



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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June 14, 2024

MEMORANDUM

TO: Senator Cameron Henry, Senate President
Representative Phillip DeVillier, Speaker of the House
Senator Rick Edmonds, Chair, Senate Committee on Education
Representative Laurie Schlegel, Chair, House Committee on Education

FROM: Kimberly Tripeaux, Interim Executive Director
Board of Elementary and Secondary Education

RE: Summary Report on Board of Elementary and Secondary Education Proposed Rulemaking

The Board has received one (1) public comment and has not conducted a hearing pursuant to R.S. 49:953(A)(2)(a).

The Louisiana State Board of Elementary and Secondary Education met in regular session on June 12, 2024, and took the following action:

On motion of Mr. Appel, seconded by Ms. Melerine, the Board:

1. received the SPCAR regarding revisions to Bulletin 1706, *Regulations for Implementation of the Children with Exceptionalities Act*;
2. authorized BESE staff to submit the summary report to the Legislative Oversight Committees; and
3. directed BESE staff to proceed with the final adoption of the April 20, 2024, Notice of Intent regarding revisions to Bulletin 1706, *Regulations for Implementation of the Children with Exceptionalities Act*, with the submission of the final Rule in the August 2024 edition of the *Louisiana Register*.

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 will proceed with the adoption of the Notice of Intent as a final Rule in the August 20, 2024, issue of the *Louisiana Register*.

The following documents are attached:

1. A copy of the Notice of Intent;
2. Summary of Public Comments and Agency Response; and
3. Public comment from Mr. Keith Scott, Evangeline Parish Special Education Supervisor, dated April 26, 2024.

Kimberly Tripeaux
Interim Executive Director

Dr. Cade Brumley
State Superintendent

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

KT:ell

Attachments (3)

- c: Caroline Tyler, Secretary, 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
- Kimberly Tripeaux, Interim Executive Director, BESE
- Kevin Calbert, Communications Manager, BESE

ATTACHMENT #1

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

The proposed rule change will provide an optional expedited pathway to help schools fill leadership roles.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change may help place qualified individuals with unique skill sets into leadership roles as needed by schools and systems.

Beth Scioneaux
Deputy Superintendent
2404#034

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act Improving Processes Related to Children with Exceptionalities (LAC 28:XLIII.120, 152, 301, 322, 503, 504, and 530)

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:XLIII in *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*. The proposed amendments improve special education policy and processes by facilitating the timeliness and consistency by which the LDOE and LEAs administer the Children with Exceptionalities Act. The changes include: requiring LDOE posting of LEA IDEA monitoring results; establishing response timelines for parent requests for special education evaluation and provision of draft IEPs; and including additional information when considering student placement due to violation of student code of conduct.

**Title 28
EDUCATION**

Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

Subpart 1. Students with Disabilities

Chapter 1. State Eligibility

Subchapter C. Least Restrictive Environment (LRE)

§120. Monitoring Activities

A. - B.2. ...

C. Beginning in fall 2024, redacted information regarding the results of monitoring activities and any necessary corrective action will be posted to the LDOE website.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2040 (October 2008), amended LR 50:

Subchapter J. State Complaint Procedures

§152. Formal Written Complaints Filing and Content Requirements

A. - B. ...

1. a statement that a public agency has violated a requirement of Part B of the IDEA or these regulations, regardless of whether the violation resulted in a loss of FAPE;

2. - 6. ...

C. The complaint shall allege a violation that occurred not more than two years prior to the date that the complaint is received in accordance with §151 - 153.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2046 (October 2008), repromulgated LR 36:1500 (July 2010), amended LR 50:

Chapter 3. Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Subchapter A. Parental Consent

§301. Parental Consent

A. - 3.b. ...

4. Within a reasonable amount of time, and not longer than 15 business days, from receipt of a written parental request for a special education evaluation, an LEA shall either request parental consent for evaluation or provide prior written notice of refusal.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2058 (October 2008), amended LR 36:1502 (July 2010), LR 50:

