

Volume 30
Number 24
September 3, 2013
Pages 2149 - 2178

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules



Mary Fallin, Governor
Larry Parman,
Secretary of State
Peggy Coe, Editor-in-Chief

THE OKLAHOMA REGISTER is an official publication of the State of Oklahoma. It is published semi-monthly on the first working day of the month and on the first working day following the 14th day of the month under the authority of 75 O.S., Sections 250 et seq. and OAC 655:10-15-1. The rules of the State of Oklahoma are codified and published in the *Oklahoma Administrative Code*.

The *Oklahoma Register* and the documents accepted for publication are **AVAILABLE FOR PUBLIC INSPECTION** at the Office of Administrative Rules pursuant to the Oklahoma Open Records Act. Copies of the *Register* are also available for public inspection at many County Clerks' offices in Oklahoma, the Jan Eric Cartwright Memorial Law Library in the State Capitol, and the following depository libraries:

Ada - East Central University, Linscheid Library

Alva - Northwestern Oklahoma State University,
J.W. Martin Library

Bartlesville - Bartlesville Public Library

Claremore - Rogers State University, Stratton Taylor Library

Clinton - Clinton Public Library

Durant - Southeastern Oklahoma State University, H.G.
Bennett Memorial Library

Edmond - University of Central Oklahoma, Chambers Library

Enid - Public Library of Enid and Garfield County

Goodwell - Oklahoma Panhandle State University

Lawton - Lawton Public Library

McAlester - McAlester Public Library

Norman - University of Oklahoma, Bizzell Memorial
Library

Oklahoma City - Metropolitan Library System

Oklahoma City - Oklahoma Department of Libraries

Stillwater - Oklahoma State University, Edmon Low
Library

Tahlequah - Northeastern State University, John
Vaughan Library

Tulsa - Tulsa City-County Library System

Tulsa - University of Tulsa, McFarlin Library

Weatherford - Southwestern Oklahoma State
University, Al Harris Library

CITE MATERIAL PUBLISHED IN THE OKLAHOMA REGISTER by the volume and the beginning page number of the document in the *Register*. For example: 30 Ok Reg 256.

SUBSCRIPTION RATES for the *Register* are \$500.00 per year for the printed issues and \$300.00 per year for the CD-ROM issues, payable in advance. When available, individual printed issues may be purchased for \$20.00 plus the cost of postage, payable in advance. Make checks payable to "Secretary of State." Send subscription requests, change of address notices, and undelivered copies to: Secretary of State, Office of Administrative Rules, 2300 N. Lincoln Boulevard, Suite 101, Oklahoma City, OK 73105.

INFORMATION ABOUT THIS PUBLICATION may be obtained by contacting the OAR by mail at Oklahoma Secretary of State, Office of Administrative Rules, 2300 North Lincoln Boulevard, Suite 101, Oklahoma City, OK 73105, by phone at (405) 521-4911, or by fax at (405) 522-3555. Information may also be obtained by visiting the OAR's office, located in Room 220, Will Rogers Building, 2401 N. Lincoln Boulevard, Oklahoma City, between 8:00 a.m. and 5:00 p.m., Monday through Friday.

This publication is issued and printed by the Secretary of State as authorized by 75 O.S., Section 255. 53 copies have been prepared and distributed at a cost of \$191.06. Copies have been deposited with the Oklahoma Department of Libraries, Publications Clearinghouse.

ISSN 0030-1728

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #13-1146]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions
210:10-1-18. Transfers [AMENDED]

AUTHORITY:

70 O.S. § 3-104; 70 O.S. § 8-104; State Department of Education

DATES:

Adoption:

June 27, 2013

Approved by Governor:

July 24, 2013

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2014, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed changes to the rule are necessary as an emergency measure pursuant to the provisions of 75 O.S. § 253(A)(1)(a) and (c). The proposed amendments are necessary to ensure compliance with the amendments to the Education Open Transfer Act resulting from HB 1422, which was signed into law by the Governor on April 22, 2013 and contained an emergency clause giving the bill immediate effect. The amendments are necessary to protect public safety of public school students by ensuring that students who have been the victims of harassment, intimidation, or bullying as defined in 70 O.S. § 24-100.3 can seek an emergency transfer to another school district.

ANALYSIS:

The proposed amendment to the rule adds a procedure whereby a student who has been the victim of harassment, intimidation, and bullying may request an emergency transfer to another school district if the sending school district was notified of the incident/incidents before the student files the application for transfer in accordance with recent amendments to the Education Open Transfer Act at 70 O.S. § 8-104 resulting from the enactment of HB 1422.

