 5-year charter renewal decisions be affected?

BESE's decision to return or continue a charter school may conflict with the school's charter renewal process.¹ Under Section 10.7, the RSD was directed to take over academically low-performing schools in order to reorganize and operate the schools in a way "most likely to improve the academic performance of each school." Indeed, the RSD's impending report on the status of each transferred school must include a component detailing the school's improvement (or decline) in student academic performance. Seemingly, a transferred school that has made significant academic improvement would be a good candidate for return to the local school board. However, if the transferred school is a charter school, during the same year BESE is making the decision to return or continue the school, BESE will also be making a five-year charter renewal decision. Under charter renewal provisions, BESE will renew charters for schools that have

¹ See 11 Loy. Pub. Int. Law 319, 336-38 (2010).

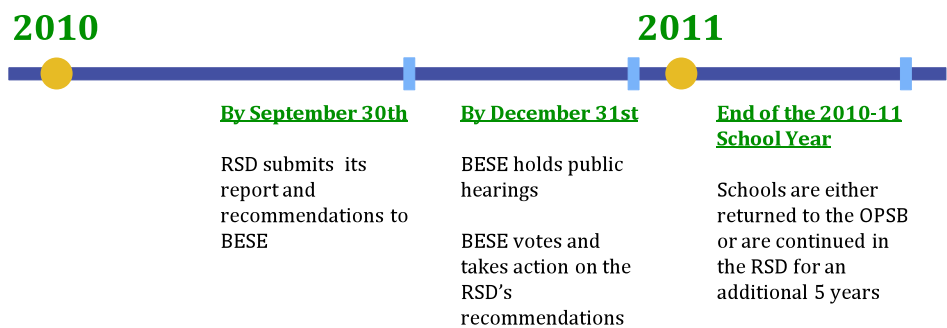


significantly improved student academic performance. Thus, under the law, it is possible that BESE will make conflicting decisions regarding the same school—to renew the school’s charter and return the school to the control of OPSB. If this occurs, the law does not specify how this conflict is to be resolved. If the charter is renewed, but the RSD no longer oversees the charter school, the charter contract will likely no longer be legally valid. And, as the law exists today, there is no mechanism to convert a Type 5 charter school into another type of charter school overseen by the local school board. Rather, it would appear that if a charter school is transferred back to the OPSB, the charter school must then apply for a new Type 1 or Type 3 charter with the OPSB.

Recommendations for BESE

In the next few months, it is important that BESE formulate rules and develop policies to clarify the procedures for these “return” decisions. The decision to return or continue a particular school personally affects an entire community and should be handled in a way that is transparent and accessible. Furthermore, the process created during this five-year cycle will likely determine the procedures for future five-year “return” decisions. While it is highly likely that BESE will choose to continue most, if not all, of the schools in the RSD for an additional five years, this cycle of “return” decisions will hopefully serve to expose any ambiguities in the law so that the legislature and BESE can make necessary changes before the next five-year cycle of “return” decisions. Likewise, school leaders and community members can learn from this decision cycle what they should do during the next five years to influence the next five-year “return” decision.

Below is the timeline for “return” decision actions required by law.



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