

State Board of Education
Public Comment Summary
Proposed Permanent Rule Changes
Chapter 15. Curriculum and Instruction
Subchapter 27. Reading Sufficiency Act
210:15-27-1. ~~Reading Sufficiency Act~~ Reading Sufficiency Plans and Summer Academy
Reading Programs [AMENDED]
210:15-27-2. ~~Alternative standardized reading assessment and use of student portfolio for~~
good Good cause exemptions for promotion under the Reading Sufficiency Act
[AMENDED]

Summary of Public Comment	Agency Response
<p>Two (2) commenters expressed appreciation that the proposed change to the rule clarifies the availability of RSA money for kindergarten intervention.</p>	<ul style="list-style-type: none"> • N/A
<p>Four (4) commenters expressed concern about the negative effect of retention on students; (1) commenter requested the SDE release data and research supporting the policy behind retention of third grade students as a best practice in education; two (2) commenters suggested that State wait to implement the changes to the RSA.</p>	<ul style="list-style-type: none"> • These comments are is outside the scope of the proposed changes to the rule. • The RSA retention requirements are dictated by statute, which can only be changed by the Legislature, not the agency. • The agency cannot delay implementation of the RSA without a change to the statute by the Legislature. Retention of third grade students found not to be reading a grade level is mandated by 70 O.S. § 1210.508C(H).
<p>Four (4) commenters expressed concerns about the availability of funding to school districts to meet the requirements of the RSA and to provide funding for Summer Academy Reading Programs (“SARP”). One (1) commenter asserted that SARPs are no longer being funded, and questioned why districts should be continued to require reporting of SARP participation under the rule.</p>	<ul style="list-style-type: none"> • The agency disagrees with the commenter’s assertion that summer academy reading programs are no longer funded by the legislature. The confusion arises from the amendments to 70 O.S. § 1210.508D which went into effect on 7/1/2012. The old version of the statute provided for \$150.00 reimbursements to school districts for each enrolled first, second, and third grade student (including those who had been retained in the third grade) found to be in need of remediation for reading, and \$400.00 for each student who had completed the third grade, include students retained in the third grade, who were found not to be reading at third grade level and who subsequently participated in a SARP. The amended version of the statute changed the funding scheme to provide an upfront lump sum

	<p>allocation for each enrolled kindergarten through third-grade student, including students who had been retained in the third grade, who were found to be in need of remediation or intervention in reading. The amended language provides school districts with more discretion to determine which programs of reading instruction are most appropriate to meet the needs of its students.</p> <ul style="list-style-type: none"> • RSA funds allocated by the SDE to each school district are contingent upon funds appropriated by the State Legislature. Available funding for reimbursement for school districts providing reading remediation is determined by appropriations from the Legislature in accordance with the provisions of 70 O.S. 1210.508D, not the agency. The agency has requested a supplemental appropriation for RSA funding, which must be approved by the legislature. • Reporting of data regarding which programs of reading instruction implemented by each school and school district remains necessary to the SDE for making future allocation requests for funding provided in accordance with the RSA.
<p>One (1) commenter stressed the importance of identification of students at risk for retention prior to third grade, and suggested implementation of state funded & required SARPs for students deficient in reading at the end of their kindergarten through third grade years in lieu of retention. The commenter asserted that the SARP program is only offered to eligible students at the end of their 3rd grade year.</p>	<ul style="list-style-type: none"> • The agency agrees with the comment regarding the importance of early identification of students at risk for retention. The law and proposed rule already provides for early identification of K-3 students at risk for retention. 70 O.S. § 1210.508C(B)(2) requires all K-3 students to be assessed at the beginning of each school year so that reading programs can be provided to them in order to prevent retention. 210:27-15-1(c) requires each school district to report numbers of K-3 students identified as needing remediation. • The agency disagrees with the commenter's assertion that the SARP is only offered to third grade students. Nothing in the rule prevents districts and schools from offering SARPs to K-3 students identified at risk of retention.
<p>One (1) commenter expressed concerns about the RSA retention requirement's effect on students who are newly enrolled in a school at the beginning of their third grade year.</p>	<ul style="list-style-type: none"> • Retention of third grade students who score at the unsatisfactory level of the reading portion of the statewide third grade criterion-referenced test is mandated by 70 O.S. § 1210.508C(H). The agency does not have discretion to add an additional exemption for students who begin a new school at

