



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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July 12, 2021

MEMORANDUM

TO: Senator Patrick Page Cortez, Senate President
Representative Clay Schexnayder, Speaker of the House
Senator Cleo Fields, Chair, Senate Committee on Education
Representative Raymond E. Garofalo, 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 June 20, 2021, Notice of Intent that was promulgated on pages 761-763 of the *Louisiana Register*.

The Board has received no public comments 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 September 20, 2021, 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: Shalyric Self, Secretary, Senate Committee on Education
Cheryl Serrett, Analyst, Senate Committee on Education
Elizabeth Borne, Legislative Analyst, House Committee on Education
Lisa Lovello, 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

Cade Brumley
State Superintendent

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, 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 cost to the providers to provide the same level of service; or
3. 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), July 9, 2021, 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 be hand-delivered to Shan N. 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 139—Louisiana Child Care and Development Fund Programs

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

The proposed rule change is not anticipated to increase expenditures for state or local governmental units.

The proposed regulations address changes to correct findings resulting from on-site federal monitoring of the Department of Education (LDE) conducted in March 2019 and to clarify existing regulations. These provide for definitions and changes to specific certification and registration requirements for Family and In-Home Child Care Providers.

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

There are no estimated impacts on revenue collections of state or local governmental units as a result of the proposed policy revisions.

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

There may be an increased workload for child care providers for staff to take the required online orientation training provided by LDE as well as the Mandated Reporter training provided by DCFS. While the training is available at

no cost to providers, the three LDE training modules take approximately one hour each to complete. The extent to which these modules will take longer to complete than any training they may replace is indeterminable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy revisions will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
2106#047

Alan Boxberger
Staff Director
Legislative Fiscal Office

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), LR 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:

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 rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules 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 rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules 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 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.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in R.S. 49:965.6, 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 cost to the providers to provide the same level of service; or

3. 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), July 9, 2021, 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 be hand-delivered to Shan N. 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 140—Louisiana Early
Childhood Care and Education Network**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT 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
NONGOVERNMENTAL 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
Deputy Superintendent
2106#048

Alan Boxberger
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Minimum Reopening Standards
(LAC 28:LXXIX.1105 and 1107;
CXV.401 and 403; CXXXIX.4101 and 4103)

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:LXXIX in Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators; LAC 28:CXV in Bulletin 741—Louisiana Handbook for School Administrators; and LAC 28:CXXXIX in Bulletin 126—Charter Schools. The aforementioned revisions clarify policy contained in the aforementioned bulletins for which there have been questions regarding the minimum reopening standards.

Title 28

EDUCATION

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana
Handbook for Nonpublic School Administrators**

Chapter 11. Health

**Subchapter B. Reopening School Facilities for the 2020-
2021 School Year**

§1105. Purpose and Background

A. This Chapter provides minimum health and safety standards regarding the reopening of school facilities for the 2020-2021 school year in response to the coronavirus disease (COVID-19) pandemic in order to ensure that students, faculty, staff, and others on school property are protected to the maximum extent possible and practical. These minimum standards regarding the reopening of schools for the 2021-2021 school year expire on June 30, 2021. Any future requirements for schools related to a statewide pandemic will be communicated as needed.

B - E.1.b. ...

F. Medical or disability impact exceptions to any standard in this Chapter should be addressed on an individual basis by the LEA in accordance with local policies.

G. For the purposes of this Chapter, the following definition will apply.

Physical Distance—the act of an individual maintaining a space of at least three feet from another individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:1674 (December 2020), amended LR 47:

**§1107. Minimum Requirements for Reopening and
Operating School Facilities**

A. - A.2.a. ...

b. The group composition may change if students are able to maintain physical distance from other students and adults. In this case, students must maintain physical distance, in accordance with current Louisiana Department of Health Guidelines as informed by the Centers for Disease Control and Prevention (CDC), from other students and adults in any classroom or indoor setting to the maximum extent possible.