

NOTICE OF INTENT  
BOARD OF ELEMENTARY AND SECONDARY EDUCATION

Third Grade Students with a Reading Deficiency  
(LAC 28: XXXIX.701)

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 proposes to amend LAC 28: XXXIX. in *Bulletin 1566 – Pupil Progression Policies and Procedures*. Act 422 of the 2023 Regular Legislative Session requires revisions to BESE policy regarding pupil progression plans. The aforementioned revisions implement policy regarding promotion or retention of certain students with reading deficiencies that have not been remediated by the end of third grade. A student must score above the lowest achievement level on the literacy screener and may be given three attempts prior to the subsequent academic year. Such a student will be screened for dyslexia and may be promoted under certain stipulations.

**Title 28  
EDUCATION**

**Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures**

**Chapter 7. Promotion and Support Policy**

**§701. Promotion and Support Standard for Grades 3-7**

A. – C.2.

D. Beginning with the 2024-2025 school year, a third grade student with a reading deficiency as demonstrated by the student scoring at the lowest achievement level in reading on an end-of-year literacy screener in accordance with LAC 28: CXV.2307. *Bulletin 741* shall be provided with two additional opportunities to score a higher achievement level on the literacy screener prior to the beginning of the subsequent academic year. A student who does not score above the lowest achievement level on the literacy screener after three attempts shall be screened for dyslexia and shall not be promoted to the fourth grade unless promoted for good cause as outlined in Subsection E. of this Section.

E. Promotion to Fourth Grade for Good Cause.

1. A student who does not meet the literacy criteria for promotion may be promoted to fourth grade if the student meets at least one of the following conditions:

- a. A limited English proficient student has been enrolled in an English language assistance program for fewer than two years.
- b. An IEP indicates that the screener is not appropriate for the student with a disability.
- c. A student with an IEP or 504 Plan has received intensive reading intervention for two years and still scores at the lowest achievement level on the literacy screener.
- d. A student with an IEP or 504 Plan was previously retained in kindergarten, first, or second grade and still scores at the lowest achievement level on the literacy screener.
- e. A student has received intensive evidence-based structured literacy intervention for two or more years, still scores at the lowest achievement level, does not meet exceptional criteria, and was previously retained for a total of two years in kindergarten, first, second, or third grade. For the purposes of this Section, intensive reading intervention includes targeted intervention in a small group with progress monitoring documented through an individual reading improvement plan.
- f. A student has been diagnosed with dyslexia.
- g. The student demonstrates an acceptable level of proficiency on a BESE-approved alternative standardized assessment. Alternative assessments will be presented for BESE approval upon recommendation of LDOE. A student scoring Mastery on the English language arts section of the LEAP 2025 assessment may be considered for promotion.

2. Promotion to fourth grade may be considered for a student who meets a good cause as indicated in this Section. Such promotion shall be considered as follows:

- a. The teacher shall confer with the parent or guardian of the student to determine whether promotion based on an exemption should be pursued.
- b. The teacher shall submit documentation to the school principal that promotion is appropriate for the student. The documentation shall clearly demonstrate that the student meets at least one of the criteria for good cause and shall reflect the decision of the parent or guardian to allow the request for promotion.
- c. The principal shall review the request and documentation provided by the teacher and determine whether to make a written recommendation for promotion. Such recommendation shall be made in writing to the local superintendent.
- d. The local superintendent shall review the request and documentation provided by the school principal and, in writing, accept or reject the recommendation. Written notification shall be provided to the parent or guardian and the school principal.
- e. The parent or guardian shall have the option to have the child retained in third grade even if the determination of the principal and superintendent is to have the student promoted to fourth grade.

3. Students promoted for good cause shall be provided an individual reading improvement plan using the LDOE form provided.

- a. Each plan shall include specialized diagnostic information and intensive evidence-based structured literacy instruction and intervention
- b. The school shall confer with the parent or guardian to communicate the support provided according to the plan, the protocol for progress monitoring, and suggestions for strategies families can use at home.
- c. Each LEA shall assist schools and teachers in implementing evidence-based reading strategies shown to be successful in improving reading among students with persistent reading difficulties.

