

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

#### Part XI. Bulletin 118—Statewide Assessment Standards and Practices

(LAC 28:XI.5305, 5309, and 5311).

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education (BESE) approved for advertisement revisions to *Bulletin 118—Statewide Assessment Standards and Practices*: §5305. Test Security Policy; §5309. Erasure Analysis and Online Answer Changes; and §5311. Addressing Suspected Violations of Test Security and Troubling Content in Written Responses.

## TITLE 28

## EDUCATION

### Part XI. Accountability/Testing

#### Subpart 3. Bulletin 118—Statewide Assessment Standards and Practices

#### Chapter 53. Test Security

##### §5305. Test Security Policy

[Formerly LAC 28:CXL305]

A. - A.9.h. ...

i. School systems wishing to contest any LDE void determinations resulting from LDE data forensic findings or other LDE investigations must submit, from the school system leader, an appeal request in writing and a report resulting from an investigation of the voids in accordance with Paragraph 3 of this Subsection to the LDE within 30 days of void notification.

i. LDE shall provide a list of recommended investigators that may be used by school systems to support this process.

ii. The investigation shall produce verifiable evidence that corroborates, with a high degree of certainty, that a testing irregularity did not occur. Investigations failing to meet this standard shall not be considered before the committee.

iii. LDE shall convene, annually, a test irregularity review committee, on or before August 31, in accordance with R.S. 42:11 et seq. The test irregularity review committee shall conduct a records review of the investigative results from the school system as well as any additional relevant evidence from the LDE.

iv. The test irregularity review committee shall consist of the following members approved by BESE, coterminous with the board members:

- (a) the LDE director of assessment or his/her designee;
- (b) a degreed, experienced, large-scale assessment psychometrician;
- (c) a nationally-recognized large-scale assessment expert;
- (d) a nationally-recognized large-scale assessment test security expert; and
- (e) a school system assessment and accountability representative.

v. The test irregularity review committee shall make recommendations, as determined by a majority vote of all members of the review committee, regarding any necessary reversals of voids to the state superintendent.

vi. The state superintendent shall issue a written determination regarding review committee recommendations to reverse voids.

vii. In the event the state superintendent determines not to accept a recommendation to reverse a void, the school system may appeal to BESE, which may determine whether to reverse the voids.

viii. This process shall not supersede or interfere with any investigations administered by state or federal law enforcement officials.

10. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:391.7(C)-(G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:65 (January 2008), LR 34:431 (March 2008), LR 34:1351 (July 2008), LR 35:217 (February 2009), LR 37:858 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:747 (March 2012), LR 39:1018 (April 2013), LR 40:2510 (December 2014), LR 43:634 (April 2017), LR 44:463 (March 2018), LR 44:

##### §5309. Erasure Analysis and Online Answer Changes

[Formerly LAC 28:CXL309]

A. - A.4. ...

5. A summary report of erasure analysis irregularities will be presented to BESE after each test administration.

6. *Erasure*—online answer-changing as well as erasing answers on a paper and pencil test.

7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:24 et seq.

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**§5311. Addressing Suspected Violations of Test Security and Troubling Content in Written Responses  
[Formerly LAC 28:CX1.311]**

A. - A.3.d. ...

i. If the district and/or parent(s)/guardian(s) wish to discuss the situation further or to examine the student responses, a meeting may be scheduled at the LDE offices between staff members from the Division of Assessments and Accountability district representatives and parent(s)/guardian(s).

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STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION  
FAMILY IMPACT STATEMENT  
(LA R.S. 49:953 and 972)

Person Preparing Statement: Ryan Gremillion  
Phone: 225-342-1501  
Division: Policy Office  
Rule Title: Part XI. Bulletin 118—Statewide Assessment Standards and Practices

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

PLEASE RESPOND TO THE FOLLOWING:

