

**NOTICE OF INTENT**

**Department of Children and Family Services**

**Division of Programs**

**Risk Assessment Evaluation**

**(LAC 67:I.301, 303, 305, 307, 309, and 311)**

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:I, Subpart 1 General Administration, Chapter 3 Risk Assessment Evaluation.

Chapter 3 is being amended in accordance with R.S. 46.51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41. The amendments include adding an owner, operator, current or prospective employee, or volunteer of an early learning center licensed by the Louisiana Department of Education as individuals entitled to request risk assessment evaluation. In addition, the chapter is being amended to add procedures and conditions of employment for current and prospective department employees/volunteers, and to update risk evaluation panel membership consistent with current job titles and responsibilities.

**Title 67**

**SOCIAL SERVICES**

**Part I. Office of the Secretary**

**Subpart 1. General Administration**

**Chapter 3. Risk Assessment Evaluation**

**§301. Introduction**

A. - B.2 ...

C. Any prospective employee or current employee/volunteer whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and

who discloses or it becomes known that their name was recorded subsequent to January 1, 2010 on the state central registry with a justified (valid) finding of abuse or neglect, ~~or through reasonable suspicion, or as the result of information known or received by DCFS~~ may request a risk assessment evaluation in accordance with the following:

1. In accordance with LAC 67:I.305, the prospective employee will have 10 calendar days from completion of the state central registry disclosure form to make his request for a risk assessment evaluation from the date of receipt of written notification that his name appears on the state central registry and of the risk assessment evaluation process in accordance with LAC 67:I.305 or shall be terminated immediately. The application process shall be terminated for a prospective employee and he may not be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys in the future, unless it is determined that he does not pose a risk to children.

2. In accordance with LAC 67:I.305, a current employee will have 10 calendar days to make a request for a risk assessment evaluation from the date of receipt of written notification that his name appears on the state central registry and of the risk assessment evaluation process. When the employee fails to make such a request, and:

a. he is currently in a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, performance of licensing surveys, termination proceedings will begin immediately after the 10 calendar days have elapsed; or

b. if he is not currently in a position whose duties include the investigation of child abuse or neglect,

supervisory or disciplinary authority over children, direct care of a child, performance of licensing surveys but is applying for such a position, he will remain in his current position and shall not be considered for the new position. The provisions in this chapter pertaining to a prospective employee are applicable to this employee.

3. If a prospective employee requests a risk assessment evaluation within the required time frame and there is a determination that the individual does not pose a risk to children, the prospective employee may reapply for employment and be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys.

4. If a current employee requests a risk assessment evaluation within the required time frame, as a condition of continued employment in a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys, the current employee/volunteer shall be directly supervised by another paid employee of the department, who has not disclosed nor has it become known that their name appears with a justified (valid) finding on the state central registry prior to January 1, 2010; or, found not to pose a risk by the risk evaluation panel. Under no circumstances may the employee with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel that they do not pose a risk to children.

5. If the Risk Evaluation Panel finds the prospective employee or current employee individual does pose a risk to children and the prospective employee or current employee individual chooses not to appeal the finding,

~~employee/volunteer shall be terminated immediately~~ the prospective employee may not be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys, and termination proceedings shall begin on the current employee, unless his current position does not include those duties.

6. If the Risk Evaluation Panel finds the individual does pose a risk to children and the ~~individual~~ prospective employee appeals the finding within the required timeframe, the prospective employee may not be considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys. If the current ~~the employee/volunteer~~ appeals the finding within the required timeframe he shall continue to have direct supervision in a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys at all times by another paid employee of the department who has not disclosed nor has it become known that they have a justified (valid) finding on the state central registry prior to January 1, 2010; or found not to pose a risk by the risk evaluation panel, until a ruling by the DCFS Appeals Unit there is a final ruling rendered by the DCFS Appeals unit or the appropriate district court that ~~they do~~ the current employee does not pose a risk to children. Supervision may end effective with such a final ruling from the DCFS Appeals Unit and/or the appropriate district court. If the DCFS Appeals Unit and/or the appropriate district court upholds the Risk Evaluation Panel finding that ~~they do~~ the individual does pose a risk to children, ~~they shall be terminated immediately~~ a prospective employee shall not be

considered for a position whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys and termination proceedings for a current employee in a position with those duties will begin immediately upon the receipt of the notice of this final ruling.

D. No person whose duties include supervisory or disciplinary authority over children or direct care of a child may volunteer or become a service provider as provided in LAC 67:V.1103 for DCFS until:

1. the department has conducted a search of the state central registry of justified (valid) abuse or neglect and has determined that the individual's name is not recorded therein subsequent to January 1, 2010; or

2. if an individual's name is recorded on the state central registry subsequent to January 1, 2010, a risk evaluation panel has, previous to his application to volunteer or become a service provider as provided in LAC 67:V.1103, determined in writing that the individual does not pose a risk to children.