4. Beginning with the 2025-2026 school year, no later than the October MFP collection, each LEA shall identify each third grade student retained in the prior year pursuant to Subsection D of this Section and each fourth grade student promoted due to good cause exemption outlined in Subsection E of this Section, indicating the exemption applied. The LDOE will annually publish a report containing the compiled data.

F. Third Grade Retention. A student who is retained in third grade due to a reading deficiency shall be provided intensive evidence-based structured literacy instructional services, progress monitoring, and support as outlined in the individual reading improvement plan to include a daily minimum of ninety minutes of evidence-based, scientifically researched reading instruction during regular school hours and 30 minutes of daily evidence-based reading intervention in the identified area of reading deficiency.

1. Intervention and instruction shall be based upon the foundations of literacy and shall include phonological awareness, phonics, decoding, fluency, and comprehension.

2. Intervention and instruction may also include small group instruction, lower teacher-student ratios, tutoring, transition classes, or extended school calendar for day, week, or summer programs.

3. The student shall be assigned a teacher who has successfully completed training in literacy instruction and who is highly effective as determined by student performance data, particularly related to student growth in reading, and performance appraisals.

4. The parent or guardian shall be provided with written notification of the individual reading improvement plan, the protocol for progress monitoring, and instructions for parent guided at-home reading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:24.9; R.S. 17:24.10 and R.S. 17:24.11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:481 (March 2018), LR 48:1760 (July 2022), LR 50:

## COMPARISON DOCUMENT

### TITLE 28

### EDUCATION

### Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures

### Chapter 7. Promotion and Support Policy

### §701. Promotion and Support Standard for Grades 3-7

#### A. – C.2.

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c. A student with an IEP or 504 Plan has received intensive reading intervention for two years and still scores at the lowest achievement level on the literacy screener.

d. A student with an IEP or 504 Plan was previously retained in kindergarten, first, or second grade and still scores at the lowest achievement level on the literacy screener.

e. A student has received intensive evidence-based structured literacy intervention for two or more years, still scores at the lowest achievement level, does not meet exceptional criteria, and was previously retained for a total of two years in kindergarten, first, second, or third grade. For the purposes of this Section, intensive reading intervention includes targeted intervention in a small group with progress monitoring documented through an individual reading improvement plan.

f. A student has been diagnosed with dyslexia.

g. The student demonstrates an acceptable level of proficiency on a BESE-approved alternative standardized assessment. Alternative assessments will be presented for BESE approval upon recommendation of LDOE. A student scoring Mastery on the English language arts section of the LEAP 2025 assessment may be considered for promotion.

2. Promotion to fourth grade may be considered for a student who meets a good cause as indicated in this Section. Such promotion shall be considered as follows:

a. The teacher shall confer with the parent or guardian of the student to determine whether promotion based on an exemption should be pursued.

b. The teacher shall submit documentation to the school principal that promotion is appropriate for the student. The documentation shall clearly demonstrate that the student meets at least one of the criteria for good cause and shall reflect the decision of the parent or guardian to allow the request for promotion.

c. The principal shall review the request and documentation provided by the teacher and determine whether to make a written recommendation for promotion. Such recommendation shall be made in writing to the local superintendent.

d. The local superintendent shall review the request and documentation provided by the school principal and, in writing, accept or reject the recommendation. Written notification shall be provided to the parent or guardian and the school principal.

e. The parent or guardian shall have the option to have the child retained in third grade even if the determination of the principal and superintendent is to have the student promoted to fourth grade.

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3. The student shall be assigned a teacher who has successfully completed training in literacy instruction and who is highly effective as determined by student performance data, particularly related to student growth in reading, and performance appraisals.

4. The parent or guardian shall be provided with written notification of the individual reading improvement plan, the protocol for progress monitoring, and instructions for parent guided at-home reading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:24.9; and R.S. 17:24.10, and R.S. 17:24.11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:481 (March 2018), LR 48:1760 (July 2022), LR 50:


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

Person Preparing Statement: Ashley Townsend  
Phone: 225-342-3446  
Division: Governmental, Administrative, and Public Affairs  
Rule Title: Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures (LAC 28:XXXIX.701)

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 (YES, NO, OR LACKS SUFFICIENT INFORMATION TO DETERMINE) TO THE FOLLOWING:

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 local government able to perform the function as contained in the proposed Rule? Yes