	<p>the start of their third grade year. However, newly enrolled students may be eligible for another one of the six available statutory exemptions.</p>
<p>One (1) commenter objected to the use of the third grade CRT to determine whether the purpose of the legislation – “to improve Oklahoma children’s reading skills before the end of the third grade” has been met; the commenter also stated that the third grade students should be given an opportunity before April/May of their third grade year to know how they may score on a third grade assessment.</p>	<ul style="list-style-type: none"> • Use of the Reading portion of statewide third grade criterion-referenced test is mandated by 70 O.S. § 1210.508C(H). The agency does not have discretion to alter this statutory requirement.
<p>Thirty-three (33) commenters requested identification of the SDE’s criteria for approval of school districts’ reading sufficiency plans pursuant to 210:15-27-1(a).</p>	<ul style="list-style-type: none"> • The agency’s review and approval of a district’s RSA plan is to ensure statutory compliance with the RSA. The criteria for district reading plans is set forth at 70 O.S. §§ 1210.508(B)(D)(2) 1210.508C(F).
<p>Thirty-three (33) commenters requested that if subsections (f) and (g) of 210:15-27-1 are referring to the same district reading sufficiency plans required in (a), that (f) and (g) be deleted as unnecessary.</p>	<ul style="list-style-type: none"> • The provisions of 210:15-27-1(g) and (h) do refer to the same district reading sufficiency plan referenced in (a). Subsections (g) and (h) are necessary to ensure compliance with 70 O.S. § 1210.508B(E), which requires districts to submit reading sufficiency plans if the district has any schools that are not achieving the required annual improvement goals. The agency has deleted these subsections and amended the language of (a) to include language in these subsections.
<p>Thirty-three (33) commenters stated that the word “exemption” should be reinstated to the proposed language of 210:15-27-2 stating “Beginning with the 2013-2014 school year...if the student qualifies for a good cause or other statutory exemption pursuant to 70 O.S. § 1210.508C.”</p>	<ul style="list-style-type: none"> • The agency has incorporated the change suggested by the commenters into the revised draft of the proposed rule.
<p>Three (3) commenters suggested incorporation of additional tests into the list of approved alternative standardized testing reading assessments used as a basis for the good cause exemption set forth at 210:15-27-2(b)(3)(A).</p>	<ul style="list-style-type: none"> • The law requires use of alternative <u>standardized</u> reading assessments approved by the State Board as a basis for this good cause exemption. The agency is reviewing additional standardized tests for eventual incorporation into the list of alternative standardized reading assessments used as a basis for this good cause exemption.

