STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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February 10, 2023

MEMORANDUM

TO: Senator Patrick Page Cortez, Senate President
Representative Clay Schexnayder, Speaker of the House
Senator Cleo Fields, Chair, Senate Committee on Education
Representative Lance Harris, 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 January 20, 2023, Notice of Intent that was promulgated on pages 81-84 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 April 20, 2023, issue of the *Louisiana Register.*

The following document is attached:

1. A copy of the Notice of Intent.

Please contact Erin LeBlanc at (225) 342-5841 if the Board may be of any assistance to you concerning this Rule.

SND:ell

Attachment (1)

c: Lily Dugas, 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
Ashley Townsend, 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

NOTICE OF INTENT

Board of Elementary and Secondary Education

Learning Pods
(LAC 28:CXV.905, 3601, 3603, 3605, 3607, 3609, 3703 and CXXIX.2721)

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:CXV in *Bulletin 741—Louisiana Handbook for School Administrators* and LAC 28:CXXIX in *Bulletin 126—Charter Schools.* The proposed revisions to LAC 28:CXV in *Bulletin 741—Louisiana Handbook for School Administrators* provides the following: that elementary school teachers shall not teach no more than two grades in a combined group except when assigned to a learning pod; the rules that govern the implementation of learning pods by public school governing authorities and also defines what a learning pod is; eligibility and admission requirements for students assigned to learning pods; pertinent policies, procedures and requirements for the implementation of learning pods in a public school governing authority; the qualifications and requirements of teachers providing instruction to learning pods; the required information that shall be provided to the department for each learning pod location request; and the definition of what a public school governing authority is. The revisions to LAC 28:CXXIX in *Bulletin 126* provides that charter schools may establish learning pods pursuant to R.S. 17:4036.1 and LAC 28:CXV.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 9. Scheduling

§905. Elementary—Grades per Class

A. Elementary teachers shall teach no more than two grades in a combined group except in band, music, and art, or when assigned to a learning pod.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7; R.S. 17:151; R.S. 17:174.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1271 (June 2005), amended LR 49:

Chapter 36. Learning Pods

§3601. Purpose

A. This section outlines rules for public school governing authorities to govern the implementation of learning pods as extensions of public schools.

B. A learning pod is defined as at least ten students enrolled in a school who receive instruction in a small group setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(6) and R.S. 4036.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:

§3603. Student Assignment and Eligibility

A. A student is eligible for assignment to a learning pod if the student meets admission requirements in accordance with R.S. 17:221(B) and eligibility requirements in accordance with R.S. 17:222(A).

B. A student shall be assigned to a learning pod only if the assignment is:

1. requested, in writing, by the parent or legal guardian of the student; and

2. recommended by school officials.

C. Students shall be registered at the school with which the learning pod is affiliated.

D. Any students assigned to a learning pod shall be subject to all requirements applicable to students enrolled in the school who are not assigned to a learning pod.

E. Any students assigned to a learning pod shall be eligible for participation in all services and activities for which they would be eligible if not assigned to a learning pod.

1. Assignment to a learning pod shall not violate provision of services required in state and federal statute and BESE policy and shall be in compliance with Section 504 of the Rehabilitation Act and IDEA mandates.

2. If a required service is not available at the learning pod site, those services shall be provided to the student at the main school campus or by other acceptable alternative sites consistent with state and federal law.

F. A student assigned to a learning pod shall be withdrawn from the learning pod upon parental request, parental approval of a school recommendation to remove the student from the learning pod, or after a fair and impartial due process hearing.

G. The student population of a learning pod may be a blended population of multiple grade levels, in compliance with all state and federal laws and regulations.

H. Students assigned to a learning pod shall be counted among the enrollment of the school for purposes of full funding through the minimum foundation program formula, provided the student meets the MFP Membership Definition as provided in BESE Administrative Code (LAC 28:I.1107).

I. Students assigned to a learning pod shall be included in the performance measures for the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.1; R.S. 17:158; and R.S. 17:4036.1

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:

§3605. Policies and Procedures

A. Each public school governing authority may establish learning pods as an extension of any school under its jurisdiction.