⊘ E. In accordance with R.S. 46:1414.1, and 15:1110.2 and 17:407.41 any owner, operator, current or prospective employee, or volunteer of a child care facility an early learning center or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education who discloses that he is currently recorded on the state central registry for a justified (valid) finding of abuse or neglect shall be entitled to a risk evaluation provided by the department to determine whether the individual poses a risk to children.

AUTHORITY NOTE: Promulgated in accordance with ~~the Louisiana Children's Code, Article 616, and Act 47, Act 221, and~~

~~Act 388 of the 2009 Regular Session of the Louisiana Legislature~~  
R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, Division of Programs, LR 39:3248 (December 2013), LR 42:

**§303. Risk Evaluation Panel and/or Risk Evaluation Coordinator**

A. A risk evaluation panel (panel) is established to conduct risk assessment evaluations for an individual as listed in LAC 67:I.301.B, ~~and C and D~~ E whose name appears on the state central registry to determine if that individual poses a risk to children.

B.1. Members of the panel shall be designated pursuant to paragraph B.2. and include consist of:

a. ~~child welfare manager 2 for field operations~~  
the Risk Evaluation Panel Coordinator;

b. a child welfare manager 2 responsible for  
~~in Home Services;~~

c. a child welfare manager 2 responsible for  
~~Out of Home Services;~~

d. ~~risk evaluation panel coordinator~~ a regional child welfare administrator;

e. a child welfare manager responsible for continuous quality improvement, except for panel reviews relating to DCFS prospective or current employees;

~~e. f.~~ a program child welfare manager for licensing for panel reviews relating to owners, operators, current or prospective employees, or volunteers of ~~child care facilities~~ specialized providers and juvenile detention facilities, ~~program manager 2 for licensing;~~ and

~~f. g. any others designated by the DCFS deputy Secretaries for the Division of Programs and Division of Field Operations as appropriate designees of those listed above or as deemed necessary to convene an appropriate panel.~~

2. The panel members listed in paragraph B.1. shall be designated by the DCFS Secretary, or his designee.

3. The Risk Evaluation Panel Coordinator shall be a non-voting member of the panel.

C. The duties of the panel shall include:

1. conducting an assessment of an individual listed in LAC 67:I301B, ~~and C~~ and E whose name appears on the state central registry and has requested a risk evaluation to determine whether that individual poses a risk to children;

2. providing written notification of the decision to the individual; and

3. retaining all records of decisions.

AUTHORITY NOTE: Promulgated in accordance with ~~Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature~~ R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:851 (April 2010), amended by the Department of Children and Family Services, LR 39:3248 (December 2013), LR 42:

**§305. Risk Assessment Evaluation Process**

A. The risk evaluation panel will determine if the individual listed in LAC 67:301.B, ~~and C~~ and E poses a risk to children based on the information available in the ~~DCS~~ DCFS case record, licensing record if applicable, and any supplemental information provided by the employee.

B. ...

C. The prospective or current employee of DCFS or any owner, operator, current or prospective employee, or current or prospective volunteer of a specialized provider or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education is responsible for providing the following documentation to the risk evaluation panel to be used in conjunction with the information in the case record in making a risk determination:

1. - 3. ...

D. The prospective or current employee of DCFS or any owner, operator, current or prospective employee, or current or prospective volunteer of a specialized provider or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education must submit the information within 10 calendar days of the request for a risk evaluation by mailing to:

Louisiana Department of Children and Family Services  
Attention: Risk Evaluation Panel  
627 N. Fourth St. Third Floor  
Baton Rouge, LA 70802

AUTHORITY NOTE: Promulgated in accordance with ~~Act 47 and Act 221 of the 2009 Regular Session of the Louisiana Legislature~~ R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, LR 39:3248 (December 2013), LR 42:

**§307. Risk Determination Criteria**

A. ...

B. The panel shall determine if an individual poses a risk to children based on the information available in the DCFS case record, licensing record if applicable, and any supplemental information provided by the prospective or current employee whose duties include the investigation of child abuse or neglect, supervisory or disciplinary authority over children, direct care of a child, or performance of licensing surveys, or a prospective/current volunteer.

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with ~~Act 47~~ and ~~Act 221 of the 2009 Regular Session of the Louisiana Legislature~~ R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, LR 39:3248 (December 2013), LR 42:

**§309. Appeals Process**

A. - B. ...

C. The individual may file a request for an administrative appeal within 30 days of the mailing of the notice of the determination with the DCFS Appeals Unit. Administrative appeals for prospective employees or current employees of DCFS are conducted by the DCFS Appeals Unit. If the request for an administrative appeal is made by a current or prospective owner, employee or volunteer of a ~~child-care facility~~ specialized provider or juvenile detention facility licensed by the department or an early learning center licensed by the Louisiana Department of Education, within 30 days of the mailing of the notice of the determination, that request shall be sent by the Appeals Unit to the Division of Administrative Law.

D. All decisions rendered by the administrative law judge within the DCFS Appeals Unit or the Division of Administrative Law are final and such decisions shall exhaust the individual's administrative appeal rights.

