



# STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064 · PHONE: 225-342-5840 · FAX: 225-342-5843

August 10, 2018

## MEMORANDUM

**James Garvey**  
1<sup>st</sup> BESE District

**Kira Orange Jones**  
2<sup>nd</sup> BESE District

**Sandy Holloway**  
3<sup>rd</sup> BESE District

**Tony Davis**  
4<sup>th</sup> BESE District

**Gary Jones**  
5<sup>th</sup> BESE District

**Kathy Edmonston**  
6<sup>th</sup> BESE District

**Holly Boffy**  
7<sup>th</sup> BESE District


**Jada Lewis**  
8<sup>th</sup> BESE District

**Thomas Roque**  
Member-at-Large

**Lurie Thomason**  
Member-at-Large

**Doris Voittier**  
Member-at-Large

**TO:** Senator John A. Alario, Jr., Senate President  
Representative Taylor F. Barras, Speaker of the House  
Senator Dan "Blade" Morrish, Chair, Senate Committee on Education  
Representative Nancy Landry, Chair, House Committee on Education

**FROM:** Shan N. Davis, Executive Director   
Board of Elementary and Secondary Education

**RE:** Summary Report on Board of Elementary and Secondary Education Proposed Rulemaking

Pursuant to R.S. 49:968(D)(1)(b), the Board of Elementary and Secondary Education hereby submits to you this summary report and announces its plan to proceed with rulemaking by finalizing the July 20, 2018, Notice of Intent that was promulgated on pages 1310 - 1312 of the *Louisiana Register*.

The Board has received no comments or requests for a public hearing and has not conducted a hearing pursuant to R.S. 49:953(A)(2)(a).

The Board has made no change to the proposed Rule.

Subject to legislative oversight by either the House Committee on Education or Senate Committee on Education, the Board anticipates adopting the Notice of Intent as a final Rule in the October 20, 2018, issue of the *Louisiana Register*.

The following document is attached:

1. A copy of the Notice of Intent.

Please contact Shannon Rawson at (225) 342-5841 if the Board may be of any assistance to you concerning this Rule.

SND:slr

Attachment (1)

c: Jeanne Johnston, Senior Analyst, Senate Committee on Education  
Cheryl Serrett, Analyst, Senate Committee on Education  
Nancy Jolly, Senior Legislative Analyst, House Committee on Education  
Ryan Gremillion, Policy Director, Louisiana Department of Education  
Shan N. Davis, Executive Director, BESE  
Kevin Calbert, Communications Manager, BESE

**Shan N. Davis**  
Executive Director

**John C. White**  
State Superintendent

### Small Business Statement

The proposed Rule is anticipated to have a positive impact on small businesses as defined in the Regulatory Flexibility Act, by expanding eligibility for non-construction companies with gross receipts more than five million dollars but less than six million dollars per year.

### Public Comments

Interested persons should submit written comments on the proposed Rules to John Mathews through the close of business on Tuesday, August 28, 2018 at 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to john.mathews@la.gov.

### Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 11 a.m. on Wednesday, August 29, 2018 at the Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802.

Mandi D. Mitchell  
Assistant Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: The Veteran Initiative

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change is not anticipated to result in any significant expenditures or savings for state or local governmental units. Any additional administrative expenditures that may be incurred are anticipated to be marginal and will be absorbed within the LA Dept. of Economic Development's (LED) existing budget authority.

The proposed rule change codifies provisions of Act 585 of the 2018 Regular Session, which increases the maximum gross receipts threshold for small businesses applying to the Veterans Initiative program by \$1.0 M, from \$5.0 M to \$6.0 M per year for non-construction operations.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not affect revenue collections for state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Veteran-owned businesses may benefit as a result of the increased eligibility threshold. By increasing the eligibility threshold, more companies may be able to participate in the program. However, the increase in activity in the Veterans Initiative will likely be marginal, as the average revenue of all certified veterans companies is \$451,232, with only 1 company having average revenue over \$5.0 M annually.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits.

Mandi D. Mitchell  
Assistant Secretary  
807#041

Evan J. Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices—Test Security (LAC 28:XI.Chapter 53)

In accordance with R.S. 17:6 and R.S. 49:950, 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*.

#### 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.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 31:1530 (July 2005), amended LR 32:234 (February 2006), LR 33:257 (February 2007), LR 35:217 (February 2009), LR 35:443 (March 2009), LR 40:2512 (December 2014), LR 43:634 (April 2017), LR 44:463 (March 2018), LR 44:

**§5311. Addressing Suspected Violations of Test Security and Troubling Content in Written Responses**  
**[Formerly LAC 28:CXL311]**

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).

4. - 4.b. ...

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

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 31:1531 (July 2005), amended LR 33:257 (February 2007), LR 35:217 (February 2009), LR 43:635 (April 2017), LR 44:464 (March 2018), LR 44:

**Family Impact Statement**

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.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

**Poverty Impact Statement**

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 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

**Small Business Analysis**

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, P.O. 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  
RULE TITLE: Bulletin 118—Statewide Assessment  
Standards and Practices—Test Security**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 NONGOVERNMENTAL 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.

Beth Scioneaux  
Deputy Superintendent  
1807#062

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 137—Louisiana Early Learning  
Center Licensing Regulations  
(LAC 28:CLXI.Chapters 1, 3, 7,  
9, 11, 13, 15, 17, 18, and 19)

In accordance with R.S. 17:6 and R.S. 49:950, the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved proposed amendments to *Bulletin 137—Louisiana Early Learning Center Licensing Regulations*.

**Title 28**

**EDUCATION**

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

**Chapter 1. General Provisions**

**§101. Purpose and Authorization**

A. The purpose of this bulletin is to set forth the rules and regulations necessary to implement the provisions of R.S. 17:407.31 et seq., that require the state Board of Elementary and Secondary Education (BESE) to establish statewide minimum standards for the health, safety and well-being of children in early learning centers, ensure maintenance of these standards, and regulate conditions in early learning centers through a program of licensing administered by the Department of Education (department).

B. The state superintendent of education (state superintendent), in order to carry out functions otherwise vested in the state superintendent by law, or by delegation of authority pursuant to law, is authorized to make, issue, rescind, and amend department guidelines, interpretive guidance and procedures governing the early childhood licensing program administered by the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 and 17:407.32.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 41:616 (April 2015), effective July 1, 2015, amended LR 44:

**§103. Definitions**

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*Academic Approval*—verification by the department that a type III early learning center is meeting the performance and academic standards required in *Bulletin 140—The Louisiana Early Childhood Care and Education Network*.

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*Child*—person who has not reached age 13, or a person with special needs who has not yet reached age 18.

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*Child Care Health Consultant*—qualified health and safety professional approved by LDH to provide training, consultation, and technical assistance to in- and out-of-home child care facilities and early childhood education staff (and parents) on health and safety topics.

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*DHH*—Repealed.

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