<p>Two (2) commenters assert that the 45th percentile score required to qualify for the good cause exemption in 210:15-27-2(b)(3)(A) is not a comparable score to a student who scores Limited Knowledge and was promoted to 4th grade, and that a student who scores Unsatisfactory should be given another opportunity to take the exam at an equivalent level.</p>	<ul style="list-style-type: none"> • Use of the statewide criterion referenced test is mandated by state law and is only given during certain times of the year. The decision to base retention decisions on a score of “Unsatisfactory” rather than “Limited Knowledge” is set by the legislature. • The 45th percentile for the alternative assessments was set because that percentile represents, on average, a 3.5 grade equivalent reading level. Scoring lower than that on the Spring-administered exam indicates that the student is not yet ready for fourth-grade work.
<p>One (1) commenter asked why the new rule eliminates the good cause exemption for students who score between 70-79 on an IQ test.</p>	<ul style="list-style-type: none"> • The statutory basis for this good cause exemption was eliminated by the Legislature when the RSA was amended in 2012.
<p>Thirty-three (33) commenters stated that proposed subsections (f), (g), (h), (i) and (j) should be relettered as subsections (c)-(g)</p>	<ul style="list-style-type: none"> • The agency has incorporated the change suggested by the commenters into the revised draft of the proposed rule.
<p>Thirty-three (33) commenters requested that the language of 210:15-27-1(f) stating “Completion of transitional grades shall be considered a previous retention for purposes of 70 O.S. § 1210.508C(K)” be revised to read “Each student completion of a transitional grade shall be considered a previous retention for purposes of 70 O.S. § 1210.508C(K)” to clarify that the rule does not intend to require more than one transitional grade to equal one year of retention.</p>	<ul style="list-style-type: none"> • The agency has incorporated the change suggested by the commenters into the revised draft of the proposed rule.
<p>Thirty-three (33) commenters request that the Legislature, SDE, and SBE collaborate to amend the RSA and accompanying rules to state that any year during which a five-year-old student who attended a district four-year-old program and subsequently attends a “transitional” kindergarten program instead of a kindergarten due to readiness concerns is considered a year of retention for good cause exemption purposes.</p>	<ul style="list-style-type: none"> • The agency agrees that the proposed change would require a statutory change, and has taken the matter under advisement.
<p>Twenty-seven (27) commenters expressed concerns about the good cause exemption in 210:15-27-2(b)(1) for students who are Limited-English proficient (“LEP”),</p>	<ul style="list-style-type: none"> • The requirement that Limited-English proficient students have had less than two (2) years of instruction in an ELL program is required by 70 O.S. § 1210.508C(K)(1); consequently, the

<p>stating that two years is insufficient time for an ELL student to become proficient in reading. Twenty-six (26) commenters requested that the rule allow ELL students “to be assessed and evaluated for promotion based upon the OSDE’s definition of adequate growth (increase of 0.5 on proficiency level or 21 scale score points) as demonstrated by the student’s WIDA ACCESS for ELLs score in the domain of Reading.”</p>	<p>proposed rule change and would require a statutory change.</p> <ul style="list-style-type: none"> • The statute requires all students to score above unsatisfactory level on reading portion of the statewide third grade criterion reference test. • Implementing the change suggested by the commenters would require a statutory change, since 70 O.S. § 1210.508C does not provide a basis for promotion based upon the criteria suggested by the commenter.
<p>Four (4) commenters objected to the requirement in 210:15-27-2(b)(1)(A) that students with limited English proficiency be identified as an English Language Learner on a screening tool approved by the SDE and have an LIEP in place prior to the administration of the third grade test, stating that the requirement of less than two (2) years of instruction in an ELL program set forth in 210:15-27-2(b)(2)(B) should be the only requirement for this exemption.</p>	<ul style="list-style-type: none"> • An LIEP will direct whether or not an ELL student requires testing accommodations. The agency believes having an LIEP in place prior to administration of the exam is necessary to give ELLs students the best opportunity to demonstrate proficiency on the statewide third grade criterion referenced test.
<p>Four (4) commenters objected to the inclusion of the language in 210:15-27-2(b)(2)(C)(i) requiring that the student’s IEP must “include measurable annual goals containing alternate achievement standards and academic and functional goals along with short term objectives or benchmarks which are based on the logical breakdown of the major components of the annual goals” as a prerequisite to qualify for the exemption from retention for students assessed with alternate achievement standards. One (1) commenter suggested that the language of the good cause exemption set forth at 210:15-27-2(C)(ii) be amended to read that the student’s IEP must “<u>Direct that the student is to be assessed with alternate achievement standards through the Oklahoma Alternative Assessment Program (QAAP) based on the OSDE Criteria Checklist for Assessing Students with Disabilities on State Assessments.</u>”</p>	<ul style="list-style-type: none"> • The agency has incorporated the change suggested by the commenters into the revised draft of the proposed rule.