E. Within 30 calendar days after the mailing date listed on the notice of the final decision by the DCFS Appeals Unit or the Division of Administrative Law, or if a rehearing is requested, within 30 calendar days after the date of the decision thereon, the individual may obtain judicial review by filing a petition for review of the decision in the Nineteenth Judicial District Court or the district court of the domicile of the individual.

AUTHORITY NOTE: Promulgated in accordance with ~~Act 47 and Act 221 of the 2009 Regular Session of the Louisiana~~ Legislature R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 36:852 (April 2010), amended by the Department of Children and Family Services, LR 39:3248 (December 2013), LR 42:

**§311. Correction or Expungement of Central Registry Entries**

A. Notwithstanding any other provisions, a panel determination shall not be used to prohibit an individual from being considered for employment when the justified (valid) finding that served as the basis for the Risk Assessment Evaluation is:

1. corrected either pursuant to Ch. C. 616 or by DCFS; or,
2. expunged either pursuant to LAC 67:V.1103 or LAC 67:V.1105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, LR 42:

**FAMILY IMPACT STATEMENT**

1. What effect will this rule have on the stability of the family? The proposed rule may have a positive effect on the stability of the family as it supports the protection of children from individuals with a history of abuse or neglect who also pose a risk to children.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? The rule may have a positive effect on the functioning of the family by assuring a process for DCFS child clients and children in out of home care to be protected from individuals with a history of abuse or neglect who pose a risk to children.

4. What effect will this have on family earnings and family budget? The proposed rule should not have an effect on family earnings and family budget. Individuals determined to pose a risk to children may be affected by loss of employment involving contact with children until they find other employment.

5. What effect will this have on the behavior and personal responsibility of children? The rule should not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, Louisiana law prescribes this as a department function.

**Poverty Impact Statement**

The proposed rulemaking is not anticipated to have an impact on poverty as defined by R.S. 49:973.

**Small Business Impact Statement**

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

**Provider Impact Statement**

The proposed rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

**Public Comments**

All interested persons may submit written comments through April 26, 2016, to Rhenda Hodnett, Deputy Secretary of Programs, Department of Children and Family Services, P.O. Box 3776, Baton Rouge, LA 70821.

**Public Hearing**

A public hearing on the proposed rule will be held on April 26, 2016, at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit or Division of Administrative at least seven working days in advance of the hearing. For assistance, call (225)342-4120 (Voice and TDD).

Marketa Garner Walters  
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person Preparing Statement:	<u>Linda Carter</u>	Department:	<u>Department of Children and Family Services</u>
Phone:	<u>(225) 342-1554</u>	Office:	<u>Child Welfare</u>
Return Address:	<u>627 North 4<sup>th</sup> Street</u> <u>Third Floor</u> <u>Baton Rouge, LA 70821</u>	Rule Title:	<u>Risk Assessment Evaluation</u>
		Date Rule Takes Effect:	<u>July 1, 2016</u>

**SUMMARY**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

**I. Estimated Implementation Costs (Savings) to State or Local Governmental Units (Summary)**

In accordance with R.S. 46:51.2, R.S. 46:1414.1, R.S. 15:1110.2 and R.S. 17:407.41, this rule proposes to amend LAC 67:I, Subpart 1 General Administration, Chapter 3 Risk Assessment Evaluation.

The amendments include adding an owner, operator, current or prospective employee and volunteer of an early learning center licensed by the Louisiana Department of Education as individuals entitled to request risk assessment evaluation. In addition, the chapter is amended to add procedures and conditions of employment for current and prospective department employees or volunteers. Finally, the chapter is amended to update the membership of the risk evaluation panel so that membership is consistent with current job titles and responsibilities.

The only cost associated with this proposed rule is the cost of publishing rulemaking. It is anticipated that \$2,343 (Federal) will be expended in FY15-16 for the state’s administrative expenses for promulgation of this proposed rule and the final rule. This is a one-time cost that is routinely included in the department’s budget.

**II. Estimated Effect on Revenue Collections of State or Local Governmental Units (Summary)**

Implementation of this proposed rule will have no effect on revenue collections of state or local governmental units.

**III. Estimated Costs and/or Economic Benefits to Directly Affected Persons or Non-Governmental Groups (Summary)**

Implementation of this proposed rule will have no cost or economic benefit to directly affected persons or nongovernmental groups.

**IV. Estimated Impact on Competition and Employment (Summary)**

The rule is not expected to have an effect on competition or employment unless a person is determined to pose a risk to children. To the extent a person has a finding, they are prevented from working in occupations that provide direct care to children.

\_\_\_\_\_  
Signature of Agency Head  
or Designee

Rhenda Hodnett, Deputy Secretary  
Typed Name and Title of Agency Head

\_\_\_\_\_  
Date

\_\_\_\_\_  
LEGISLATIVE FISCAL OFFICER  
OR DESIGNEE

\_\_\_\_\_  
DATE OF SIGNATURE

\_\_\_\_\_  
DCFS Deputy Undersecretary