1. WILL THE PROPOSED RULE AFFECT THE STABILITY OF THE FAMILY?  
 No  
 Yes  
 Lacks sufficient information to determine
2. WILL THE PROPOSED RULE AFFECT THE AUTHORITY AND RIGHTS OF PARENTS REGARDING THE EDUCATION AND SUPERVISION OF THEIR CHILDREN?  
 No  
 Yes  
 Lacks sufficient information to determine.
3. WILL THE PROPOSED RULE AFFECT THE FUNCTIONING OF THE FAMILY?  
 No  
 Yes  
 Lacks sufficient information to determine
4. WILL THE PROPOSED RULE AFFECT FAMILY EARNINGS AND FAMILY BUDGET?  
 No  
 Yes  
 Lacks sufficient information to determine
5. WILL THE PROPOSED RULE AFFECT THE BEHAVIOR AND PERSONAL RESPONSIBILITY OF CHILDREN?  
 No  
 Yes  
 Lacks sufficient information to determine
6. IS THE FAMILY OR A LOCAL GOVERNMENT ABLE TO PERFORM THE FUNCTION AS CONTAINED IN THE PROPOSED RULE?  
 No  
 Yes  
 Lacks sufficient information to determine

Signature of Contact Person:   
Date Submitted: 7/9/18

**STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION  
POVERTY IMPACT STATEMENT  
(LA R.S. 49:973)**

**Person Preparing Statement:** Ryan Gremillion

**Phone:** 225-342-1501

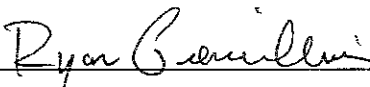
**Division:** Policy Office

**Rule Title:** Part XI. Bulletin 118—Statewide Assessment Standards and Practices

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Poverty Impact Statement on the rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

PLEASE RESPOND TO THE FOLLOWING:

1. WILL THE PROPOSED RULE AFFECT THE HOUSEHOLD INCOME, ASSETS, AND FINANCIAL SECURITY?  
 No  
 Yes  
 Lacks sufficient information to determine
2. WILL THE PROPOSED RULE AFFECT EARLY CHILDHOOD DEVELOPMENT AND PRESCHOOL THROUGH POSTSECONDARY EDUCATION DEVELOPMENT?  
 No  
 Yes  
 Lacks sufficient information to determine
3. WILL THE PROPOSED RULE AFFECT EMPLOYMENT AND WORKFORCE DEVELOPMENT?  
 No  
 Yes  
 Lacks sufficient information to determine
4. WILL THE PROPOSED RULE AFFECT TAXES AND TAX CREDITS?  
 No  
 Yes  
 Lacks sufficient information to determine
5. WILL THE PROPOSED RULE AFFECT CHILD AND DEPENDENT CARE, HOUSING, HEALTH CARE, NUTRITION, TRANSPORTATION, AND UTILITIES ASSISTANCE?  
 No  
 Yes  
 Lacks sufficient information to determine

Signature of Contact Person: 

Date Submitted: 7/9/18

### **Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Interested persons may submit written comments via the U.S. Mail until noon, August 9, 2018, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing  
Statement: Ryan Gremillion Dept.: LA Department of Education  
Board of Elementary &  
Secondary Education

Phone: (225) 342-1501 Office: Policy

Return  
Address: P. O. Box 94064 Rule  
Baton Rouge, LA Title: Part XI. Bulletin 118—Statewide  
Assessment Standards and Practices

Date Rule  
Takes Effect: Upon final adoption by BESE

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS

(Summary)

There may be an increase in expenditures for the Department of Education (LDE) to provide support to the Testing Irregularity Review Committee, however, the department does not believe those expenses will be material. There may also be costs associated with securing national experts and school system representatives to serve on the Testing Irregularity Review Committee. The LDE estimates those costs to be approximately \$8,000 per year. The LDE anticipates these expenses will be funded with federal funds.

The Board of Elementary and Secondary Education (BESE) directed the Louisiana Department of Education (LDE) to create a mechanism for school systems wishing to appeal test security decisions by the LDE. Per the proposed revisions, school systems are no longer required to investigate every void (results excluded); however, school systems wishing to contest a void must submit a request in writing, including a report resulting from an investigation pursuant to Bulletin 118. Appeals will be heard annually, at a public meeting, by the test irregularity review committee. The committee will consist of the following members: (1) LDE Director of Assessment or his/her designee; (2) a degreed, experienced large-scale assessment psychometrician; (3) a nationally-recognized large-scale assessment expert; (4) a nationally-recognized large-scale assessment test security expert; and (5) a school system assessment and accountability representative.

