



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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Executive Director

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December 12, 2018

MEMORANDUM

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 November 20, 2018, Notice of Intent that was promulgated on pages 2036-2038 of the *Louisiana Register*.

The Board has received one (1) public comment and has not conducted a hearing pursuant to R.S. 49:953(A)(2).

The Louisiana State Board of Elementary and Secondary Education met in regular session on December 12, 2018, and took the following action:

On motion of Dr. Boffy, seconded by Ms. Edmonston, the Board:

1. received the Summary of Public Comments and Agency Response (SPCAR) regarding revision to Bulletin 741, *Louisiana Handbook for School Administrators*: §3301. Definition; §3305. Application Process; §3307. Instructor; §3309. Curriculum; §3311. Testing; §3313. Admission or Readmission to the Public School System; §3315. Due Process; and §3317. Cost;
2. authorized BESE staff to submit the summary report to the Legislative Oversight Committees; and
3. directed BESE staff to proceed with the final adoption of the November 20, 2018 Notice of Intent regarding revisions to Bulletin 741 at the appropriate time.

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 February 20, 2019, issue of the *Louisiana Register*.

The following documents are attached:

1. A copy of the Notice of Intent;
2. Summary of Public Comments and Agency Response pertaining to proposed revisions to Bulletin 741, *Louisiana Handbook for School Administrators*: §3301. Definition; §3305. Application Process; §3307. Instructor; §3309. Curriculum; §3311. Testing; §3313. Admission or Readmission to the Public School System; §3315. Due Process; §3317. Cost; and
3. Public comment from Dianne R. Moore dated November 10, 2018.

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

SND:slr

Attachments (3)

c: Cheryl Serrett, Senior 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
Jeanne Johnston, Special Policy Advisor to the Governor

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 the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. 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 12 p.m. (noon), December 10, 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 137—Louisiana Early Learning Center Licensing Regulations—Owners, Directors and Director-Designees of Type III Early Learning Centers Fraud and Felony Limitations*

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

There are no estimated costs or savings to state or local governmental units as a result of the proposed revisions which address eligibility determinations for certain child care center staff.

The proposed changes provide relative to owners, directors and director-designees of Type III centers, by reducing the number of crimes of fraud and limiting such felonies to those occurring within the past 10 years; provides for termination of employment, removal from the centers, as well as BESE review of such determinations.

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)

Owners, Directors and Director designees could benefit from the time limitations on fraud convictions; the ability to request a review of determinations of ineligibility; and the ability to continue working at the center as a staff member, (other than director or designee) if the determination is upheld. To the extent owners opt to convert the center to a Type I or Type II center, they will no longer be eligible to participate in the Child Care Assistance Program and receive state and federal funding. Furthermore, impacted individuals would no

longer benefit from tax credits under the state School Readiness Tax Credit program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There could be increased demand for placement at other Type III centers if owners determined to be ineligible to operate Type III centers convert existing operations to a Type I or Type II center. Furthermore, the changes may affect individuals' ability to serve as child care center directors and director designees for certain centers, however, the extent of such impacts is indeterminable at this time.

Beth Scioneaux
Deputy Superintendent
1811#049

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Home Study Programs
(LAC 28: CXV. Chapter 33)

Under the authority granted in R.S. 17:6 and 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 proposes to amend *Bulletin 741—Louisiana Handbook for School Administrators*. The proposed amendments update terminology and requirements for home study programs.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 33. Home Study Programs

§3301. Definition

Home Study Program—a program that offers a sustained curriculum of quality, at least equal to that offered by public schools at the same grade level, and implemented under the direction and control of a parent, legal guardian, or tutor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1312 (June 2005), amended LR 45:

§3305. Application Process

A. Initial Home Study Program Application

1. An initial application must be made within 15 days after the beginning of the program to the LDE, on behalf of BESE, for review and approval.

2. The initial application will be accompanied by a certified copy or a photocopy of the birth certificate of the student. The applicant must certify that the home study program will offer a sustained curriculum of quality at least equal to that offered by public schools at the same grade level.

3. For purposes of compulsory attendance, a child participating in an approved home study program will be considered in attendance in a day school.

B. Home Study Program Application Renewal

1. A renewal application must be made October 1 of the school year, or within 12 months of the approval of the initial application, whichever is later. Parents seeking

continued approval are required to submit a renewal application each year.

