



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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October 18, 2018

The Honorable John Bel Edwards
Governor
State of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804-9004

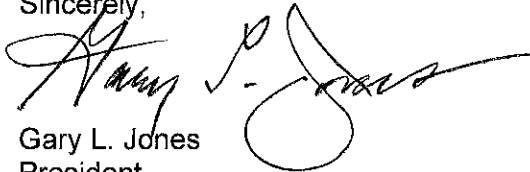
RE: Declaration of Emergency
(LAC 28:CLXI)

Dear Governor Edwards:

The Board of Elementary and Secondary Education (BESE) has exercised the emergency provision in accordance with R.S. 49:953(B), the Administrative Procedure Act, and R.S. 17:6. to amend LAC 28:CLXI, Bulletin 137, *Louisiana Early Learning Center Licensing Regulations*: §1805. Persons Ineligible for Child Care Purposes; §1806. Types of CCCBC-based Determinations of Eligibility for Child Care Purposes; §1819. Termination of Employment and Removal from Center and Premises; and §1823. Review of Determinations of Ineligibility for Owners, Directors, or Director Designees of Type III Centers. The initial Declaration of Emergency, effective for 120 days (from June 27, 2018, through October 18, 2018) is being extended beyond the initial period for an additional 120 days (from October 18, 2018, through February 15, 2019) and will remain in effect until the Rule is finally adopted.

The proposed policy revisions provide that for owners, directors, and director-designees of Type III early learning centers, crimes of fraud be limited to those that have occurred within the past 10 years. The revisions also provide for a BESE review process if there was a conviction related to these crimes within the past 10 years.

Sincerely,



Gary L. Jones
President

GLJ:RG

c: Jeff Landry, Attorney General
Taylor F. Barras, Speaker of the House
John A. Alario, Jr., Senate President
Jeff Truax, Director, Office of the State Register
John White, State Superintendent of Education
Shan Davis, BESE Executive Director

Enclosure (1)

James Garvey
1st BESE District

Kira Orange Jones
2nd BESE District

Sandy Holloway
3rd BESE District

Tony Davis
4th BESE District

Gary Jones
5th BESE District

Kathy Edmonston
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Jada Lewis
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Thomas Roque
Member-at-Large

Lurie Thomason
Member-at-Large

Doris Voitier
Member-at-Large

Shan N. Davis
Executive Director

John C. White
State Superintendent

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 137—Louisiana Early Learning Center Licensing Regulations Child Care Criminal Background Checks (LAC 28:CLXI.Chapter 18)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CLXI.Chapter 18 in *Bulletin 137—Louisiana Early Learning Center Licensing Regulations*. The revisions pertain to owners, directors and director-designees of type III early learning centers. This Declaration of Emergency, adopted on June 20, 2018, will remain in effect for a period of 120 days from the date of adoption or until it becomes a final Rule.

Title 28 EDUCATION

Part CLXI. Bulletin 137—Louisiana Early Learning Center Licensing Regulations

Chapter 18. Child Care Criminal Background Checks (CCCBC)

§1805. Persons Ineligible for Child Care Purposes

A. - C. ...

D. In addition, for type III centers an owner, director, or director designee shall not have been convicted of, or pled guilty or *nolo contendere* to a felony, within the past 10 years, for any of the following crimes of fraud:

1. 18 U.S.C. 287 and 1341 and R.S. 14:67.11, 14:68.2, 14:70.1, 14:70.4, 14:70.5, 14:70.7, 14:70.8, 14:71, 14:71.1, 14:71.3, 14:72, 14:72.1.1, 14:72.4, 14:73.5, and 14:133.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 98.43 and R.S. 15:587.1 and 407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:252 (February 2018), effective March 1, 2018, amended LR 44:

§1806. Types of CCCBC-based Determinations of Eligibility for Child Care Purposes

A. There are two types of CCCBC-based determinations of eligibility for child care purposes:

1. "owner/director/director designee of type III centers" determinations of eligibility are required for owners, directors and director designees of type III centers; and

2. "child care staff member" determinations of eligibility are required for owners, directors and director designees of type I and type II centers and volunteers, staff, visitors, contractors and other persons providing services in any type of child care centers when children are present.

B. A person with an "owner/director/director designee of type III centers" determination of eligibility also has a "child care staff member" determination of eligibility.

C. A person with a "child care staff member" determination of eligibility does not have an "owner/director/director designee of type III centers" determination of eligibility.

1. For a person with a "child care staff member" determination of eligibility, a type III center must obtain an "owner/director/director designee of type III centers" determination of eligibility before that person can become an owner, director or director designee of the type III center.

