



STATE BOARD of ELEMENTARY and SECONDARY EDUCATION

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March 12, 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: 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 February 20, 2024, Notice of Intent that was promulgated on pages 290-292 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 May 20, 2024, 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: 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
Shan N. Davis, Executive Director, BESE
Kevin Calbert, Communications Manager, BESE

Shan N. Davis
Executive Director

Dr. Cade Brumley
State Superintendent

change. The proposed change provides clarity to educator preparation program providers and addresses the following: submission requirements following denial for program applicants; implementation dates and scoring for the Early Childhood Quality Rating System; inclusion of family child care home providers with academic approval in the quality rating system; repeal of obsolete subchapters; program considerations regarding associate teachers; and technical edits.

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

There is no anticipated effect on 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 economic benefits to directly affected persons, small businesses, or nongovernmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated impacts on competition and employment as a result of the proposed rule change.

Beth Scioneaux
Deputy Superintendent
2402#045

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1566—Pupil Progression Policies and Procedures
Third Grade Students with a Reading Deficiency
(LAC 28:XXXIX.701)**

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:XXXIX in Bulletin 1566—*Pupil Progression Policies and Procedures*. Act 422 of the 2023 Regular Legislative Session requires revisions to BESE policy regarding pupil progression plans. The aforementioned revisions implement policy regarding promotion or retention of certain students with reading deficiencies that have not been remediated by the end of third grade. A student must score above the lowest achievement level on the literacy screener and may be given three attempts prior to the subsequent academic year. Such a student will be screened for dyslexia and may be promoted under certain stipulations.

Title 28

EDUCATION

Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures

Chapter 7. Promotion and Support Policy

§701. Promotion and Support Standard for Grades 3-7

A. - C.2. ...

D. Beginning with the 2024-2025 school year, a third grade student with a reading deficiency as demonstrated by the student scoring at the lowest achievement level in reading on an end-of-year literacy screener in accordance with LAC 28:CXV.2307. *Bulletin 741* shall be provided with two additional opportunities to score a higher achievement level on the literacy screener prior to the beginning of the

subsequent academic year. A student who does not score above the lowest achievement level on the literacy screener after three attempts shall be screened for dyslexia and shall not be promoted to the fourth grade unless promoted for good cause as outlined in Subsection E. of this Section.

E. Promotion to Fourth Grade for Good Cause.

1. A student who does not meet the literacy criteria for promotion may be promoted to fourth grade if the student meets at least one of the following conditions:

a. A limited English proficient student has been enrolled in an English language assistance program for fewer than two years.

b. An IEP indicates that the screener is not appropriate for the student with a disability.

c. A student with an IEP or 504 Plan has received intensive reading intervention for two years and still scores at the lowest achievement level on the literacy screener.

d. A student with an IEP or 504 Plan was previously retained in kindergarten, first, or second grade and still scores at the lowest achievement level on the literacy screener.

e. A student has received intensive evidence-based structured literacy intervention for two or more years, still scores at the lowest achievement level, does not meet exceptional criteria, and was previously retained for a total of two years in kindergarten, first, second, or third grade. For the purposes of this Section, intensive reading intervention includes targeted intervention in a small group with progress monitoring documented through an individual reading improvement plan.

f. A student has been diagnosed with dyslexia.

g. The student demonstrates an acceptable level of proficiency on a BESE-approved alternative standardized assessment. Alternative assessments will be presented for BESE approval upon recommendation of LDOE. A student scoring Mastery on the English language arts section of the LEAP 2025 assessment may be considered for promotion.

2. Promotion to fourth grade may be considered for a student who meets a good cause as indicated in this Section. Such promotion shall be considered as follows:

a. The teacher shall confer with the parent or guardian of the student to determine whether promotion based on an exemption should be pursued.

b. The teacher shall submit documentation to the school principal that promotion is appropriate for the student. The documentation shall clearly demonstrate that the student meets at least one of the criteria for good cause and shall reflect the decision of the parent or guardian to allow the request for promotion.

c. The principal shall review the request and documentation provided by the teacher and determine whether to make a written recommendation for promotion. Such recommendation shall be made in writing to the local superintendent.

d. The local superintendent shall review the request and documentation provided by the school principal and, in writing, accept or reject the recommendation. Written notification shall be provided to the parent or guardian and the school principal.

e. The parent or guardian shall have the option to have the child retained in third grade even if the

determination of the principal and superintendent is to have the student promoted to fourth grade.

