



# STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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

October 12, 2020

## 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 September 20, 2020, Notice of Intent that was promulgated on pages 1284-1287 of the *Louisiana Register*.

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

The Board has made no change to the proposed Rule.

Subject to legislative oversight by either the House Committee on Education or Senate Committee on Education, the Board anticipates adopting the Notice of Intent as a final Rule in the December 20, 2020, 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:sr

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

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

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

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

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

**Ashley Ellis**  
5<sup>th</sup> BESE District

**Ronnie Morris**  
6<sup>th</sup> BESE District

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

**Preston Castille**  
8<sup>th</sup> BESE District

**Belinda Davis**  
Member-at-Large

**Thomas Roque**  
Member-at-Large

**Doris Voitier**  
Member-at-Large

**Shan N. Davis**  
Executive Director

**Cade Brumley**  
State Superintendent

In addition to receiving a formula allocation of ESSER funds, LEAs were eligible to apply for \$25 million in ESSER incentive grants to support priorities enumerated in the LDE Strong Start 2020 guidelines, including curricular materials and professional development for continuous learning, postsecondary planning for high school students and recent graduates, supports for students with disabilities, and assistance with developing professional learning and adaptive staffing plans. In June 2020, BESE approved ESSER incentive grant allocations to districts. CARES Act funds also included the Governor's Emergency Education Relief (GEER) Fund for Governors to support LEAs to continue to provide educational services and on-going functionality. The LDE allocated \$32.3 M to LEAs based on a needs assessment for devices and internet connectivity.

In July, the LDE was awarded \$17 million through the Rethink K-12 Education Models Grant to provide over 75,000 students access to microgrants for remote learning resources, including at least 12,000 students who will receive devices or hotspots through the program. Finally, the LDE is collaborating with the Governor's Office of Homeland Security and Emergency Management (GOHSEP) to assist districts with the purchase and distribution of personal protective equipment, including reusable and disposable face masks for faculty, staff, students, and visitors, and at least three thermometers per school.

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

In the event a local school district chooses to provide virtual education or a hybrid of virtual education and in-person education, families may experience reduced earnings through lost wages as well as increased childcare expenses on those days in which virtual education is offered. According to an April 2020 distance learning survey conducted by the LDE, approximately 34% of students do not have home internet access and 28% do not have access to a school-issued personal tablet or computer; families may incur costs associated with technology purchases and internet access. Additionally, families may experience costs to the extent they need to secure alternative means of school transportation due to limitations on school bus capacity. The amount of these costs will vary by family and are indeterminable at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be increased demand for substitute teachers, school bus drivers and custodial services as a result of the proposed rules on group sizes, hygienic and cleaning requirements, and transportation capacity.

Beth Scioneaux  
Deputy Superintendent  
2009#036

Christopher A. Keaton  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 741 (Nonpublic)—Louisiana Handbook for  
Nonpublic School Administrators  
Reopening of Schools for the 2020-2021 School Year  
(LAC 28:LXXIX.1101, 1103, 1105, 1107, 1109 and 3303)

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: CXV (Bulletin 741) and LAC 28: CLXIII (Bulletin

138). Proposed amendments align current policy with Act 9 of the 2020 First Extraordinary Session, which requires the State Board of Elementary and Secondary Education (BESE) to adopt, no later than July 15, 2020, emergency rules informed by the Centers for Disease Control and Prevention (CDC) guidelines to provide minimum standards, policies, medical exceptions, and regulations to govern the reopening of schools for the 2020-2021 school year.

**Title 28  
EDUCATION**

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

**Chapter 11. Health**

**Subchapter A. General Provisions**

**§1101. Immunization**

A. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, 44:411, 17:170(D), and 17:170(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2348 (November 2003), amended LR 31:3078 (December 2005), LR 35:1232 (July 2009), LR 35:2348 (November 2009), LR 39:1443 (June 2013), repromulgated LR 46:

**§1103. Diabetes Management and Treatment**

NOTE: This Section was developed in coordination with the Louisiana State Board of Nursing (LSBN). Any waivers, deletions, additions, amendments, or alterations to this policy shall be approved by both BESE and LSBN.