2. A renewal application will be approved if the applicant submits to the LDE satisfactory evidence that the program offers a sustained curriculum of quality at least equal to that of public schools at the same grade level.

C. Initial and renewal applications will be approved if found to meet the requirements set forth in R.S. 17:236.1. Upon LDE approval, parents will receive an official approval verification letter. Because state law does not provide for any exceptions to the deadline for the approval of a home study program and does not allow for retroactive approval of a previous school year, it is the parent's responsibility to maintain a record of annual home study participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1312 (June 2005), amended LR 39:2229 (August 2013), LR 45:

§3307. Instructor

A. A parent, legal guardian, or tutor will be permitted to provide instruction in a home study program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1312 (June 2005), amended LR 45:

§3309. Curriculum

A. - A.4. ...

B. A high school diploma awarded by a home study program approved by LDE, on behalf of BESE, is deemed by all public postsecondary education institutions, state departments, agencies, boards, commissions, and other state and local governmental entities to have the same rights and privileges afforded to a high school diploma awarded by a state-approved nonpublic school.

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1312 (June 2005), amended LR 37:1137 (April 2011), LR 39:2229 (August 2013), LR 42:1879 (November 2016), LR 45:

§3311. Testing

A. A parent or court-appointed custodian of a student in a home study program may request of the LEA superintendent or the state superintendent that the student be administered the LEAP tests in grades 3-8 under the following conditions:

1. - 5. ...

B. Students enrolled in state-approved home study programs are not eligible to participate in LEAP connect, ELPT, or EOC tests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1313 (June 2005), amended LR 37:1138 (April 2011), LR 45:

§3313. Admission or Readmission to the Public School System

A. ...

1. The policy includes a placement exam to determine grade-level placement.

2. Repealed.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1313 (June 2005), amended LR 39:2230 (August 2013), LR 45:

§3315. Due Process

A. No public school will deny admission or readmission of a home study program student if that student is otherwise eligible for enrollment in a public school pursuant to state law, the policies of the local school board, and the Board of Elementary and Secondary Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1313 (June 2005), amended LR 45:

§3317. Cost

A. All costs directly attributed to the home study program will be borne by the parent or court appointed custodian approved to offer such program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:236.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1313 (June 2005), amended LR 39:2230 (August 2013), LR 45:

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 the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. 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 12 p.m. (noon), December 10, 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 741—Louisiana Handbook for School Administrators—Home Study Programs

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
- There are no implementation costs to the Department of Education or local school districts as a result of the proposed changes to guidelines for home study programs which clarify the application process for approval of home study programs, eliminate testing requirements, and include other technical changes for alignment with state law.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

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

Students completing home study programs will no longer be required to pass, and parents will no longer be required to pay for the cost of the HiSET exam in order for a student to receive a state equivalency diploma.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux
Deputy Superintendent
1811#048

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—STEM Diploma Endorsements (LAC 28:CVX.2317)

Under the authority granted in R.S. 17:6 and 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 proposes to amend *Bulletin 741—Louisiana Handbook for School Administrators*. The proposed amendments establish STEM diploma endorsements recognizing high school students who exhibit academic achievement in STEM discipline subjects. Students completing the required coursework in the BESE approved Jumpstart STEM pathways of LSU Digital Design and Emergent Media, LSU Pre-Engineering, and Environmental Protection and Sustainability will receive an endorsement on their high school diploma.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction Subchapter A. Standards and Curricula §2317. High Schools

A. - J.3.b. ...

K. Science, Technology, Engineering, and Mathematics (STEM) Diploma Endorsement

1. Beginning with the 2018-2019 school year, high school students completing specified courses in STEM discipline subjects that comprise Jump Start STEM pathways will be eligible to receive the STEM diploma endorsement.

a. The STEM diploma endorsement is indicated with a silver diploma seal and is awarded to students who successfully complete a subset of required courses within a BESE-approved Jump Start STEM pathway, set forth by the LDE. The LDE will annually publish on its website a list of courses required for the STEM endorsement for each graduating class prior to the beginning of each school year and shall notify each LEA of any additions or revisions.

b. The advanced STEM diploma endorsement is indicated with a gold seal and is awarded to students who successfully complete all courses that make up a BESE-approved Jump Start STEM pathway.