3. Students promoted for good cause shall be provided an individual reading improvement plan using the LDOE form provided.

a. Each plan shall include specialized diagnostic information and intensive evidence-based structured literacy instruction and intervention

b. The school shall confer with the parent or guardian to communicate the support provided according to the plan, the protocol for progress monitoring, and suggestions for strategies families can use at home.

c. Each LEA shall assist schools and teachers in implementing evidence-based reading strategies shown to be successful in improving reading among students with persistent reading difficulties.

4. Beginning with the 2025-2026 school year, no later than the October MFP collection, each LEA shall identify each third grade student retained in the prior year pursuant to Subsection D of this Section and each fourth grade student promoted due to good cause exemption outlined in Subsection E of this Section, indicating the exemption applied. The LDOE will annually publish a report containing the compiled data.

F. Third Grade Retention. A student who is retained in third grade due to a reading deficiency shall be provided intensive evidence-based structured literacy instructional services, progress monitoring, and support as outlined in the individual reading improvement plan to include a daily minimum of ninety minutes of evidence-based, scientifically researched reading instruction during regular school hours and 30 minutes of daily evidence-based reading intervention in the identified area of reading deficiency.

1. Intervention and instruction shall be based upon the foundations of literacy and shall include phonological awareness, phonics, decoding, fluency, and comprehension.

2. Intervention and instruction may also include small group instruction, lower teacher-student ratios, tutoring, transition classes, or extended school calendar for day, week, or summer programs.

3. The student shall be assigned a teacher who has successfully completed training in literacy instruction and who is highly effective as determined by student performance data, particularly related to student growth in reading, and performance appraisals.

4. The parent or guardian shall be provided with written notification of the individual reading improvement plan, the protocol for progress monitoring, and instructions for parent guided at-home reading.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:24.9; R.S. 17:24.10 and R.S. 17:24.11.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:481 (March 2018), amended, LR 48:1760 (July 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.

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 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, March 11, 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: Third Grade Students with a Reading
Deficiency**

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

There are anticipated yet indeterminable impacts to expenditures of state and local governmental units due to the proposed rule change. The proposed change implements policy regarding promotion or retention of certain students with reading deficiencies that have not been remediated by the end of third grade. In compliance with Act 422 of the 2023 Regular Session, a student must score above the lowest achievement level on the literacy screener and may be given three attempts prior to the subsequent academic year. Such a student will be screened for dyslexia and may be promoted under certain stipulations.

Total state costs are indeterminable; however, the program requires an additional year of instruction for all students retained. Due to the delays in the RFP process, the end-of-year reading assessment required by R.S. 17:24.9 was implemented at the start of the current school year. The Louisiana Department of Education (LDOE) reports 34% of current second graders, who will be the first group impacted by the retention law/policy, scored "Well Below" on the beginning of year screener. Given the criteria for good-cause exemptions, and the number of attempts permitted, estimates for the number of students who would be retained and funded via the Minimum Foundation Program for an additional year of study in a given year are unascertainable.

Local education agencies may experience indeterminable cost increases associated with lower student-teacher ratios and the provision of interventions as a result of the proposed rule change. Act 422 of the 2023 RS requires no specific action by the Louisiana Department of Education (LDOE); however, the department is offering support with innovative scheduling to help schools work within time and staffing constraints. Initially, the department reported that beginning in FY 24 they would require \$106,916 to create one (1) Education Program Consultant 3 position to support systems and leaders in the implementation of supports for students reading below grade level. The FY 24 budget did not include an appropriation for this purpose and the department reports this assistance will now be provided by existing staff.

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

There is no anticipated effect on 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 estimated cost and/or economic benefits to directly affected persons, small business, or non-governmental groups.

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

There are no anticipated impacts on competition and employment as a result of the proposed rule change.

Beth Scioneaux
Deputy Superintendent
2402#048

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1922—Compliance Monitoring Procedures
Special Education Corrective Action Plans
(LAC 28:XCI.107)**

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:XCI in Bulletin 1922—*Compliance Monitoring Procedures*. The proposed revisions facilitate the process by which the LDOE may approve, when necessary, a special consultant to collaborate with a Local Education Agency (LEA) for development and implementation of an intensive corrective action plan.

**TITLE 28
EDUCATION**

**Part XCI. Bulletin 1922—Compliance Monitoring
Procedures**

Chapter 1. Overview

§107. Corrective Action and Sanctions

A. - F.3. ...

4. The LDOE may determine that a special consultant or management team is necessary to assist the LEA in addressing areas of non-compliance. The LDOE will select a special consultant or management team to collaborate with the LEA in developing and implementing an intensive corrective action plan. The special consultant and the ICAP activities will be funded at the local level.

5. - 5.d....

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004), amended LR 31:3105 (December 2005), LR 32:1839 (October 2006), LR 37:3216 (November 2011), LR 43:517 (March 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,