A. - A.4.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, 17:411, 17:170(D), 17:170(A)(1), and 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:480 (March 2013), repromulgated LR 46:

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

**§1105. Purpose and Background**

A. This Subchapter 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 and to ensure that students, faculty, staff, and others on school property are protected to the maximum extent possible and practical.

B. The requirements contained within this Subchapter were developed by the LDE in coordination with the LDH using guidance provided by the Centers for Disease Control (CDC) regarding school settings, defined as a setting in which educational services are provided to children. As research and information about COVID-19 is updated, or if the LDH or CDC revise guidance regarding school settings, the LDE will review the standards contained within this Subchapter and, as appropriate and necessary, propose revisions of this Subchapter to BESE.

C. While the requirements outlined in this Subchapter are designed to mitigate the spread of COVID-19 and to create a safe and healthy environment for students, faculty, staff, and others on school property, no requirement or plan guarantees that individuals will not contract COVID-19.

D. The governor establishes the statewide phase(s) of reopening (phase 1, phase 2, or phase 3). If the local governing authority of a parish or other municipality has

established a more restrictive phase of reopening, the LEA located within that parish or municipality must conform to the more restrictive requirements.

E. 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.

F. For the purposes of this Subchapter, the following definition will apply.

*Physical Distance*—the act of an individual maintaining a space of six feet or more 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:

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

#### **A. Group Sizes**

1. The maximum group size that may convene indoors in a single room, irrespective of room size, or outdoors at any given time are as follows:

- a. phase 1—10 individuals;
- b. phase 2—25 individuals; and
- c. phase 3—50 individuals.

#### **2. Group Composition**

a. Younger students who are unable to wear face coverings or maintain a physical distance from other students or adults should be assigned static groups. This should include, at a minimum, students in grades 2 or lower. The static group composition should be maintained for as long as possible over the course of the 2020-2021 school year.

b. The composition of a group may change if students are able to maintain a physical distance of at least six feet from other students and adults in a classroom or indoor setting, to the greatest extent possible.

c. Students with disabilities must continue to receive special education and related services in the least restrictive environment. School systems must factor in any additional service providers who may need to enter the classroom, students who receive services outside the classroom (e.g. resource, APE), and/or students who receive services through alternate instructional methods.

#### **B. Physical Standards for the use of School Facilities**

1. If a group convenes indoors, it must convene in a room enclosed by a wall or partition. This includes large rooms, such as a gymnasium or auditorium, which may include more than one group if each group is separated by a wall or partition.

2. If groups convene outdoors, a physical barrier is not required, but each group must remain separated.

3. To the greatest extent possible, schools must limit crowding at entry and exit points and maintain maximum group sizes and physical distance recommendations.

4. If a room is used by more than one group in a single day, high-touch surfaces contained in that room must be cleaned before and after use by each group.

#### **C. Monitoring Students and Adults for Symptoms of COVID-19**

1. Each school must establish an area used to isolate anyone showing signs of being sick. The isolation area must be cleaned after it is occupied by any sick student or adult.

2. Upon arriving at the school facility, each adult and student must be assessed for symptoms of COVID-19, as defined by the CDC. This includes an initial temperature check.

#### **D. Environmental Cleaning and Personal Hygiene**

1. High-touch surfaces must be cleaned multiple times per day, including bathrooms.

2. Students must wash or sanitize hands upon arrival at the school, at least every two hours, before and after eating, before and after using outdoor play equipment, and before exiting the school facility.

3. While inside the school facility, all adults and students in grades 3 through 12 must wear a face covering to the greatest extent possible and practical within the local community context.

4. While inside the school facility, students in grades prekindergarten through 2 may wear a face covering.

5. While inside the school facility, children under two years old and individuals with breathing difficulties should not wear a face covering.