CONTACT PERSON:

Stephanie Moser Goins, (405) 521-4890

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING EMERGENCY RULES ARE
CONSIDERED PROMULGATED AND EFFECTIVE
UPON APPROVAL BY THE GOVERNOR AS SET
FORTH IN 75 O.S., SECTION 253(D):**

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-18. Transfers

(a) All district transfers shall be governed by the Oklahoma Education Open Transfer Act, 70 O.S. § 8-101.1, et seq. Transfers made for the purpose of providing a free appropriate public education (FAPE) to special education students shall be governed by 70 O.S. § 18-110 and 70 O.S. § 13-101, et seq. Transfers made for the purpose of providing gifted child educational programs shall be governed by 70 O.S. § 1210.307.

(b) The following definitions shall apply in State Department of Education rules relating to transfers:

(1) **Open Transfer-** The transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue. An open transfer may be requested and approved only during the statutory timeframe.

(2) **Emergency Transfer-** the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue which, for specific reasons, must be requested and approved outside of the statutory timeframe required for open transfers.

(3) **IEP Service Agreement-** An agreement between school districts to provide special education and related services to an eligible student with a disability solely for the purpose of providing the student a free appropriate public education (FAPE). An IEP Service Agreement is the resourcing of special education and related services to a school district that provides special education and related services to an eligible student with a disability on behalf of the resident district.

(4) **"Special Education and Related Services"-** All services required to be provided pursuant to the Individuals with Disabilities Education Act (IDEA) U.S.C. §§ 1400, et seq.

(5) **Receiving School District-** The school district in which the student is seeking to be transferred.

(6) **Resident School District-** The school district in which the parent, guardian, or person having custody of the student resides, as defined in 70 O.S. § 1-113(A)(1).

(7) **Parent-** For purposes of the Education Open Transfer Act, this includes the parent, guardian, or person having custody of the student, as defined in 70 O.S. §

Emergency Adoptions

1-113(A)(1). For purposes of IDEA, the definition of parent set forth in 34 C.F.R. § 300.30 shall supersede this rule.

(c) **Open Transfers.** Transfers to another district may be approved by the board of education of the receiving school district. If the grade a student is entitled to pursue is not offered in the district where the student resides, the transfer shall be automatically approved by the receiving school district. No student may be granted more than one (1) open transfer per school year, but may qualify for additional transfers pursuant to emergency provisions of the Education Open Transfers Act or a legal change in residence.

(1) The parent of the student must complete an application form specified by the State Board of Education. The application must be submitted to the receiving school district by April 1 of the school year preceding the school year for which the transfer is being requested.

(2) The receiving school district shall notify the resident school district that an application for transfer has been filed.

(3) The board of education of the receiving school district shall approve or deny the application no later than June 1 of the same year and notify the parents of the student in writing.

(4) The parents of the student shall confirm enrollment in writing with the receiving school district by July 1 of the same year. Failure of the parents to notify may result in the loss of the student's right to enroll in the school district for that year only. If a parent fails to notify the receiving school district that a student will be enrolling, and the receiving school district chooses to cancel the transfer, the receiving school district shall provide a written notice of the cancellation to the parent and the resident district immediately upon cancellation.

(5) Local school districts shall adopt a policy governing the transfer of students who do not reside in the school district. A receiving school board of education may refuse the transfer request of a student who does not reside in the district in accordance with the provisions of the adopted policy, but may not accept or deny a request based on statutorily prohibited factors as set forth in 70 O.S. § 8-103.1.

(6) Approval of the resident district is not required for an open transfer.

(7) Transfer requests submitted outside of the statutory time frame will not be considered timely and must meet the statutory criteria of an emergency transfer to be approved.

(d) **Emergency Transfers.** In addition to the open transfer process, students may be transferred on an emergency basis, as prescribed by statute.

(1) The parents of the student may make an application for an emergency transfer. The application for emergency transfer must be filed with the superintendent of the receiving school district.

(2) The superintendent of the receiving school district or his/her designee responsible for approving transfers may approve the emergency transfer only upon an adequate showing of emergency, and subject to approval of the State Board of Education.

(3) Only the superintendent of the receiving school district or his/her designee responsible for approving transfers may submit an application for emergency transfer to the State Board of Education for approval. The superintendent or designee of the receiving school district shall collect documentation from the student desiring to be transferred, and may be required to submit such documentation to the State Board of Education through the State Department of Education's student information system. In submitting an application for an emergency transfer to the State Board of Education, the superintendent or designee verifies that he/she has personally reviewed and approved the application and has a good faith belief that the student qualifies for an emergency transfer.