Signature of Contact Person:   
Date Submitted: 1/19/2024

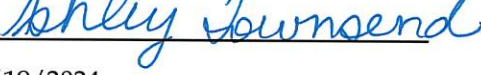
POVERTY IMPACT STATEMENT  
(LA R.S. 49:973)

Person Preparing Statement: Ashley Townsend  
Phone: 225-342-3446  
Division: Governmental, Administrative, and Public Affairs  
Rule Title: Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures (LAC 28:XXXIX.701)

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 (YES, NO, OR LACKS SUFFICIENT INFORMATION TO DETERMINE) TO THE FOLLOWING:

1. Will the proposed Rule affect the household income, assets, and financial authority? 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

Signature of Contact Person:   
Date Submitted: 1/19/2024

#### **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, March 11, 2024, 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.

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing  
Statement: Ashley Townsend Dept.: LA Department of Education  
Board of Elementary &  
Secondary Education

Phone: 225-342-3446 Office: Governmental, Admin., and Public Affairs

Return  
Address: P.O. Box 94064 Rule  
Baton Rouge, LA Title: Part XXXIX. Bulletin 1566—  
Pupil Progression Policies and Procedures (LAC  
28:XXXIX.701)

Date Rule  
Takes Effect: Upon final adoption by BESE

SUMMARY

In accordance with Section 961 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 are anticipated yet indeterminable impacts to expenditures of state and local governmental units due to the proposed rule change. The proposed change implements policy regarding promotion or retention of certain students with reading deficiencies that have not been remediated by the end of third grade. In compliance with Act 422 of the 2023 Regular Session, a student must score above the lowest achievement level on the literacy screener and may be given three attempts prior to the subsequent academic year. Such a student will be screened for dyslexia and may be promoted under certain stipulations.

Total state costs are indeterminable; however, the program requires an additional year of instruction for all students retained. Due to the delays in the RFP process, the end-of-year reading assessment required by R.S. 17:24.9 was implemented at the start of the current school year. The Louisiana Department of Education (LDOE) reports 34% of current second graders, who will be the first group impacted by the retention law/policy, scored "Well Below" on the beginning of year screener. Given the criteria for good-cause exemptions, and the number of attempts permitted, estimates for the number of students who would be retained and funded via the Minimum Foundation Program for an additional year of study in a given year are unascertainable.

Local education agencies may experience indeterminable cost increases associated with lower student-teacher ratios and the provision of interventions as a result of the proposed rule change. Act 422 of the 2023 RS requires no specific action by the Louisiana Department of Education (LDOE); however, the department is offering support with innovative scheduling to help schools work within time and staffing constraints. Initially, the department reported that beginning in FY 24 they would require \$106,916 to create one (1) Education Program Consultant 3 position to support systems and leaders in the implementation of supports for students reading below grade level. The FY 24 budget did not include an appropriation for this purpose and the department reports this assistance will now be provided by existing staff.

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

There is no anticipated effect on revenue collections of state or local governmental units as a result of the proposed rule change.

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

There are no estimated cost and/or economic benefits to directly affected persons, small business, or non-governmental groups.

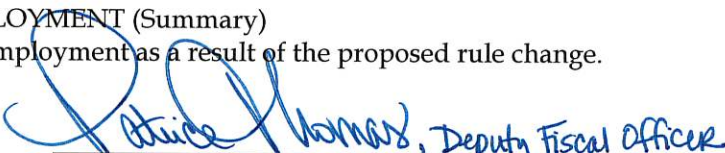
IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated impacts on competition and employment as a result of the proposed rule change.

  
Signature of Agency Head or Designee

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

2/7/24  
Date of Signature

  
Legislative Fiscal Officer or Designee

2/08/2024  
Date of Signature

**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 rule changes to LAC 28:XXXIX. in *Bulletin 1566—Pupil Progression Policies and Procedures*, implement policy regarding promotion or retention of certain students with reading deficiencies that have not been remediated by the end of third grade. A student must score above the lowest achievement level on the literacy screener and may be given three attempts prior to the subsequent academic year. Such a student will be screened for dyslexia and may be promoted under certain stipulations.

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

Act 422 of the 2023 Regular Legislative Session requires revisions to BESE policy regarding pupil progression plans and the promotion or retention of students who do not meet the literacy criteria necessary for promotion.