#### **E. Hygienic Supplies**

1. School employees must be provided adequate access to hygienic supplies, including soap, hand sanitizer with at least 60 percent alcohol, disinfectant wipes or spray, paper towels, and tissues. Face coverings should also be provided when needed.

2. The quantity of hygienic supplies must be appropriately provided to the school employee, according to the role and the number and age of students or adults served by that employee.

#### **F. Transportation**

1. School buses used to transport students must not exceed the following maximum capacity requirements:

- a. phase 1—25 percent, including adults, of the school bus manufacturer capacity;
- b. phase 2—50 percent, including adults, of the school bus manufacturer capacity; and
- c. phase 3—75 percent, including adults, of the school bus manufacturer capacity.

2. Passengers on a school bus must be spaced to the greatest extent possible as follows:

- a. phase 1—passengers must ride one per seat. Every other seat must remain empty. Members of the same household may sit in the same seat or adjacent seats; and
- b. phase 2 and 3—passengers must be dispersed throughout the bus to the greatest extent possible.

#### **G. Student Programming Determinations**

1. Student placement determinations in a distance or in-person education program should be made in consultation with the parent or custodian.

2. Student placement determinations should take into consideration a student's unique academic, social, emotional, familial, and medical needs of a student, as identified by the student's parent or custodian.

#### **H. Essential Visitors to School Facilities**

1. Essential visitors are individuals who must enter schools or early learning centers in order to conduct visits in accordance with Louisiana law or policy. Essential visitors include, but are not limited to, individuals who:

- a. conduct *CLASS*<sup>®</sup> observations;
- b. observe teacher candidates as part of the teacher preparation quality rating system; or

c. provide essential supports and services including, but not limited to, early intervention services, special education services, or mental health consultation.

2. Essential visitors must comply with the minimum health and safety standards in this Subchapter.

I. 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.

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:

### **§1109. Nonpublic School Board or Governing Authority Reopening Policies and Plans**

A. Prior to the beginning of the 2020-2021 school year, each nonpublic school board or governing authority must adopt policies in accordance with the standards outlined in this Subchapter.

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:

## **Chapter 33. Glossary**

### **§3303. Definitions**

\* \* \*

*Department* or *LDE*—the Louisiana Department of Education.

\* \* \*

*Face Covering*—a piece of material used to cover both the nose and mouth for the purpose of forming a barrier to droplets or airborne particles that are coughed, sneezed, or exhaled when talking. Face coverings are meant to protect both the wearer of the face covering and surrounding individuals.

\* \* \*

*High-Touch Surface*—surfaces that are touched frequently, including but not limited to door handles, bathroom fixtures, drinking fountains, railings, desks, and other surfaces in school facilities or on school buses.

\* \* \*

*LDH*—the Louisiana Department of Health.

\* \* \*

*Static Group*—a group whose composition of students and adults does not change.

\* \* \*

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 34:230 (February 2008), amended LR 36:2848 (December 2010), LR 38:1405 (June 2012), LR 39:1457 (June 2013), LR 41:1486 (August 2015), LR 46:

#### **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 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), October 10, 2020, 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 741 (Nonpublic)—Louisiana  
Handbook for Nonpublic School Administrators  
Reopening of Schools for the 2020-2021 School Year**

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

There will be increased costs for local public school districts to purchase supplies and services on behalf of nonpublic school governing authorities. In April 2020, the Department of Education (LDE) received nearly \$287 million in federal relief funding through the CARES Act. The Department has notified public school systems of their Elementary and Secondary School Emergency Relief (ESSER) Fund allocations totaling \$258 million. These allocations are based on their proportional share of Title I, Part A subgrants. An LEA that receives funds under the CARES Act programs must provide equitable services to students and teachers in a non-public school in the same manner as provided under section 1117 of the Elementary and Secondary Education Act (ESEA) of 1965, as determined in consultation with representatives of non-public schools. LEAs maintain control of funds for services and assistance provided to nonpublic schools. Although the use of funds will vary, potential uses are for technology purchases and other supplies and services relating to reopening procedures or distance learning.