(A) If the superintendent has appointed a designee to review and approve emergency transfers, the school district shall notify the State Department of Education of the appointment.

(B) Resident district approval of an emergency transfer is only required if the emergency transfer is being conducted pursuant to 70 O.S. § 8-104(5). Emergency transfer approval requests submitted to the State Board of Education shall be reviewed by the resident district within ten (10) business days of submission. Failure of the resident district to take action to approve or deny the emergency transfer request within ten (10) business days shall result in an automatic approval.

(4) Emergency transfers shall be approved only in the following circumstances:

(A) The destruction or partial destruction of a school building;

(B) Inability of the resident district to offer the subject a student desires to pursue, if the student becomes a legal resident of the school district after February 1 of the school year immediately prior to the school year for which the student is seeking to transfer.

(C) A catastrophic medical problem of a student, which for purposes of this section shall mean an acute or chronic serious illness, disease, disorder or injury which has a permanently detrimental effect on the body's system or renders the risk unusually hazardous;

(D) Total failure of transportation facilities;

(E) With the concurrence of both the sending and receiving school districts;

(F) The unavailability of remote or on-site Internet-based instruction by course title in the district of residence for a student identified as a result of the district's intake and screening procedures as in need of drop-out recovery or alternative education services, provided such student was enrolled at any time in a public school in this state during the previous three (3) school years; ~~or~~

(G) The unavailability of a specialized deaf education program for a student who is deaf or hearing impaired. This transfer may be processed and handled as an IEP Service Agreement. Such determination

shall be made in coordination with the parents of the requesting student-; or

(H) When a student has been the victim of harassment, intimidation and bullying as defined in 70 O.S. § 24-100.3, and the receiving school district has verified that:

(i) The student has been the victim of harassment, intimidation or bullying; and

(ii) The sending school district was notified of the incident or incidents prior to the filing of the application for transfer.

(5) Obtaining an emergency transfer by submitting an application that includes false or inaccurate information, or obtaining an emergency transfer on behalf of a student who remains in the resident school district may result in a reduction of a district's funding allocation based on Average Daily Attendance (ADA) and/or Average Daily Membership (ADM).

(6) If a student to whom a transfer has been granted fails to report and/or enroll in the receiving school district, the superintendent of the receiving school district shall notify the State Board of Education and the resident school district within ten (10) business days.

(7) Emergency transfers may be cancelled with the concurrence of the board of the receiving school district and the parents of the student. A school district must notify the parent in writing of the date and time for which the transfer will be considered for cancellation by the school board.

[OAR Docket #13-1146; filed 7-29-13]

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 15. CURRICULUM AND INSTRUCTION**

[OAR Docket #13-1145]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 34. Supplemental Online Course Procedures
210:15-34-1. General provisions [AMENDED]

AUTHORITY:

70 O.S. § 3-104; 70 O.S. § 1-111; State Department of Education

DATES:

Adoption:

June 27, 2013

Approved by Governor:

July 24, 2013

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2014, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed changes to the rule are necessary as an emergency measure pursuant to the provisions of 75 O.S. § 253(c) and (e). Proposed amendments

to 210:15-34-1 are necessary to ensure compliance with 70 O.S. § 1-111, as amended by SB 419, which changed the definition of what constitutes an "educationally appropriate" supplemental online course. SB 419 was approved by the Governor on May 6, 2013 and will go into effect on July 1, 2013. The amendments are also necessary to protect the public interest by ensuring school district compliance with the new definition of what constitutes an "educationally appropriate" online course for the 2013-2014 school year.

ANALYSIS:

The proposed amendment to the rule changes the definition of what constitutes an "educationally appropriate" supplemental online course.

CONTACT PERSON:

Stephanie Moser Goins, (405) 521-4890

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 34. SUPPLEMENTAL ONLINE COURSE PROCEDURES

210:15-34-1. General provisions

(a) **Purpose.** The purpose of this program is to make supplemental learning opportunities available to local school district students using online technology in a nontraditional classroom setting, (i.e., inside or outside of public school site locations). The supplemental online course enrollment options are for public school students enrolled in the district. This rule establishes policies and procedures as directed by 2011 Senate Bill 280, which amends Oklahoma Statute Title 70, Section 1-111.

(b) **General Information.** The Oklahoma Supplemental Online Course Program (hereafter referred to as OSOCP), establishes a framework for districts to offer supplementary online courses to any public student residing in Oklahoma. All OSOCP teachers shall be: 1) appropriately certified in accordance with Oklahoma Administrative Rule 210:35-21-2 to teach in the content area of the course offered, or 2) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course. All courses offered through OSOCP shall be aligned with Oklahoma's Priority Academic Student Skills (PASS) curriculum standards and/or Common Core State Standards (CCSS). Local districts have control regarding the method by which they deliver online courses to enrolled students.