There may be indeterminable savings to local school districts due to the elimination of the requirement that certain irregularities must be investigated and written reports must be submitted to the superintendent within 30 calendar days.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS

(Summary)

The proposed policy revisions will have no effect on revenue collections of state or local governmental units.

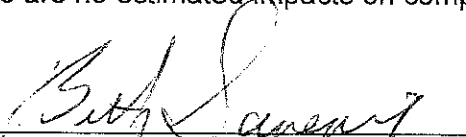
III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

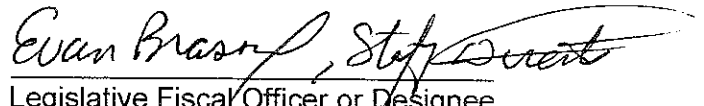
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)



There are no estimated impacts on competition and employment.

  
Signature of Agency Head or Designee

  
Legislative Fiscal Officer or Designee

Beth Scioneaux, Deputy Superintendent for Management and Finance  
Typed Name and Title of Agency Head or Designee

7/9/18  
Date of Signature

7/9/18  
Date of Signature

LFO 10/04

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The proposed revisions create a mechanism for school systems wishing to appeal test security decisions by the LDE

- B. Summarize the circumstances that require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The Board of Elementary and Secondary Education (BESE) directed the Louisiana Department of Education (LDE) to create a mechanism for school systems wishing to appeal test security decisions by the LDE. Per the proposed revisions, school systems are no longer required to investigate every void; however, school systems wishing to contest a void must submit a request in writing, including a report resulting from an investigation pursuant to Bulletin 118. Appeals will be heard annually, at a public meeting, by the test irregularity review committee. The committee will consist of the following members: (1) LDE Director of Assessment or his/her designee; (2) a degreed, experienced large-scale assessment psychometrician; (3) a nationally-recognized large-scale assessment expert; (4) a nationally-recognized large-scale assessment test security expert; and (5) a school system assessment and accountability representative.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

1. Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No

2. If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) \_\_\_\_\_ Yes. If yes, attach documentation.

(b) \_\_\_\_\_ NO. If no, provide justification as to why this rule change should be published at this time.

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY18-19	FY19-20	FY20-21
PERSONAL SERVICES			
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES			
OTHER CHARGES	Increase	Increase	Increase
EQUIPMENT			
<u>MAJOR REPAIR &amp; CONSTR.</u>			
<u>POSITIONS (#)</u>			
<b>TOTAL</b>	Increase	Increase	Increase

2. Provide a narrative explanation of the costs or savings shown in "A. 1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There may be an increase in expenditures for the LDE to provide support to the Testing Irregularity Review Committee. The department does not believe those expenses will be material. There may also be costs associated with securing national experts and school system representatives to serve on the Testing Irregularity Review Committee. The LDE estimates those costs to be approximately \$8,000 per year.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY18-19	FY19-20	FY20-21
STATE GENERAL FUND	Increase	Increase	Increase
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED			
FEDERAL FUNDS	\$8,000	\$8,000	\$8,000
<u>OTHER (Specify)</u>			
<b>TOTAL</b>	\$8,000 +	\$8,000 +	\$8,000 +

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There may be indeterminable savings to local school districts due to the elimination of the requirement that certain irregularities must be investigated and written reports must be submitted to the superintendent within 30 calendar days.

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

Local school districts are funded with a mix of state Minimum Foundation Program (MFP) funds, local revenue, and federal funds.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

N/A

REVENUE INCREASE/DECREASE	FY18-19	FY19-20	FY20-21
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS			
TOTAL	-0-	-0-	-0-

\*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

N/A

## FISCAL AND ECONOMIC IMPACT STATEMENT

### WORKSHEET

#### III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

N/A.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impact on income is anticipated as a result of this rule change.

#### IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

N/A

COMPARISON DOCUMENT

TITLE 28

EDUCATION

**Part XI. Accountability/Testing**

**Subpart 3. Bulletin 118—Statewide Assessment Standards and Practices**

**Chapter 53. Test Security**

**§5305. Test Security Policy**  
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**§5309. Erasure Analysis and Online Answer Changes**  
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**§5311. Addressing Suspected Violations of Test Security and Troubling Content in Written Responses** [Formerly LAC 28:CXI.311]

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