Summary of Public Comments and Agency Response
Proposed Revisions to Bulletin 741, Louisiana Handbook for School Administrators

Background

In November 2018, in response to feedback the Louisiana Department of Education (LDE) staff received from home study participants and advocates, the state Board of Elementary and Secondary Education (BESE) adopted, as Notice of Intent, revisions to Bulletin 741, *Louisiana Handbook for School Administrators*: §3301. Definition; §3305. Application Process; §3307. Instructor; §3309. Curriculum; §3311. Testing; §3313. Admission or Readmission to the Public School System; §3315. Due Process; and §3317. Cost. The revisions more closely align regulations to applicable state law (R.S. 17:236.1).

Public Comments Received

BESE received public comment(s) regarding the aforementioned policy revisions from Ms. Dianne R. Moore. In her letter, Ms. Moore challenges BESE's authority to enact regulations relative to home study programs and questions the placement of such regulations within Bulletin 741.

Agency Response

The state law that authorizes home study programs, R.S. 17:236.1, specifically charges BESE with receiving, reviewing, and determining whether the proposed program meets requirements needed for approval. The law directs BESE to approve or disapprove the application accordingly.

As the state's constitutionally established governing body for elementary and secondary education, BESE has general rulemaking authority under R.S. 17:6. More specifically, R.S. 17:6.1 provides that, "The board, in fulfilling its constitutional and statutory responsibilities, shall adopt rules in accordance with the Administrative Procedure Act for any program, statement, guideline, or requirement for conduct or action prescribed by the board, the state superintendent of education, and the state Department of Education."

Furthermore, R.S. 18:236.2 relative to the admission of home study program students into public schools requires the adoption of rules by BESE. In addition, R.S. 17:236, which provides for a definition of a school, refers to BESE's approval of a home study program.

For these reasons, BESE and LDE maintain that the state board has the authority and the obligation under state law to promulgate rules relative to home study programs. Placement of these regulations within the bulletin that provides direction to school administrators is appropriate, both because parents of approved home study programs serve as administrators of those programs that satisfy the requirements of a "school" per R.S. 17:236, and because the same bulletin addresses transfer requirements in the event that home study program participants transfer to public schools.

Dianne R. Moore
114 Chimaera Lane
Slidell, LA 70458

Shan N. Davis
Executive Director, BESE
Box 94064
Capitol Station
Baton Rouge, LA 70804-9064

November 10, 2018

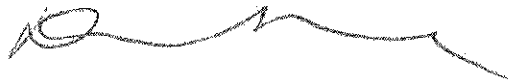
Dear Ms. Davis,

I am writing in response to the revisions to bulletin 741 regarding home study. Our state constitution and our laws are clear that BESE does not have authority over homeschooling except to approve Home Study and to provide readmission criteria to the schools. Home study legally has no place in a bulletin for public school administrators other than to provide withdrawal and readmission criteria. Any other inclusion is outside of BESE's legal authority. In article 8, section 3 of our state constitution, BESE's authority of supervision and control is clearly limited to, "the public elementary and secondary schools and special schools under its jurisdiction." Homeschools are clearly not public schools and they are not considered special schools under the law. Special schools are clearly explained in Revised Statute 17:1945, and nowhere in that law is the mention or description of home study. Article 8, section 3 of the constitution goes on to state that the board shall have "other powers, duties, and responsibilities as provided by this constitution or by law," but the constitution provides no further authority of BESE over homeschooling except the authority to approve private schools found in article 8 section 4. The law is consistent with the constitution and gives no authority to BESE over homeschooling except to approve home study as found in revised statute 17:236.1 and the power to establish procedures for homeschoolers readmission into the schools system as found in revised statute 17:236.2.

In looking at Chapter 33 of Bulletin 741, the authority cited for many of the passages is revised statute 17:6. However Revised statute 17:6 provides BESE no such authority over home study, and very clearly reiterates what is written in the constitution that BESE's authority is limited to public elementary and secondary schools and special schools under its jurisdiction. Revised statute 17:236 is also listed as an authority of BESE in bulletin 741, but the only authority given in this law is approval of home study, which is more clearly defined in 17:236.1.

Bulletin 741. Chapter 1, section 101 entitled "Purpose" states, "Policies passed by the Board of Elementary and Secondary Education govern the operation of of public elementary, middle, and secondary schools." Bulletin 741 Louisiana Handbook for School Administrators contains policies for the administration of public schools. The section on home study does not need to be revised; it needs to be removed.

Dianne R. Moore



RECEIVED

DEC 03 2018

Board of Elementary
and Secondary Education