(c) **Definitions.**

(1) **Supplemental online course.** An online program that allows students who are enrolled in a public school to supplement their education by enrolling part time in online courses that are educationally appropriate for the student, which are equal to the equivalent of classroom instruction time required for student attendance and participation by the district.

(2) **Educationally appropriate.** For the purposes of supplemental online courses, "educationally appropriate" means any instruction that is not substantially a repeat of a course or portion of a course that the student has successfully completed, regardless of the grade of the

Emergency Adoptions

~~student, and regardless of whether a course is similar to or identical to the instruction that is currently offered in the school district, educationally appropriate means an instructional delivery method best suited for an individual student to advance the student's academic standing toward meeting the learning expectations of the district and State graduation requirements for the student. The determination of educationally appropriate will be made at local district level.~~

[OAR Docket #13-1145; filed 7-29-13]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #13-1144]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 9. Professional Standards: Teacher Education and Certification

Part 9. Teacher Certification

210:20-9-105. Non-traditional certification in special education [NEW]

AUTHORITY:

70 O.S. § 3-104; 70 O.S. § 6-122.7; 70 O.S. § 6-187; State Department of Education

DATES:

Adoption:

June 27, 2013

Approved by Governor:

July 24, 2013

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2014, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed new rule is necessary as an emergency measure pursuant to the provisions of 75 O.S. § 253(c) and (e). The proposed new rule at 210:20-9-105 implements a new procedure for non-traditional certification of special education teachers necessary to comply with the provisions of HB 1233. HB 1233 was approved by the Governor on May 29, 2013 and becomes effective on July 1, 2013. HB 1233 was enacted to address a current shortage of special education teachers in the State of Oklahoma by creating a new non-traditional path to certification of special education teachers. The emergency rule is necessary to avoid serious prejudice to public interest because without it, teachers will be unable to benefit from the new certification procedure, and school districts would be unable to hire them until after the 2013-2014 school year.

ANALYSIS:

The new rule adds a procedure for non-traditional special education teacher certification for teachers who have completed a special "boot camp" program approved by the State Department of Education and met the requirements for non-traditional certification established in HB 1233.

CONTACT PERSON:

Stephanie Moser Goins, (405) 521-4890

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE

UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-105. Non-traditional certification in special education

(a) Provisional certificates in special education for qualified applicants. Notwithstanding any other rule in this Part, upon payment of the required processing fee for a provisional certificate set forth in 210:20-9-9, the Oklahoma State Department of Education shall issue a one-year provisional certificate to teach in the area of mild-moderate or severe-profound disabilities to any qualified applicant. An applicant will be considered "qualified" if the applicant has met the following criteria:

(1) Applicant provides a written recommendation for a certificate by a school district board of education or an accredited institution of higher education;

(2) Applicant has satisfactorily completed a one-hundred fifty (150) clock hour special education program which has been approved annually by the State Department of Education Office of Special Education in accordance with the criteria approved by the State Board of Education; and

(3) A national criminal history record check of the applicant has been conducted in accordance with the requirements of 70 O.S. § 5-142, the cost of which shall be paid by the Applicant.

(b) Renewal of a provisional certificate in special education. The one-year provisional certificate issued in accordance with the provisions of (a) of this Section may be renewed for up to two (2) additional periods of one-year each upon submission of proof from an accredited institution of higher education that the individual has successfully completed at least six (6) credit hours of prescribed coursework during the previous year in either:

(1) A special education certification program in mild-moderate or severe-profound disabilities or;

(2) A master's degree program in special education.

(c) Standard certificates in special education for provisional certificate holders. Notwithstanding any other rule in this Part, upon payment of the required processing fee for a standard certificate set forth in 210:20-9-9, the Oklahoma State Department of Education shall issue a standard certificate to teach in the area of mild-moderate or severe-profound disabilities to any individual who has:

(1) Been issued one or more provisional certificates in accordance with (a) and (b) of this Section;

(2) Successfully completed the subject area competency examination as required by 70 O.S. § 6-187; and

(3) Successfully completed within three (3) years of issuance of the original provisional certificate the prescribed coursework and any required examinations of either:

- (A) An alternative route to certification program in either mild-moderate or severe-profound disabilities from an accredited institution of higher education; or
- (B) The prescribed coursework and any required examinations of a master's degree program in special education from an accredited institution of higher education.

