



# 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

Paul Hollis  
1<sup>st</sup> BESE District

Sharon Clark  
2<sup>nd</sup> BESE District

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

Stacey Melerine  
4<sup>th</sup> BESE District

Lance Harris  
5<sup>th</sup> BESE District

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

Kevin Berken  
7<sup>th</sup> BESE District

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

Conrad Appel  
Member-at-Large

Judy Armstrong  
Member-at-Large

Simone Champagne  
Member-at-Large

Kimberly Tripeaux  
Interim Executive Director

Dr. Cade Brumley  
State Superintendent

May 11, 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

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 April 20, 2024, Notice of Intent that was promulgated on pages 555-558 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 July 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.

KT: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  
Kimberly Tripeaux, Interim Executive Director, BESE  
Kevin Calbert, Communications Manager, BESE

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#025

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 137—Louisiana Early Learning Center Licensing Regulations—Early Learning Providers (LAC 28:CLXI.103, 709, 901, 903, 1103, 1507, 1509, 1711, 1721, 1804, 1811, 1901, 1917)

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 revisions strengthen measures designed to protect children and to provide additional clarity to early learning providers. Topics addressed include: updates and revisions to several definitions; clarification regarding early learning programs operating at the same address located on LEA property; establishing that a current license holder must be in compliance with licensing rules and regulations prior to changing the location of ownership of a center; clarification on how to report critical incidents; clarification of monitoring policy for provisionally-employed staff-members; correction of child-to-staff ratio for two-year-old children; clarification of qualifications for in-person trainer requirements to conduct health and safety and medication trainings; clarification of the use of prohibited substances; and addition of a requirement that the administration of supplements will require written parental authorization.

**Title 28  
EDUCATION**

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

**Chapter 1. General Provisions**

**§103. Definitions**

\*\*\*

*Child Care Criminal Background Check (CCCBC)*—information received by the department upon request for information pursuant to requirements set forth in R.S. 17:407.42, 45 CFR 98.43(b), and Chapter 18 of this Bulletin.

*Child Care Market Rate Survey*—a survey that measures the prices charged by child care providers and paid by parents in a given child care market. The Child Care and Development Fund Programs require states to conduct child care market rate surveys.

\*\*\*

*Providers*—all owners, operators and directors of a center.

*Provisionally Employed Staff Member*—a person for whom the center has requested a CCCBC-based determination of eligibility for child care purposes, and for whom the LDOE has received a satisfactory fingerprint-based Louisiana or federal criminal history information record, who is temporarily employed and monitored by the center pending the LDOE receipt of the other CCCBC results and determination of the person's eligibility for child care purposes or as otherwise determined by the LDOE in §1804 of this Part.

*Quiet Time*—a period when children who are in full-time care are provided an appropriate environment for rest or quiet play, such as a child reading a book on a mat.

\*\*\*

*Rest Time*—a daily period for children over age 12 months during which children are placed on mats or cots or in cribs as age appropriate.

*Staff*—all full-time or part-time, paid or non-paid individuals that perform services for the early learning center and have direct or indirect contact with children at the center. Staff includes the director, child care staff, and any other employees at the center such as the cook, housekeeper, driver, substitutes, secretary, bookkeeper, and foster grandparents, but does not include extra-curricular personnel, therapeutic professionals and other independent contractors.

\*\*\*

*Supervision*—the function of observing, overseeing, and guiding a child or group of children, that includes awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed. Supervision requires physical presence with visual contact, accountability for care of the children, knowledge of activity requirements, and knowledge of the abilities and needs of the children.

*Supplement*—herbal or other dietary, nutritional, or other food or medical supplement administered to be ingested by children orally, in aerosol form, or in any other manner.

*Temporary Absence*—absence for running errands, attending conferences, etc.

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6 and 17:407.31 et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 41:616 (April 2015), effective July 1, 2015, amended LR 41:2103 (October 2015), LR 43:638 (April 2017), LR 44:247 (February 2018), effective March 1, 2018, LR 44:1858 (October 2018), LR 47:1274 (September 2021), LR 49:1710 (October 2023), LR 50:

**Chapter 7. Licensing Process and Procedures**

**§709. Validity of Licenses**

A. - E. ...

F. All early learning care and education provided at a physical address shall be included under one license address except for the license of an early learning center at the same physical address as a licensed Head Start program or a licensed non-Head Start LEA program that is located on LEA property.

G. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:407.39(C), and 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:624 (April 2015), effective July 1, 2015, amended LR 42:554 (April 2016), LR 44:1861 (October 2018), LR 47:1275 (September 2021), LR 49:1710 (October 2023), LR 50:

## **Chapter 9. Changes Requiring a New License**

### **§901. Change in Location**

A. Change in Location. When a center changes location, it is considered a new operation, and a new application and fee for licensure must be submitted, have verification of substantial compliance with the applicable licensing regulations, and a new license obtained, prior to opening at the new location.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39 and R.S. 17:6 and 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:625 (April 2015), effective July 1, 2015, amended LR 44:1861 (October 2018), LR 50:

### **§903. Change of Ownership**

A. ...

B. Prior to the ownership change, the new owner shall submit a new application and have verification of substantial compliance with the applicable licensing regulations in order to fee for licensure and obtain a new license.

C. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:407.39 and R.S. 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:625 (April 2015), effective July 1, 2015, amended LR 41:2105 (October 2015), LR 47:1275 (September 2021), LR 50:

## **Chapter 11. Operating Violations and Incidents; Fines; Appeals**

### **§1103. Critical Incidents and Required Notifications**

A. - C. ...

1. LDOE. This written notification shall be made for all of the critical incidents identified above, shall be made on the LDOE critical incidents report form, shall contain all information requested on the form, and shall be submitted to the location indicated on the critical incident form.

C.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:625 (April 2015), effective July 1, 2015, amended LR 44:1862 (October 2018), LR 47:1275 (September 2021), LR 49:1711 (October 2023), LR 50:

## **Chapter 15. Minimum General Requirements and Standards**

### **§1507. Daily Attendance Records**

A. ...

1. include the child's first and last name, arrival and departure times, date, and first and last name of person or entity to whom the child is released;

A.2, - B. ...

1. include the first and last name of the staff member or owner, date, and arrival and departure times;

B.2. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.40.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:629 (April 2015), effective July 1, 2015, amended LR 44:1864 (October 2018), LR 47:1276 (September 2021), LR 50:

## **§1509. Policies**

A. - A.12. ...

a. each center shall develop and implement a written policy describing the monitoring procedures that shall be used at the center when staff members are employed on a provisional basis due to an incomplete CCCBC-based determination of eligibility for child care purposes or any other provisions of this Bulletin;

b. the monitoring policy shall include all requirements for the monitoring of provisionally employed staff members set forth in §1804.B and §1811.D of this Part;

c. - 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 41:629 (April 2015), effective July 1, 2015, amended LR 44:250 (February 2018), effective March 1, 2018, LR 44:1864 (October 2018), LR 47:1276 (September 2021), LR 49:1712 (October 2023), LR 50:

## **Chapter 17. Minimum Staffing Requirements and Standards**

### **§1711. Child-to-Staff Minimum Ratios**

A. - C. ...

D. Minimum child-to-staff ratios for centers are as follows.

1. Infants under 1 year, 5:1;
2. 1 year, 7:1;
3. 2 years, 10:1;
4. Children 3 years, 13:1;
5. 4 years, 15:1;
6. 5 years, 19:1;
7. 6 years and up, 23:1.

E. - K. ...

L. Maximum group sizes for centers are as follows.

1. Infants under 1 year, 15;
2. 1 year, 21;
3. 2 years, 20;
4. 3 years, 26;
5. 4 years, 30;
6. 5 years, 38;
7. 6 years and up, 46.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.40(A)(3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:633 (April 2015), effective July 1, 2015, amended LR 43:638 (April 2017), LR 44:250 (February 2018), effective March 1, 2018, LR 44:1865 (October 2018), LR 45:525 (April 2019), LR 47:1276 (September 2021), LR 49:1712 (October 2023), LR 50:

### **§1721. Continuing Education**

A. - E. ...

1. Providers may complete the approved self-paced, online training provided by the LDOE or utilize an in-person trainer. If taught in person, the training must be taught by a

licensed nurse, licensed physician, licensed physician's assistant, licensed social worker, or licensed nutritionist who is on the LDOE registry of approved trainers.