B. The establishment of a learning pod shall be subject to policies and procedures adopted by a public school governing authority, which, at a minimum, shall provide for the following:

1. the student population of the learning pod, which may be a blended population of students of different grade levels, including the proposed number of students enrolled in each learning pod;

2. the method of instruction for the learning pod, which may occur in-person at a physical location on the school campus, remotely through virtual instruction, or through a hybrid approach that combines both methods, including the proposed school times for each learning pod;

3. any specialized curriculum or program provided in the learning pod;

4. the process for a parent to request student assignment to a learning pod, grant authorization for student assignment to a learning pod if recommended by school officials, and withdraw a student from a learning pod;

5. the process for seeking parent approval to enroll additional students in the learning pod should the enrollment in a learning pod fall below the threshold of 10 students;

6. emergency procedures required for each learning pod, which must be included in the emergency plan developed in accordance with §339 of this Part and must include the following:

a. a description of available communications systems located at the learning pod;

b. whether teachers at the learning pod have been trained on the incident report policy, threat assessment policy, and emergency response procedures of the public school governing authority and learning pod;

c. required contact information for local law enforcement for the learning pod location;

7. provision of special educational and related services to exceptional students in accordance with the IEP for the entirety of the school year;

8. an incident report policy for the learning pod;

9. if applicable, evidence of insurance coverage of learning pod location.

C. Attendance at a learning pod shall be checked and recorded in accordance with LAC 28:CXV.1103.

D. The facility in which a learning pod is located must meet the definition of a school as defined in R.S. 17:236 and must be structurally sound, lack known or potentially dangerous material that may be present in construction material, and should have sufficient available space to meet the needs of the students.

E. "Virtual instruction" does not constitute a "virtual school" as that term is defined by LRS 17:236.3(A).

F. Additional school policies may be adopted to address specific operation of the learning pod distinct from the general requirements applicable to all students enrolled in the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.1; R.S. 17:24.5; R.S. 17:232.B.(1); R.S. 17:236; and R.S. 17:4036.1

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:

§3607. Teacher Qualifications and Requirements

A. All instruction provided to students assigned to learning pods shall be provided by teachers employed by the school operating the learning pod.

B. All teachers providing instruction in a learning pod shall meet all qualifications and be subject to all requirements applicable to teachers at the school who are not assigned to a learning pod.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.1; R.S. 17:7(6); and R.S. 17:4036.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:

§3609. Reporting

A. Public school governing authorities shall provide the department the following information for each learning pod location upon request:

1. the physical location of each learning pod authorized by the public school governing authority;

2. the hours of operation;

3. the name of the teacher(s) of record in the learning pod;

4. the list of students served at the learning pod location;

5. the purpose or key focus area of each learning pod; and

6. evidence of insurance coverage for the learning pod location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.1 and R.S. 17:4036.1

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:

§3703. Definitions

* * *

Public School—a school operated by publicly elected or appointed school officials and supported primarily by public funds.

Public School Governing Authority—the city, parish, charter, or other local public school board of any public elementary or secondary school.

Public School System Accreditation—an accreditation classification, which is based upon the fifth-year, on-site verification of the annual system and school reports, and which is granted by the state Department of Education.

* * *

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 31:1316 (June 2005), amended LR 39:2231 (August 2013), LR 46:1673 (December 2020), amended LR 48:34 (January 2022), LR 49:

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 27. Charter School Recruitment and Enrollment

§2721. Learning Pods

A. Charter schools may establish learning pods pursuant to R.S. 17:4036.1 and LAC 28:CXV.Chapter 36 upon providing written notice to the department and completing a learning pod pre-opening checklist.

1. The school must provide written notice to the department prior to the scheduled opening date of the learning pod.

2. The charter school must complete all learning pod pre-opening requirements before students can enter the designated learning pod location.

3. The charter school must receive written notice of approval from the department before opening the designated learning pod location. Written approval shall be provided by the department to the charter school within 60 days of receipt of the request from the charter school; otherwise the request shall be deemed approved.

B. In accordance with R.S. 17:4036.1, a charter school pod shall be considered an extension of the charter school and be subject to all state and federal laws, policies, rules, and regulations applicable under the charter operating agreement, including compliance with R.S. 17:3991(E)(3).

C. The procedures for recruitment and enrollment of charter school students assigned to a learning pod shall be consistent with the provisions of LAC 28:CXXXIX.Chapter 7, except that the waitlist for the learning pod shall be maintained and administered separately from that of the charter school home campus.

