

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 140—Louisiana Early Childhood Care and Education Network
(LAC 28:CLXVII.509, 511 and 512)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CLXVII, *Bulletin 140—Louisiana Early Childhood Care and Education Network*. As a result of the COVID-19 pandemic, the proposed revisions: extend 2019-2020 Performance Scores and Ratings for sites where this score is higher than the 2020-2021 Performance Score; Mandate Site Improvement Planning (SIP) participation for sites that score below 3.75 in 2020-2021; ensure classrooms are equally weighted and provide unique treatment for classrooms that were not required to receive a spring local observation; and abstain from publishing Community Network Performance Scores as well as honor rolls for sites rated “excellent” as well as those making significant growth.

Title 28

EDUCATION

Part CLXVII. Bulletin 140—Louisiana Early Childhood Care and Education Network

Chapter 5. Early Childhood Care and Education Accountability System

§509. Performance Rating Calculations for Publicly-Funded Sites

A. – A.2. ...

a. Exception due to the COVID-19 pandemic with regard to observation completion and other associated challenges. For the 2020-2021 school year only, the performance rating for each site which received at least one observation during 2020-2021 shall be based on the higher of the published 2019-2020 performance rating and the 2020-2021 performance rating calculated for the site.

i. The LDE shall share performance summaries based on 2020-2021 observations for informational purposes only.

ii. Sites not receiving any observations during the 2020-2021 school year shall not receive a performance rating.

A.3. – B.3. ...

4. Exception due to the COVID-19 pandemic with regard to observation completion and other associated challenges. For the 2020-2021 school year only, a classroom that does not have a second observation because the classroom received a fall CLASS® score of 4.50 or higher after third party replacement shall have their fall CLASS® score after third party replacement duplicated and treated as the spring local observation for the purposes of performance rating. A classroom that does not have a second observation for any other reason shall have their score replaced consistent with Subsection B of this Section.

C. – G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2587 (December 2015), amended LR 42:1873 (November 2016), LR 44:1442 (August 2018), LR 45:1453 (October 2019), L R 47:.

§511. Performance Rating Calculations for Community Networks

A. – H. ...

I. Exception due to the COVID-19 pandemic with regard to observation completion and other associated challenges. For the 2020-2021 school year only, the LDE shall not publish community network ratings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:2588 (December 2015), amended LR 42:1874 (November 2016), LR 44:1442 (August 2018), LR 45:1454 (October 2019), LR 47:.

§512. Performance Ratings for Publicly-Funded Sites

A. – B.1.c. ...

d. Exception due to the COVID-19 pandemic with regard to observation completion and other associated challenges. For the 2020-2021 school year only, publicly-funded sites where the score calculated from observations conducted during the 2020-2021 school year is lower than 3.75 shall be required to participate in an early childhood school or center improvement planning process.

C. – C.2. ...

3. Exception due to the COVID-19 pandemic with regard to observation completion and other associated challenges. For the 2020-2021 school year only, the LDE shall not publish annual honor rolls nor label sites as “top gains.”

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.21 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 42:1874 (November 2016), amended LR 44:1442 (August 2018), LR 47:.

COMPARISON DOCUMENT

Title 28

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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 Gremlion
Phone: 225-342-1501
Division: Policy Office
Rule Title: Part CLXVII. Bulletin 140—Louisiana Early Childhood Care and Education Network

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: *Ryan Gremlion*
Date Submitted: 6/8/2021

**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 CLXVII. Bulletin 140—Louisiana Early Childhood Care and Education Network

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: *Ryan Gremillion*

Date Submitted: 6/8/2021

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, July 9, 2021, 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 CLXVII. Bulletin 140—Louisiana Early
Childhood Care and Education Network

Date Rule
Takes Effect: Upon final Promulgation

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 increased state costs as a result of the proposed rule; however, the likelihood is indeterminable. Type III early learning centers receive annual performance ratings that determine the amount of quarterly bonus payments received through the state and federally funded Child Care Assistance Program (CCAP). The proposed rule will extend the 2019-2020 performance ratings for centers whose 2020-2021 ratings are lower than their prior year scores. In absence of the proposed rule, it is possible that the Department of Education would have reduced CCAP bonus payments for child care centers that received lower performance ratings; however, this is indeterminable. Any CCAP expenditure reductions that do not occur as a result of the proposed rule will result in state and federal costs. However, because such costs will not exceed base level appropriations, there is no net increase to the state.

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

The proposed revisions may decrease state revenue by an indeterminable amount. Type III early learning centers are eligible to receive a School Readiness Tax Credit (SRTC) based on the center's quality rating, which in turn is derived from a center's performance rating. In addition, the center's quality rating determines the amount of the SRTC that can be claimed by taxpayers who have enrolled dependents in these centers and businesses that support these centers.

The proposed revisions provide that the 2020-2021 performance rating will be based on the higher of the published 2019-2020 performance rating and the calculated 2020-2021 performance rating. This may allow some centers to avoid a drop in their rating and subsequent reduction in tax credit amount due to COVID-19.

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

The proposed revisions will benefit Type III early learning centers whose 2020-2021 performance scores are lower than their 2019-2020 performance scores, as the centers will instead be assigned their 2019-2020 performance scores for accountability purposes. This may prevent a decrease in the performance rating of the center, which would otherwise lead to a loss of SRTC credits and quarterly bonus payments through the Child Care Assistance Program (CCAP). In addition, taxpayers who have enrolled dependents in these centers and businesses that support these centers may benefit by avoiding a decrease in their SRTC credit amounts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed revisions will not have an effect on competition and employment.