<p>Six (6) commenters objected to the requirement that a student be identified as needing special education services prior to the third grade criterion referenced test in order to qualify for the exemptions from retention for students with disabilities set forth at 210:15-27-2(b)(2), asserting that this requirement limits the ability of a child to receive federally mandated IEP services whenever a student is identified as needing such services, thereby creating potential conflict in federal and state law.</p>	<ul style="list-style-type: none"> • 70 O.S. 1210.508C(K)(2) requires that a student have an IEP in place which directs that a student be assessed under alternative achievement standards through the OAAP. • The decision as to whether a student is tested under alternative achievement standards under the Oklahoma School Testing Program is based upon a student’s IEP. Consequently, a student must have been identified as a student with a disability and have an IEP in place directing that the student be assessed under alternative achievement standards <i>prior</i> to administration of the third grade criterion referenced test.
<p>Four (4) commenters believes that the proposed language in 210:15-27-22(b)(3) accurately reflects the statutory exemption and did not have an issue with the proposed language for this statutory exemption.</p>	<ul style="list-style-type: none"> • N/A
<p>Four (4) commenters requested that the language of 210:15-27-2(b)(4)(E) requiring a student portfolio submitted as a basis for a good cause exemption be modified from “The portfolio includes only work that has been independently produced by the student in the third grade” to clarify that language is not limiting third grade work to schoolwork completed during the regular school day, but may also include work in remediation provided after school and during Saturday programs or summer school.</p>	<ul style="list-style-type: none"> • The agency has incorporated the change suggested by the commenters into the revised draft of the proposed rule.
<p>One (1) commenter suggested that because a district will not know whether a student passed the third grade CRT until the summer after the third grade, that the OSDE reconsider the components of the student portfolio good cause exemption in 210:15-27-2(b)(4)(A) to encompass the Academic Progress plan; that the portfolio should include collection of evidence that the student received intervention throughout, not after the student failed; and that the term “Reading Teacher” be changed to “certified classroom teacher” for clarity.</p>	<ul style="list-style-type: none"> • The agency has incorporated the change suggested by the commenters into the revised draft of the proposed rule. • The agency is working with the new vendor of the statewide criterion referenced test to obtain earlier reporting of results.

<p>Three (3) commenters stated that the good cause exemption for students with disabilities in 210:15-27-2(b)(5)(A) should be amended to include Pre-K in the list of grades in which the student must have been previously retained in order to qualify for the exemption. Two (2) commenters suggested the language of (b)(5) and (6) be amended to include a student's maximum age.</p>	<ul style="list-style-type: none"> Implementing the change suggested by the commenters would require a statutory change, since 70 O.S. § 1210.508C does not currently include Pre-K students, nor does the law include a reference a maximum age of students.
<p>Four (4) commenters requested that the proposed language of 210:10-27-2(b)(5) providing an exemption from retention for students with disabilities be amended to clarify that the rule requires that a student have "received" intensive remediation for more than two years, rather than "participation" in a program of intensive remediation, as students with severe or profound disabilities may be able to "receive" intensive remediation but may not be able to actively "participate" due to the level of disability involved.</p>	<ul style="list-style-type: none"> The agency has incorporated the change suggested by the commenters into the revised draft of the proposed rule.
<p>Four (4) commenters believe that the proposed language in 210:15-27-22(b)(6) accurately reflects the statutory exemption and did not have an issue with the proposed language for this statutory exemption.</p>	<ul style="list-style-type: none"> N/A
<p>One (1) commenter encouraged the SDE to develop a form for the purpose of the required documentation set forth in 210:15-27-2(g)</p>	<ul style="list-style-type: none"> The agency will develop a recommended form for district use for this purpose.
<p>One (1) commenter asserts that an APP required under 210:15-27-2(i) should not be required for students "who are promoted based on a portfolio, or who demonstrate proficiency based on an alternate standardized reading assessment" because they have demonstrated proficiency in reading.</p>	<ul style="list-style-type: none"> The agency believes that the APP is necessary and important tool for documenting programs of reading instruction provided to students in order to prevent remediation.
<p>Thirty-three (33) commenters support the proposed definition of "intensive reading instruction" in 210:15-27-2(j) as expanded use of a three-tiered RtI model and the provision of scientific-research-based reading instruction to students for</p>	<ul style="list-style-type: none"> The agency disagrees that the definition of a program of "intensive reading instruction" forecloses students who have received "intensive remediation" from eligibility of the good cause exemption in 210:15-27-2(b)(5). The definition is intended to apply to the program of reading