(d) **Standard certificates in special education for individuals with a master's degree in special education.** Notwithstanding any other rule in this Part, upon payment of the required processing fee for a standard certificate set forth in 210:20-9-9, the Oklahoma State Department of Education shall issue a standard certificate to teach in the area of mild-moderate or severe-profound disabilities to any individual who has met all of the following requirements, without requiring applicant to first obtain a provisional certificate:

- (1) Applicant has successfully completed the prescribed coursework and any required examinations of a master's degree program in special education from an accredited institution of higher education;
- (2) Applicant has successfully completed the subject area competency area examination as required by 70 O.S. § 6-187; and
- (3) A national criminal history record check of the applicant has been conducted in accordance with the requirements of 70 O.S. § 5-142, the cost of which shall be paid by the Applicant.

(e) **Highly qualified status.** Teachers who hold a provisional certificate issued or renewed in accordance with (a) or (b) of this Section who do not provide direct instruction in a "core academic area" as defined by 20 U.S.C. § 7801(11) are not required to meet the requirements for "highly qualified" status. Teachers who obtain a provisional certificate who are unable to meet the requirements for obtaining "highly qualified" status may still provide indirect services in core academic areas. Examples of these indirect services include co-teaching, serving in a resource room, or provision of supplemental instruction. Teachers who hold a provisional certificate issued or renewed in accordance with (a) or (b) of this Section who do provide direct instruction in a "core academic area" must obtain highly qualified status as follows:

(1) **Core academic areas - secondary education.** Teachers who hold a provisional certificate issued or renewed in accordance with (a) or (b) of this Section who provide direct instruction in a "core academic area" as defined by 20 U.S.C. § 7801(11) cannot be considered a special education teacher who is "highly qualified" in secondary education unless they have met all of the following requirements:

- (A) Hold a bachelor's degree; and
- (B) Successfully completed the appropriate competency examinations in each core academic area taught, or, if the teacher is not new to the profession (i.e., was a certified teacher prior to December 3, 2004), demonstrated competency in each core

academic area taught through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).

(2) **Core academic areas - early childhood and elementary education.** Teachers who hold a provisional certificate issued or renewed in accordance with (a) or (b) of this Section who provide direct instruction in a "core academic area" as defined by 20 U.S.C. § 7801(11) cannot be considered a special education teacher who is "highly qualified" in early childhood or elementary education unless they have met all of the following requirements:

- (A) Obtained a standard certificate;
- (B) Hold a bachelor's degree;
- (C) Successfully completed an accredited teacher preparation program approved by the Oklahoma Commission for Teacher Preparation in accordance with the provisions of OAC 712:10-5; and
- (D) Successfully completed the appropriate competency examinations in early childhood or elementary education in accordance with the requirements set forth in 70 O.S. § 6-187, or, if the teacher is not new to the profession (i.e., was a certified teacher prior to December 3, 2004), demonstrated competency in early childhood or elementary education through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).

(3) **Core academic areas - alternate achievement standards.** Notwithstanding (1) and (2) of this subsection, teachers who hold a provisional certificate issued or renewed in accordance with (a) or (b) of this Section who provide direct instruction in a "core academic area" as defined by 20 U.S.C. § 7801(11) cannot be considered a special education teacher who is "highly qualified" to teach alternate achievement standards unless they have met all of the following requirements:

- (A) Obtained a standard certificate;
- (B) Hold a bachelor's degree;
- (C) Successfully completed an accredited teacher preparation program approved by the Oklahoma Commission for Teacher Preparation in accordance with the provisions of OAC 712:10-5; and
- (D) Successfully completed the appropriate competency examinations in early childhood or elementary education in accordance with the requirements set forth in 70 O.S. § 6-187, or, if the teacher is not new to the profession (i.e., was a certified teacher prior to December 3, 2004), demonstrated competency in early childhood or elementary education through a High, Objective, Uniform State Standard of Evaluation (HOUSSE).

(f) **Additional certification in early childhood or elementary education.** Teachers who obtain a standard certificate under (c) of this Section may add a certification in early childhood or elementary education upon successful completion of:

- (1) An accredited teacher preparation program approved by the Oklahoma Commission for Teacher Preparation in accordance with the provisions of OAC 712:10-5; and

Emergency Adoptions

(2) The appropriate competency examinations in early childhood or elementary education in accordance with the requirements set forth in 70 O.S. § 6-187.