Beth Scioneaux

Signature of Agency Head or Designee

Allen M. Byrnes

Legislative Fiscal Officer or Designee

Beth Scioneaux, Deputy Superintendent for Management and Finance

Typed Name and Title of Agency Head or Designee

6.8.2021

Date of Signature

6/9/21

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).

As a result of the COVID-19 pandemic, the proposed revisions: extend 2019-2020 Performance Scores and Ratings for sites where this score is higher than the 2020-2021 Performance Score; Mandate Site Improvement Planning (SIP) participation for sites that score below 3.75 in 2020-2021; ensure classrooms are equally weighted and provide unique treatment for classrooms that were not required to receive a spring local observation; and abstain from publishing Community Network Performance Scores as well as honor rolls for sites rated "excellent" as well as those making significant growth.

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

COVID-19 has presented challenges to the typical observation coverage of early childhood classrooms.

To limit the number of outside visitors entering the classroom, shadow scoring requirements were waived, which reduced the number of inter-rater reliability checks conducted. The Board of Elementary and Secondary Education (BESE) approved a one-time waiver of the shadow-scoring requirement to ensure that Bulletin 140 was aligned to the Louisiana Department of Education (LDE) reopening guidance for group sizes and ratios. As a result of COVID-19 incidence and spread, the LDE suspended in-person observations by external observers beginning December 7, 2020, to align with guidance from the Louisiana Department of Health and the Centers for Disease Control and shifted to virtual third party observations for the first time.

As a result of classrooms meeting virtually and/or closing temporarily to quarantine, fewer local observations occurred and of those, fewer were shadow scored and checked by third party observers than during a typical year. Compared to Fall 2019, before observations were disrupted by COVID-19, observations by both local lead agencies, as well as the LDE third party contractors, were limited by the COVID-19 pandemic.

Proposed revisions to Bulletin 140 address challenges related to observation coverage as a result of COVID-19

- 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.

Yes. To the extent there would have been reductions in CCAP expenditures due to lower performance scores, the proposed rule will result in increased costs.

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.

The Child Care Assistance Program (CCAP) is funded through state and federal funds in HB 1 of the 2021 Regular Session.

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?

There may be increased state costs as a result of proposed rule, however this is indeterminable.

COSTS	FY21	FY22	FY23
PERSONAL SERVICES			
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
<u>MAJOR REPAIR & CONSTR.</u>			
<u>POSITIONS (#)</u>			
TOTAL	-0-	INDETERMINABLE	INDETERMINABLE

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.

Type III early learning centers receive annual performance ratings that determine the amount of quarterly bonus payments received through the state and federally funded Child Care Assistance Program (CCAP). The proposed rule will extend the 2019-2020 performance ratings for centers whose 2020-2021 ratings are lower than their prior year scores. In absence of the proposed rule, it is possible that the Department of Education would have reduced CCAP bonus payments for child care centers that received lower performance ratings, however this is indeterminable. Any CCAP expenditure reductions that do not occur as a result of the proposed rule will result in state and federal costs. However, because such costs will not exceed base level appropriations, there is no net increase to the state.

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

SOURCE	FY21	FY22	FY23
STATE GENERAL FUND	-0-	INDETERMINABLE	INDETERMINABLE
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED			
FEDERAL FUNDS	-0-	INDETERMINABLE	INDETERMINABLE
OTHER (Specify)			
TOTAL	-0-	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, early childhood program activities are funded from multiple sources including federal Child Care and Development Funds (CCDF), federal IDEA funds, federal grant funds, and state general funds, as well as local funding and other available resources.

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.

The proposed policy revisions will not have an impact on local government units.

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

The proposed policy revisions will not have an impact on local revenue collections.

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?

The proposed revisions may decrease state revenue by an indeterminable amount.

REVENUE INCREASE/DECREASE	FY21	FY22	FY23
STATE GENERAL FUND	-0-	INDETERMINABLE	INDETERMINABLE
AGENCY SELF GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	INDETERMINABLE	INDETERMINABLE

*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.

The proposed revisions may decrease state revenue by an indeterminable amount. Type III early learning centers and staff members are eligible to receive a School Readiness Tax Credit (SRTC) based on the center's quality rating, which in turn is derived from a center's performance rating. In addition, the center's quality rating determines the amount of the SRTC that can be claimed by taxpayers who have enrolled dependents in these centers and businesses that support these centers.

The proposed revisions provide that the 2020-2021 performance rating will be based on the higher of the published 2019-2020 performance rating and the calculated 2020-2021 performance rating. This may allow some centers to avoid a drop in their rating and subsequent reduction in tax credit amount due to COVID-19.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

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

The proposed revisions will benefit Type III early learning centers whose 2020-2021 performance scores are lower than their 2019-2020 performance scores, as the centers will instead be assigned their 2019-2020 performance scores for accountability purposes. This may prevent a decrease in the performance rating of the center, which would otherwise lead to a loss of SRTC credits and quarterly bonus payments through the Child Care Assistance Program (CCAP). In addition, taxpayers who have enrolled dependents in these centers and businesses that support these centers may benefit by avoiding a decrease in their SRTC credit amounts.

- 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.

Type III early learning centers may avoid losses of tax credits and quarterly bonus payments due to the proposed revisions. The number of such centers is indeterminable; however, the tax credits range from \$0 to \$1,500 and the bonus payments range from 0% to 23% of payments received from the Department of Education in a given quarter. In addition, SRTC child care expense tax credit for taxpayers who enroll dependents in these centers ranges from 0% to 200% of the Louisiana Child Care Tax Credit. Finally, the SRTC business-supported child care expense credit ranges from 0% to 20% of eligible child care expenses.

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.

The proposed revisions will not have an effect on competition and employment.