<p>uninterrupted blocks of time, but requested additional language be added to the rule stating the definition will take effect “beginning with administration of the reading portion of the third grade criterion-referenced tests during the 2015-16 school year.”</p> <p>The commenters noted that because a number of school districts are not currently using an RtI model or providing a certain number of minutes of daily uninterrupted reading time, it will take school districts time to implement and students who are not currently being provided with intensive reading instruction, third graders won’t be able to meet the requirement for two years of intensive reading instruction under the good cause exemption set forth in 210:15-27-2(b)(5).</p>	<p>instruction required by 70 O.S. § 1210.508C(B)(2) to protect students from retention; the agency is leaving what constitutes a program “intensive remediation” required to be provided to students who have been remediated up to each district to define.</p>
<p>One (1) commenter expressed concern that the use of the “Response to Intervention” will cause confusion and lead districts to believe this is a way of determining a student’s eligibility for special education. One commenter noted that Tier III intervention under to the RtI model proposed in 210:15-27-2(j) is usually a "pull-out" type program for special education students, and that the IEP team decides the level of support needed for the student and the time needed for this support.</p>	<ul style="list-style-type: none"> • The agency has identified the RtI model as effective foundation for providing reading instruction to all students.
<p>Five (5) commenters objected to the time requirements for uninterrupted daily scientific-research based reading instruction set forth in the definition of “intensive reading instruction” under 210:10-27-2(j). One (1) commenter asserts that the proposed requirements of an additional 30-90 minutes of daily uninterrupted reading time for students identified as in need of Tier II and Tier III intensive reading instruction limits or eliminates the portion of the statute which provides that “Retained students shall be provided other strategies prescribed by the</p>	<ul style="list-style-type: none"> • 70 O.S. § 1210.508C(N)(2) states that students who have been retained should be provided intensive interventions to include “a minimum of ninety (90) minutes of daily, uninterrupted, scientific-research-based reading instruction. Retained students shall be provided other strategies prescribed by the school district, which may include, but are not limited to.....” The statute does not establish maximum limit on the amount of instructional time. • The agency believes that providing more than ninety (90) minutes of daily, uninterrupted, scientific-research-based reading instruction is necessary to prevent retention and provide

<p>school district.”</p>	<p>remediation to students who have already been retained and have been identified as in need of Tier II or Tier III remediation, and is not inconsistent with the “other strategies” required by the statute to be provided as intensive remediation after a student has been retained pursuant to 70 O.S. § 1210.508C(N)(2) of the statute.</p>
<p>Two (2) commenters asserted that the proposed rule language is discriminatory toward students with disabilities, citing the language from the good cause exemption from retention in 210:15-27-2(b)(2) and (5). One (1) of the two commenters alleges that the qualifications in 210:15-27-2(b)(5) requiring a student on an IEP to have been previously retained and have received intensive remediation for more than two (2) years “punishes students for having disabilities,” and stated “These rules mandate the retention of students who are on an IEP and are in direct conflict with the IEP’s purpose.”</p>	<ul style="list-style-type: none"> • The agency disagrees with the assertion that the retention requirements of the RSA are discriminatory toward students with disabilities. Students with disabilities are eligible for good cause exemptions from retention in accordance with 70 O.S. § 1210.508C(K) and 210:15-27-2(b) of the proposed rule. • The agency disagrees with the assertion that 210:15-27-2(b)(5) “punishes students for having disabilities,” as this language does not require retention of all students on IEPs. This section of the rule provides an exemption from retention for students on IEPs who are assessed as “unsatisfactory” in Reading; the qualifications for this exemption (one previous retention during K-2 + two years of intensive remediation in reading) are required by the statute.