[OAR Docket #13-1144; filed 7-29-13]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION

[OAR Docket #13-1143]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Transportation

210:30-5-8. School bus driver certification [NEW]

AUTHORITY:

70 O.S. § 3-104; 70 O.S. § 9-118; 47 O.S. § 15-109; State Department of Education

DATES:

Adoption:

June 27, 2013

Approved by Governor:

July 24, 2013

Effective:

Immediately upon Governor's approval

Expiration:

Effective through September 14, 2014, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The proposed new rule is necessary as an emergency measure pursuant to the provisions of 75 O.S. § 253(a), (c), and (e). The rule is necessary to protect the public safety of public school children who rely upon public school transportation to travel to and from school. 47 O.S. § 15-109 requires the State Board of Education to adopt and enforce regulations to govern the design and operation of all school buses used for the transportation of public school children. The statute also requires adopted regulations to be incorporated into school bus driver contracts. 70 O.S. § 3-104(6) grants the State Board of Education with the authority to formulate rules governing the issuance and revocation of certificates of school bus drivers.

In 2013, the State Board of Education amended 210:30-5-1, which contained the procedure for school bus driver certification; the amended version of the proposed rules removed the language in 210:30-5-1(g) pertaining to school bus driver certification and proposed that the certification language be made a new separate rule at 210:30-5-8. Although the amended language removing the school bus driver certification procedure language from 210:30-5-1(g) was approved, the previous proposed permanent school bus driver certification rule at 210:30-5-8 was disapproved by the Governor on April 18, 2013; consequently, the State Department of Education currently lacks a rule governing procedures for school bus driver certification.

The new rule is also necessary to ensure compliance with the Americans with Disabilities Act by creating a procedure whereby school bus drivers who have monocular vision conditions or drivers with diabetes who are dependent upon insulin can demonstrate their ability to safely transport public school children in school buses.

ANALYSIS:

The new rule at 210:30-5-8 establishes the qualifications and procedures for certification of school bus drivers who contract with school districts. The rule also clarifies what specific requirements school bus drivers must meet to obtain a school bus driver certificate from the State Department of Education must meet once they have met the more general requirements to obtain a commercial motor vehicle license established from the State Department of Public Safety. For example, DPS rule at OAC 595:11-3-5(a) regarding driver's

licensing vision standards specifically states that "The vision standards set forth in this section and OAC 595:10-5-7 are not intended to supercede any other....state standard or rule for operators of school buses [see OAC 210:35-5 regarding school bus operator rules]."

In addition, the rule adds a procedure whereby drivers with monocular vision conditions and insulin-dependent drivers with diabetes can qualify to obtain a school bus driver certificate. The rule also adds a requirement that applicants for a school bus driver certificate notify the SDE of any disqualifying offenses during the pendency of the application.

CONTACT PERSON:

Stephanie Moser Goins, (405) 521-4890

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D):

SUBCHAPTER 5. TRANSPORTATION

210:30-5-8. School bus driver certification

(a) General criteria.

(1) Pursuant to the authority granted to the State Board of Education in 70 O.S. § 3-104(6) to regulate school bus drivers and 47 O.S. § 15-109, no board of education shall have authority to enter into any written contract with a school bus driver who does not hold a valid Oklahoma School Bus Driver's Certificate issued by the State Board of Education authorizing said bus driver to operate a school bus within the State of Oklahoma.

(2) In order to obtain and maintain a standard Oklahoma School Bus Driver's Certificate, the State Board of Education requires all public school bus drivers to:

(A) Successfully complete a school bus driver training course approved by the State Department of Education;

(B) Possess and maintain a valid Commercial Driver's License (CDL) issued by the Oklahoma State Department of Public Safety, which includes the following endorsements required by 70 O.S. § 6-110.1 in accordance with the qualifications determined by the Department of Public Safety:

(i) A school bus "S" endorsement; and

(ii) For drivers of vehicles designed to transport sixteen (16) or more passengers (including the driver), a passenger "P" endorsement; and

(C) Comply with all other health and safety qualifications set forth in this Section.

(3) The State Board of Education recognizes the substantial public interest in safe school bus transportation of children. Therefore, in addition to meeting the vision standards required to obtain a CDL from the Department of Public Safety, in order to obtain a standard or emergency Oklahoma School Bus Driver's Certificate, all school bus drivers must have:

(A) A visual acuity of not less than twenty-fourty (20/40) (Snellen) in each eye with or without corrective lenses; and

(B) Not less than twenty-four (20/40) (Snellen) with both eyes with or without corrective lenses; and

(C) A minimum field of vision of 70 degrees horizontal median vision in each eye.

(4) The use of tobacco by a school bus driver is not permitted during the operation of the bus while hauling pupils. The use of any intoxicating or non-intoxicating alcoholic beverage by the driver eight (8) hours prior to or during the operation of a school bus is strictly prohibited. The use of any controlled dangerous substance seventy-two (72) hours prior to or during the operation of a school bus is strictly prohibited. The possession of any controlled dangerous substance on a school bus is strictly prohibited.