Local school districts will incur administrative costs associated with consulting with nonpublic school governing authorities, determining the proportional share of CARES Act funding, and facilitating the purchase of supplies and services on behalf of nonpublic schools, however these costs are expected to be negligible.

**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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed revisions will result a significant increase in expenditures for nonpublic schools. Some schools may experience disproportionate impacts due available fund balances and their reliance on tuition and other revenues. Federal revenues are available to nonpublic schools for such expenditures through the Coronavirus Aid, Relief and Economic Security (CARES) Act, however amounts will vary by parish.

Costs are associated with the following instructional modifications, purchases, and services, and are contingent upon the public health constraints imposed by each phase of the reopening process as established through the Governor's executive order: the purchase and installation of partitions and costs associated with other facility modifications to implement group size restrictions in classrooms and other school facilities, provide for isolation areas, and address entry and exit points; additional staffing to accommodate static groups, maintain

special education services, increased custodial services, as well as the potential need for long-term coverage for substitute teachers; purchase of thermometers and personal protective equipment (PPE) to monitor students and staff for symptoms of COVID-19; purchase of cleaning and disinfecting supplies for daily cleaning of high-touch surfaces and other school spaces; and the purchase of hygienic supplies, including soap, hand sanitizer, disinfectant wipes or spray, paper towels, tissues, and face coverings. Nonpublic schools may incur significant costs associated with transportation due to limits on school bus capacity, including additional fuel for new routes and additional school buses and drivers for expanded fleet size; costs will vary by geography, student characteristics, and whether school buses are district-owned or contracted. Student programming determinations (distance or in-person instruction) may involve costs to the extent additional technology purchases, expanded server capacity, professional development, and assistance to families without internet access are required.

The amount of these expenditures is indeterminable at this time and will vary by nonpublic school. Additional unforeseen costs may arise due to the unpredictability of operating during a pandemic, such as school staffing and attendance levels, consumption rate of hygienic supplies, and other factors. Further, it is unclear how schools will interpret provisions in the proposed rules that permit implementation "to the greatest extent possible"; this will likely vary by school.

There will be an increase in revenues through the CARES Act. Nonpublic schools are eligible to receive a portion of federal revenues allocated to local education agencies (LEAs) through the CARES Act. According to U.S. Department of Education guidance, nonpublic schools eligible for CARES Act funding include those which are accredited, licensed, or otherwise operating in accordance with state law, and in existence prior to March 13, 2020. Actual amounts will vary by parish according to each school district's allocations and the percentage of children enrolled in nonpublic schools. LEAs determine the overall number of children who are enrolled in both public and nonpublic schools in the LEA that wish to participate in CARES Act programs. Using the proportion of students who are enrolled in participating nonpublic schools, the LEA determines the amount of funds available for equitable services based on that proportional share of the LEA's total allocation.

Finally, in the event a nonpublic school governing authority chooses to provide virtual education or a hybrid of virtual education and in-person education, families may experience increased childcare costs on those days in which virtual education is offered. The amount of these costs will vary by family and are indeterminable at this time. It is unknown how many nonpublic school students lack home internet access or do not have access to a school-issued personal tablet or computer; families may incur costs associated with technology purchases and internet access. Additionally, families may experience costs to the extent they need to secure alternative means of school transportation due to limitations on school bus capacity. The amount of these costs will vary by family and are indeterminable at this time.

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

There may be increased demand for substitute teachers, school bus drivers and custodial services as a result of the proposed rules on group sizes, hygienic and cleaning requirements, and transportation capacity.

Beth Scioneaux  
Deputy Superintendent  
2009#037

Christopher A. Keaton  
Legislative Fiscal Officer  
Legislative Fiscal Office