- 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.

Total state costs are indeterminable; however, the program requires an additional year of instruction for all students retained. Due to the delays in the RFP process, the end-of-year reading assessment required by R.S. 17:24.9 was implemented at the start of the current school year. The Louisiana Department of Education (LDOE) reports 34% of current second graders, who will be the first group impacted by the retention law/policy, scored “Well Below” on the beginning of year screener. Given the criteria for good-cause exemptions, and the number of attempts permitted, estimates for the number of students who would be retained and funded via the Minimum Foundation Program for an additional year of study in a given year are unascertainable.

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

- (a)   X   Yes. If yes, attach documentation.
- (b)        NO. If no, provide justification as to why this rule change should be published at this time

Act 422 requires BESE promulgate rules related to its passage. Any potential increase in SGF expenditures related to this legislation and rule change would be provided via the Minimum Foundation Program, which allocates funding on a per-pupil basis. Student counts are updated twice yearly to account for changes in enrollment. It is anticipated any increase in expenditures will be absorbed within the MFP’s existing budget.

Beginning in FY 25, there will likely be increased costs to school districts to provide intensive instructional services, progress monitoring measures, and supports for third grade students who are retained. These costs are indeterminable, but may be significant in some cases as some supports suggested in Act 422 include reduced student-teacher ratios and lengthening the school year, which would increase costs significantly.

# FISCAL AND ECONOMIC IMPACT STATEMENT 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                   | FY 24     | FY 25     | FY 26     |
|-------------------------|-----------|-----------|-----------|
| Personal Services       | 0         | 0         | 0         |
| Operating Expenses      | 0         | 0         | 0         |
| Professional Services   | 0         | 0         | 0         |
| Other Charges           | See Below | See Below | See Below |
| Equipment               | 0         | 0         | 0         |
| Major Repairs & Constr. | 0         | 0         | 0         |
| <b>TOTAL</b>            | See Below | See Below | See Below |
| <b>POSITIONS (#)</b>    | 0         | 0         | 0         |

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.

Total state costs are indeterminable; however, the program requires an additional year of instruction for all students retained. The end-of-year reading assessment required by R.S. 17:24.9 will first be administered in the 2022-23 school year; however, in Spring 2022, approximately 22% (10,895) of third-grade students who took the LEAP 2025 English Language Arts Assessment scored Unsatisfactory. Given the criteria for good-cause exemptions, estimates for the number of students who would be retained and funded for an additional year of study are unavailable. Such funding would primarily come via SGF through the Minimum Foundation Program.

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

SGF via the Minimum Foundation Program.

| SOURCE                | FY 24          | FY 25          | FY 26          |
|-----------------------|----------------|----------------|----------------|
| State General Fund    | Indeterminable | Indeterminable | Indeterminable |
| Agency Self-Generated | 0              | 0              | 0              |
| Dedicated             | 0              | 0              | 0              |
| Federal Funds         | 0              | 0              | 0              |
| Other (Specify)       | 0              | 0              | 0              |
| <b>TOTAL</b>          | Indeterminable | Indeterminable | Indeterminable |

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.

Local education agencies may experience indeterminable cost increases associated with lower student-teacher ratios and the provision of interventions; however, LDOE is offering support with innovative scheduling to help schools work within time and staffing constraints.

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

Potential cost increases could be covered by school operational funds from state or local sources, depending on the district.

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

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

There is no anticipated effect on revenue collections of state and local governmental units as a result of the

proposed rule change.

| REVENUE INCREASE/DECREASE | FY 24 | FY 25 | FY 26 |
|---------------------------|-------|-------|-------|
| State General Fund        | 0     | 0     | 0     |
| Agency Self-Generated     | 0     | 0     | 0     |
| Dedicated Funds*          | 0     | 0     | 0     |
| Federal Funds             | 0     | 0     | 0     |
| Local Funds               | 0     | 0     | 0     |
| TOTAL                     | 0     | 0     | 0     |

\*Specify the particular fund being impacted.

FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET

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.

Not applicable.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

A. What persons, small businesses, 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.

The proposed rule change will not result in costs or economic benefits to directly affected persons, small businesses, or nongovernmental groups.

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.

Not applicable.

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.

There is no anticipated impact on competition and employment as a result of the proposed rule change.