(5) All school bus drivers shall have an annual health certificate signed by a physician licensed by this state filed in the office of the chief administrative officer of the local school district or designee of the chief administrative officer attesting that such physician has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination is in compliance with the physical qualifications and examination requirements at Subpart E of the Federal Motor Carrier Safety Regulations, 49 CFR §§ 391.41 to 391.50.

(6) Substitute and activity school bus drivers shall meet all the requirements prescribed for regular bus drivers.

(7) At a minimum, the chief administrative officer of the local school district or designee of the chief administrative officer shall conduct an annual driving record check of all school bus drivers, including substitute and activity drivers. The Oklahoma State Department of Education shall be immediately notified of any violation(s) that make a school bus driver ineligible to hold an Oklahoma School Bus Driver's Certificate.

(8) The State Board of Education shall revoke the bus driver's certificate of any holder who fails to comply with the provisions of this Section.

(9) School districts who fail to comply with the provisions of this section shall be subject to penalty pursuant to 210:30-5-2.

(b) School bus driver certificate requirements.

(1) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that each applicant submitted for Standard Five-Year Certification:

(A) Is at least 18 years of age;

(B) Has successfully completed a special school bus drivers' course approved by the State Department of Education;

(C) Holds a valid Commercial Drivers license (CDL) appropriate for the type of vehicle driven with the proper endorsements required by the Department of Public Safety;

(D) Has not been convicted of a felony, or pled guilty or nolo contendere to a felony during the last ten years; and

(E) Has passed a driving record check, and no certificate shall be issued to any person who, within the preceding three (3) years:

(i) Has had a license suspended or revoked, canceled or withdrawn pursuant to the Implied Consent Laws at 47 O.S. § 751 et seq.;

(ii) Has a conviction for a violation of 47 O.S. § 11-902 which includes driving, operating or being in actual physical control of a vehicle while under the influence of alcohol or any intoxicating drug;

(iii) Has been convicted or plead guilty to a violation of 47 O.S. § 761, operating a motor vehicle while impaired by consumption of alcohol;

(iv) Has been convicted of any municipal violation of driving under the influence of alcohol or drugs or operating a motor vehicle while impaired or being in actual physical control of a motor vehicle while impaired; or

(v) Has had four (4) or more traffic violations (excluding parking violations).

(2) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant for an Emergency One-Year School Bus Driver Certificate (Not Renewable):

(A) Is at least 18 years of age;

(B) Holds a valid Commercial Drivers License with the proper endorsements required by the Department of Public Safety; and

(C) Has passed a driving record check and meets the requirements set forth in (1)(D)-(E) of this subsection.

(3) Requirements for Renewal of the Standard Five-Year Certificate include:

(A) Every five (5) years, each driver shall have successfully completed four (4) hours per year of in-service training approved by the State Department of Education;

(B) The chief administrative officer of the local school district or designee of the chief administrative officer shall certify to the State Department of Education that the applicant meets all requirements for standard certification; [47 O.S. § 15-109]

(C) Each applicant has a health certificate on file signed by a licensed physician and meets all vision requirements;

(D) Each applicant has not been convicted or pled guilty to a felony in the last ten (10) years;

(E) The applicant's driving record has been checked and meets all other State Board of Education requirements for certification; and

(F) Notwithstanding the provisions of this paragraph, in order to renew any school bus driver certificate which has been expired for more than one year, a driver must successfully complete a renewal course

Emergency Adoptions

approved by the State Department of Education. Such a course must, at a minimum, include topics on:

- (i) Railroad crossings;
- (ii) Emergency evacuation procedures;
- (iii) Mirror placement;
- (iv) Pick-up and drop-off procedures;
- (v) Sound driving practices; and
- (vi) Accident procedures.

(4) During the period that the application for issuance of a new or renewed school bus driver certificate is pending, applicants must immediately notify the State Department of Education Transportation Section of any arrest, citation, or conviction of any disqualifying offense set forth in (1)(E) of this subsection; any moving violation; or any involvement in a traffic accident.

(c) Certification of drivers with a monocular vision condition.