Subchapter B. Evaluations and Reevaluations

§322. Parent Participation

A. - E. ...

F. Parent Copy of Student's IEP. The public agency, upon parent request, shall give the parent a draft of the student's IEP at least three business days prior to an IEP meeting and shall provide the copy of the student's draft and final IEP at no cost to the parent.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2062 (October 2008), amended LR 50:

Chapter 5. Procedural Safeguards

Subchapter A. Due Process Procedures for Parents and Students

§503. Independent Educational Evaluation (IEE)

A. - B.1. ...

2. Within a reasonable amount of time, and not longer than 15 business days, of a parent request for an independent educational evaluation at public expense, the public agency shall, without unnecessary delay, either:

B.2.a. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2068 (October 2008), amended LR 50:

§504. Prior Notice by the Public Agency; Content of Notice

A. Notice. Written notice that meets the requirements of Subsection B of this Section shall be given to the parents of a student with a disability a reasonable amount of time, and no less than 15 business days, before the public agency:

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2069 (October 2008), amended LR 50:

Subchapter B. Discipline Procedures for Students with Disabilities

§530. Authority of School Personnel

A. - E. ...

1. Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the student's IEP Team (as determined by the parent and the LEA) shall review all relevant information in the student's file, including the student's IEP, the student's disciplinary and behavioral history and records, any available medical information related to behavior, any teacher observations, and any relevant information provided by the parents to determine:

E.1.a. - I.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2076 (October 2008), amended LR 43:2494 (December 2017), LR 50:

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? Yes.
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 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, May 10, 2024, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 1706—Regulations for
Implementation of the Children with Exceptionalities
Act—Improving Processes Related to Children
with Exceptionalities**

- 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 change. The change improves special education policy and processes by facilitating the timeliness and consistency by which the Louisiana Department of Education (LDOE) and local education agencies (LEA) administer the Children with Exceptionalities Act. The changes include: requiring LDOE posting of LEA IDEA monitoring results; establishing response timelines for parent requests for special education evaluation and provision of draft Individual Education Program; and including additional information when considering student placement due to violation of student code of conduct.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated effect on the revenue collections of state or local governmental units as a result of the proposed rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)
There are no anticipated costs or benefits to directly affected persons, small business, or nongovernmental groups as a result of the proposed rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated effect on competition and employment as a result of the proposed rule change.

Beth Scioneaux
Deputy Superintendent
2404#024

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Immunization Exemption Communication
(LAC 28:CLVII.303 and LAC 28:LXXIX.1101)**

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:CLVII in *Bulletin 135—Health and Safety* and LAC 28:LXXIX in *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators*. Louisiana R.S. 17:170 sets forth immunization requirements of students entering or attending schools in addition to the provisions for exemptions. To ensure compliance with this statute, the proposed revisions require inclusion of information regarding exemptions in any immunization communication provided to students and families.

**Title 28
EDUCATION**

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana
Handbook for Nonpublic School Administrators
Chapter 11. Health
§1101. Immunization**

- A. G.3. ...
- H. Any communication issued to persons, parents, or guardians regarding immunization requirements for a student attending or seeking to enter any school shall include information regarding immunization exemptions pursuant to Subsection E of this Section.
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), R.S. 17:170.4, 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 46:1674 (December 2020), LR 50:

**Part CLVII. Bulletin 135—Health and Safety
Chapter 3. Health
§303. Immunizations**

- A. - A.2. ...
- 3. Any communication issued to persons, parents, or guardians regarding immunization requirements for a student attending or seeking to enter any school shall include information regarding immunization exemptions.
- B. - H.2. ...
AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:170, 17:170.2, and 17:170.4.
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1029 (April 2013), amended LR 45:35 (January 2019), LR 48:2549 (October 2022), LR 50:

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.

ATTACHMENT #2

Summary of Public Comments and Agency Response

Proposed Revisions to *Bulletin 1706 - Regulations for Implementation of the Children with Exceptionalities Act*

Background

In March 2024, the Louisiana Department of Education (LDOE) recommended revisions to *Bulletin 1706 - Regulations for Implementation of the Children with Exceptionalities Act* to refine policy and processes related to monitoring report results, notification/processing timelines, and information access to improve efficiency and consistency. The Board of Elementary and Secondary Education (BESE) approved the proposed revisions, and the Notice of Intent (NOI) was published in the April 20, 2024, issue of the *Louisiana Register*.