2. To obtain an "owner/director/director designee of type III centers" determination of eligibility for a person with a valid "child care staff member" determination of eligibility, the type III center must request the subsequent determination from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

§1819. Termination of Employment and Removal from Center and Premises

A. - C. ...

D. Exception for Owners, Directors and Director Designees of Type III Centers with Notices of Ineligibility

1. Upon receipt of notice from the department that an owner, director or director designee of a type III center is ineligible for child care purposes based solely on a crime of fraud listed in §1805.D of this Chapter, the owner, director or director designee of the type III center may remain on the premises pending a review of the determination of ineligibility by BESE, provided the owner, director or director designee of the type III center timely submits the following:

a. a written request to BESE staff for a review of the determination of ineligibility pursuant to §1823 of this Chapter within 15 business days of receipt of the notice of ineligibility from the department; and

b. documentation listed in §1823.D and E.2 of this Chapter to BESE staff within 30 business days of receipt of the notice of ineligibility from the department.

2. If the owner, director or director designee of the type III center:

a. fails to timely comply with Paragraph 1 of this Subsection;

b. chooses not to request a records review for the notice of ineligibility; or

c. remains ineligible because BESE declines to conduct a review of the determination, or BESE determines that the owner,

director or director designee of the type III center shall remain ineligible, then the requirements in:

i. Subsection A of this Section shall apply to directors and director designees of the type III center who are not also owners, or the director or director designee of the type III center may continue to work as a staff member at the type III center other than the director or director designee, or as any type of staff member at a type I or type II center, including the director or the director designee of the type I or type II center; and

ii. Subsection B of this Section shall apply to all owners of type III centers, whether or not they are directors or director designees of type III centers in that such owners must:

(a). divest ownership of the type III center within 30 calendar days of receipt of the original notice of ineligibility from the department if no records review is requested, or within 30 calendar days of receipt of notice of continuing ineligibility from BESE if a records review is requested. The owner may continue to work at the center as a staff member other than the director or director designee, but may not continue to own the center; or

(b). change license types for the center from a type III to a type I or type II license within 30 calendar days of receipt of the original notice of ineligibility from the department if no records review is requested, or within 30 calendar days of receipt of notice of continuing ineligibility from BESE if a records review is requested and then may continue to own the center.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 98.43 and R.S. 15:587.1 and 407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:255 (February 2018), effective March 1, 2018, amended LR 44:

§1823. Review of Determinations of Ineligibility for Owners, Directors, or Director Designees of Type III Centers

A. A review of a determination of ineligibility for owners, directors or director designees of type III centers shall not be considered if it is based in part on any crime or event listed in §1805.A through C of this Chapter.

B. A review of a determination of ineligibility may only be considered for owners, directors or director designees of type III centers if the determination is based solely on a crime of fraud listed in §1805.D of this Chapter.

C. A review of a determination of ineligibility based solely on a crime of fraud listed in §1805.D of this Chapter shall not be considered until at least five years have lapsed from the date of entry of the final conviction or plea which resulted in the determination of ineligibility.

D. An applicant may apply to the Board of Elementary and Secondary Education (BESE) for a review of his/her determination of ineligibility based solely on a crime of fraud listed in §1805.D of this Chapter after the lapse of time indicated above and under the following conditions:

1. There are no other crimes or events that would render the applicant ineligible to be an owner, director, or director designee of a type III center pursuant to §1805 of this Chapter other than a crime of fraud listed in §1805.D of this Chapter; and

2. There has been successful completion of all conditions/requirements of any parole or probation.

E. The applicant must provide relevant documentation, including:

1. documentation from the department that the determination of ineligibility is based solely on a crime of fraud listed in §1805.D of this Chapter and there are no other crimes or events that would prohibit the applicant from being eligible to be an owner, director, or director designee of a type III center; and

2. relevant documentation of all conditions and requirements of any parole and/or probation.

F. Applicant's responsibilities are as follows:

1. contact the BESE office and submit a written request for a review of records for a determination of ineligibility as an owner, director or director designee of a type III center based on a crime of fraud listed in §1805.D of this Chapter; and

2. provide each applicable item identified in Subsection D of this Section and any evidence of rehabilitation. It is recommended that the applicant provide letters of support from past/present employers, law enforcement officials or other community leaders.

G. BESE's Responsibilities

1. BESE or its designees will consider the request for a review of the determination of ineligibility and the documentation provided. BESE is not required to conduct a review of the determination and may summarily deny a request for review.

2. If BESE or its designees decide to conduct a records review of the determination, BESE staff shall notify the applicant of a date, time, and place when a BESE committee shall consider the applicant's request. Only written documentation provided prior to the records review will be considered.

3. BESE reserves the right to accept or reject any document as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible to be an owner, director or director designee of a type III center pursuant to §1805.D of this Chapter.

4. The BESE committee shall make a recommendation to the full board regarding whether the determination of ineligibility shall be changed to a determination of eligibility. Board staff shall notify the applicant of BESE's action.

5. BESE's action is a final decision and can only be appealed to a court of proper jurisdiction in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