F. - G. ...

1. Providers may complete the approved self-paced, online training provided by the LDOE or utilize an in-person trainer. If taught in person, the training must be taught by a licensed nurse, licensed physician, licensed physician's assistant, licensed paramedic, or licensed EMT who is on the LDOE registry of approved trainers.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:407.40(A)(1) and (3).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:636 (April 2015), effective July 1, 2015, amended LR 41:2108 (October 2015), LR 42:555 (April 2016), LR 44:251 (February 2018), effective March 1, 2018, LR 44:1866 (October 2018), LR 47:1277 (September 2021), LR 49:1712 (October 2023), LR 50:

## **Chapter 18. Child Care Criminal Background Checks (CCCBC)**

### **§1804. Provisional Status for Child Care Purposes**

A. - B. ...

1. A center may provisionally employ a staff member for whom the center has requested a CCCBC-based determination of eligibility for child care purposes, and for whom the LDOE has received a satisfactory fingerprint-based Louisiana or federal criminal history information record, pending the LDOE receipt of the other CCCBC results and determination of the person's eligibility for child care purposes, or for someone named in a deficiency for §1509 of this Part.

2. - 2.b. ...

c. The monitor shall accompany the provisionally-employed staff member at all times the provisionally-employed staff member is present at the center.

d. - g. Repealed.

3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 98.43 and R.S. 15:587.1, and 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 49:1713 (October 2023), LR 50:

### **§1811. Requests for CCCBC-Based Determinations of Eligibility for Child Care Purposes from the Department**

A. - D. ...

1. A center may provisionally employ as a staff member, a person for whom it has requested a CCCBC-based determination of eligibility for child care purposes, and for whom the LDOE has received a satisfactory fingerprint-based Louisiana or federal criminal history information record, pending the LDOE receipt of the other CCCBC results and determination of the person's eligibility for child care purposes, or for someone named in a deficiency for §1509 of this Part.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 98.43, R.S. 15:587.1, and R.S. 17:407.42.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:253 (February 2018), effective March 1, 2018, LR 47:1278 (September 2021), LR 49:1714 (October 2023), LR 50:

## **Chapter 19. Minimum Health, Safety, and Environment Requirements and Standards**

### **§1901. General Safety Requirements**

A. - N. ...

O. The center shall prohibit the use of alcohol and tobacco in any form, and the use or possession of illegal substances, unauthorized potentially toxic substances, fireworks and firearms, and pellet and BB guns on the center premises and notice to this effect shall be posted.

P. - S.5. ...

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 42:555 (April 2016), LR 44:1867 (October 2018), LR 47:1278 (September 2021), LR 49:1207 (July 2023), LR 50:

### **§1917. Medication Administration**

A. - K.2.e. ...

L. Supplements. Children shall not be administered any form of supplements without prior written parental authorization.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 41:639 (April 2015), effective July 1, 2015, 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? Yes.

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? Yes.

#### 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 137—Louisiana Early Learning Center Licensing Regulations Early Learning Providers

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

There are no anticipated implementation costs or savings to state or local governmental units due to the proposed rule change. The proposed change modifies policy to strengthen measures designed to protect children and to provide additional clarity to early learning providers. The proposed revisions address: updates and revisions to several definitions; clarification regarding early learning programs operating on

local education authority property; establishing that a current license holder must be in compliance with licensing rules and regulations prior to changing the location of ownership of a center; clarification on how to report critical incidents; clarification of monitoring policy for provisionally-employed staff-members; correction of child-to-staff ratio for two-year-old children; clarification of qualifications for in-person trainer requirements to conduct health and safety and medication administration trainings; clarification of the use of prohibited substances; and addition of a requirement that the administration of supplements will require written parental authorization.

#### 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#026

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Office

#### NOTICE OF INTENT

##### Board of Elementary and Secondary Education

Bulletin 139—Louisiana Child Care and Development  
Fund Programs—Child Care Programs  
(LAC 28:CLXV.103, 309, 311, 313, 320, 507, and 515)

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:CLXV in *Bulletin 139—Louisiana Child Care and Development Fund Programs*. The proposed revisions accomplish the following: strengthen measures designed to protect children, ensure better statewide access to quality early care and learning, and provide additional clarity to family child care, in-home, and school-based child care providers. The aforementioned revisions further codify definitions and regulations regarding CCAP contracted seats.

#### Title 28 EDUCATION

##### Part CLXV. Bulletin 139—Louisiana Child Care and Development Fund Programs

##### Chapter 1. Child Care Assistance Program

##### §103. Definitions

*Automated Child Care Time and Attendance*—an electronic system that provides accurate and timely capturing, tracking, and reporting of time and attendance data.

*Back Scans*—attendance scans by head of household or household designee utilizing the LDOE Automated Child Care Time and Attendance system that are made at a time