D. The charter operator must seek a material amendment to the charter contract prior to opening a learning pod in the case of one or more of the following:

1. the school enrollment will exceed the authorized total enrollment stated in the charter agreement pursuant to R.S. 17:3991 and LAC 28:CXXXIX.2703;

2. more than 50 percent of the students enrolled in the charter school will attend a location other than the initially approved main school location site; or

3. more than 50 percent of the students enrolled in the charter school will engage in a virtual learning program for more than 50 percent of the school day averaged over a semester.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7; R.S. 17:3981; and R.S. 17:4036.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:

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? No.

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 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, February 9, 2023, 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
RULE TITLE: Learning Pods

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

There are no anticipated implementation costs or savings to state or local governmental units due to the proposed rule revisions to LAC 28: CXV in Bulletin 741—*Louisiana Handbook for School Administrators*. The proposed rule changes provide that elementary school teachers shall teach no more than two grades in a combined group, except when assigned to a learning pod; define the rules that govern the implementation of learning pods by public school governing authorities and also define a learning pod; outline eligibility and admission requirements for students assigned to learning pods; provide for pertinent policies, procedures and requirements for the implementation of learning pods by a

public school governing authority; outline the qualifications and requirements of teachers providing instruction in learning pods; outline the required information that shall be provided to the department for each learning pod information request; and define of a public school governing authority. The proposed rule revisions to LAC 28: CXXXIX in Bulletin 126—*Charter Schools* provide for the manner in which charter schools may establish learning pods pursuant to R.S. 17:4036.1 and LAC 28:CXV.

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

The proposed rule revisions will not have a determinable effect on revenue collections of state or local governmental units. Charter schools may be able to attract greater student enrollment due to the ability to provide unique or more conveniently located programs through the creation of learning pods. This may result in an increase in the amount of student funding directed to the charter school through the Minimum Foundation Program and a decrease in the amount of student funding directed to the traditional public school that the student would otherwise attend. Charter schools may not charge tuition or attendance fees pursuant to R.S. 17:3991(E)(3). The number of additional students and the resultant increase or decrease in minimum foundation program funds directed to a school are indeterminable.

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

The proposed rule revisions may benefit students and parents due to the ability to provide unique or more conveniently located programs through the creation of learning pods.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule revisions will not have an effect on competition and employment. The teachers in a learning pod must be on the staff of the school for which the learning pod is an extension.

Beth Scioneaux	Alan M. Boxberger
Deputy Superintendent	Interim Legislative Fiscal Officer
2301#070	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Medication Administration Training
(LAC 28:CLXI.1515 and 1725)

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:CLXI in *Bulletin 137—Louisiana Early Learning Center Licensing Regulations*. The proposed revision is in response to legislation enacted by the 2022 Regular Legislative Session and R.S. 17:407.50.2. The revision provides a requirement that centers develop a policy regarding the use of auto-injectable epinephrine, that they share that policy with families of all children at the site, and requires training for administration of auto-injectable epinephrine to a child in an early learning center who is believed to be having an anaphylactic reaction.

Title 28
EDUCATION

Part CLXI. Bulletin 137—Louisiana Early Learning Center Licensing Regulations

Chapter 15. Minimum General Requirements and Standards

§1515. Child Records and Cumulative Files

A. - D. …

E. An early learning center shall provide a written copy of all health-related policies established by the center, including policies regarding accidents, allergic reactions, fever, illness, immunizations, infection, and injuries, to the parent or guardian of each child attending or enrolled in the early learning center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:630 (April 2015), effective July 1, 2015, amended LR 41:2106 (October 2015), LR 44:250 (February 2018), effective March 1, 2018, LR 47:1276 (September 2021), LR 49:

Chapter 17. Minimum Staffing Requirements and Standards

§1725. Medication Management Training

A. All staff members who administer medication shall have medication administration training that includes auto-injectable epinephrine.

B. …

C. Training for auto-injectable epinephrine shall be completed every two years with an approved child care health consultant, registered nurse, licensed medical physician, a child care health consultant, an anaphylaxis training organization, or any other entity approved by the Louisiana Department of Health. Training for medication administration shall be completed every two years with an approved child care health consultant.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.40(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:636 (April 2015), effective July 1, 2015, amended LR 44:251 (February 2018), effective March 1, 2018, LR 44:1866 (October 2018), LR 47:1278 (September 2021), LR 49:

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.