The revisions were part of continued improvements to special education policy that facilitates timeliness and consistency with which the LDOE and Local Education Agencies (LEAs) administer the Children with Exceptionalities Act.

Summary of Comments Received

One written comment was received prior to the May 10, 2024, deadline. The author of the comment asserts the following concerns:

1. Under the new proposed rule, the public agency would have to give the parent notice 15 days prior to implementing a change in educational placement which includes a change in educational placement to an alternative setting through the IEP.
2. Concern that Section 301 is in conflict with giving parents 15 days notice before beginning an initial evaluation.
3. LEAs will only have 45 days to complete evaluations since 15 days prior notice must be given to parents before beginning.

Agency Response

In response to the first concern, Section 530 of *Bulletin 1706 - Regulations for Implementation of the Children with Exceptionalities Act* states that “[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the LEA shall notify the parents of that decision.” This provision, which specifically addresses the timing of notices related to disciplinary placements, supersedes the provisions in the proposed revision, which apply generally to notices.

In response to concerns two and three, LDOE is sensitive to the issues raised about the impact of the 15-school-day notice requirement. The commenter makes a valid point that adherence to the updated prior written notice timeline may delay the implementation of initial Individualized Education Programs (IEP) by requiring public agencies to provide written notice at least 15 school days before evaluating the student, determining the student's eligibility, and implementing the initial IEP. Under current law, public agencies may conduct combination evaluation review/eligibility determination/IEP meetings at the conclusion of the evaluation. The proposed policy could extend that one-day process to at least 30 days to provide for 15-school-days notice of the eligibility determination and 15-school-days notice of the IEP's implementation.

LDOE believes that these delays can be avoided in circumstances where the public agency and the parent are in agreement and the parent knowingly waives the notice timeline in writing. LDOE believes that the availability to waive the requirement is inherent in the regulation; however, LDOE plans to propose an explicit waiver provision in an upcoming revision of sections of *Bulletin 1706 - Regulations for Implementation of the Children with Exceptionalities Act*.

LDOE recommends proceeding with the adoption of the Notice of Intent as a final Rule in the July 20, 2024, issue of the *Louisiana Register*.

ATTACHMENT #3

Keith Scott
Special Education Supervisor
Evangeline Parish School Board
1144 E Hickory St
Ville Platte, Louisiana 70586

April 26, 2024

Shan N. Davis, Executive Director
Board of Elementary and Secondary Education
Box 94064
Capitol Station
Baton Rouge, LA 70804-9064

RE: Public Comment of Bulletin 1706 Proposed Changes

Dear BESE Members,

I am writing to voice my concerns about the proposed changes to Bulletin 1706, Regulations for Implementation of the Children with Exceptionalities Act approved by BESE on 03/06/24. The change I am concerned about is the changes to the following section:

§504. Prior Notice by the Public Agency; Content of Notice

The new “ and no less than fifteen business days” requirement will have a major effect on placing a student with a disability at an alternative site in a timely manner. Under the new proposed rule, the public agency would have to give the parent notice 15 days prior to implementing a change in educational placement which includes a change in educational placement to an alternative setting through the IEP. I would suggest adding an option for the parent to consent to waiver of the 15-day requirement for disciplinary actions that would result in a disciplinary change of placement.

Please realize the 15 business day rule will also affect the following:

1. Refusing/Proposing to initiate an evaluation/reevaluation -- Parents would have to be notified 15 business days prior to starting an initial evaluation. This conflicts with the changes in §301. Parental Consent “4. Within a reasonable amount of time, and not longer than fifteen business days, from receipt of a written parental request for a special education evaluation, an LEA shall either request parental consent for evaluation or provide prior written notice of refusal”

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Board of Elementary
and Secondary Education

2. Proposing to identify or change identification - Parents would have to be notified 15 business days prior to identifying or changing identification which takes time away from the 60 business days we have to complete evaluations. You would only have a max of 45 business days to complete an evaluation and be in compliance with evaluation timelines if you are proposing to identify a child or change their identification.

Thank you for your consideration.

Sincerely

Keith Scott