(1) Individuals who wish to obtain an Oklahoma School Bus Driver's Certificate and meet all other requirements of this Section, but cannot meet the vision requirements in (a)(3) of this Section in both eyes due to the presence of a monocular vision condition, may obtain an exemption from the vision requirements of (a)(3) of this Section by providing evidence showing that Applicant is exempt from the requirements of 49 C.F.R. § 391.41, has fully adapted to the monocular vision condition, and is capable of safely operating a school bus for the purpose of transporting school children. Such evidence must consist of documentation for each one of the following:

(A) Documentation establishing that Applicant's vision condition has been present and unchanged for three years or more prior to the application for an exemption from the vision requirements of (a)(3) of this Section;

(B) Documentation establishing that Applicant has experience in safely operating a Commercial Motor Vehicle with the monocular vision condition within the three (3) year period immediately preceding the date of the application for an exemption from the vision requirements of (a)(3) of this Section; and

(C) One of the following:

(i) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the vision requirements of 49 C.F.R. § 391.41; or

(ii) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the vision requirements of 49 C.F.R. § 391.41.

(2) Documentation of the evidence required by (1)(A) of this subsection shall consist of documentation for each one of the following:

(A) Applicant must have been examined by a licensed ophthalmologist or optometrist within sixty (60) days prior to obtaining the Commercial Driver License and within one year of applying for the State

Department of Education monocular vision exemption. Applicant must provide the State Department of Education a copy of the official Oklahoma State Department of Public Safety vision form documenting the examination. In addition, if not included on the official Oklahoma State Department of Public Safety vision form, Applicant must submit additional documentation, in which a licensed ophthalmologist or optometrist identifies and describes:

(i) The nature of the vision deficiency, including how long the individual has had the deficiency;

(ii) The date of the examination;

(iii) Whether the applicant's vision is stable;

(iv) The visual acuity of each eye, corrected and uncorrected;

(v) The field of vision of each eye, including central and peripheral fields, testing to at least 120 in the horizontal. (Formal perimetry is required. The doctor must submit the formal perimetry test for each eye and interpret the results in degrees of field of vision.);

(vi) Whether the applicant has the ability to recognize the colors of traffic control signals and devices showing red, green, and amber; and

(vii) The ophthalmologist/optometrist's medical opinion as to whether the individual has sufficient vision to perform the driving tasks required to operate a school bus.

(3) Documentation of the evidence required by (1)(B) of this subsection shall consist of each of the following:

(A) Applicant must provide documentation of experience in operating a commercial motor vehicle (as defined by 47 O.S. §§ 1-107.1, 1-107.2, or 1-107.3) while the Applicant has a monocular vision condition for the three (3) year period immediately preceding the date of this application which includes the following information:

(i) For any applicant employed as a driver of a commercial motor vehicle, the DOT # or ICC# of Applicant's employer(s); for any applicant with driving experience as an independent motor carrier, a list of names, addresses, and phone numbers of customers for whom Applicant performed transportation services through the operation of a commercial motor vehicle on public highways;

(ii) A list of all dates (month/date/year) during the three (3) year period for which Applicant performed services driving and/or operating a commercial motor vehicle, and the number of hours driven per week; and

(iii) A list of all types of commercial motor vehicles operated by Applicant and gross vehicle weight rating ("GVWR") of each vehicle operated by Applicant;

(B) Acceptable forms of required documentation of the Applicant's driving experience described in (3) of this paragraph may include either:

- (i) A signed, notarized statement from the individual's present or past employer(s) on company letterhead; or
 - (ii) An affidavit by the Applicant.
 - (C) Applicant shall provide the State Department of Education with a Motor Vehicle Report demonstrating that applicant's driving record during the three (3) year period prior to the date the application is filed:
 - (i) Contains no suspensions or revocations of Applicant's driver's license for the operation of any motor vehicle (including Applicant's personal vehicle);
 - (ii) Contains no record of involvement in an accident involving negligence attributable to the monocular vision condition;
 - (iii) Contains no record of a serious traffic offense attributable to the monocular vision condition (e.g., erratic unsafe lane changes, following too closely, etc.)
 - (4) Individuals who receive the vision exemption to drive a bus for an accredited school in Oklahoma must submit to their employer a copy of the documentation required by (1)(C) of this subsection.
- (d) **Certification of drivers with insulin-dependent diabetes mellitus.**
 - (1) Any person with diabetes mellitus requiring insulin by injection shall not be eligible for a school bus certificate unless the individual meets all other requirements of (a) and (b) of this Section, and the individual possesses and maintains either:
 - (A) An authority letter issued by the Oklahoma State Department of Public Safety (DPS) qualifying the individual as exempt from the physical requirements of 49 C.F.R. § 391.41; or
 - (B) A letter or waiver issued by the Federal Motor Carrier Safety Administration (FMCSA) documenting that the applicant has received a waiver from the physical requirements of 49 C.F.R. § 391.41.
 - (2) Upon hire, exempted individuals will be required to agree to and comply with the following conditions:
 - (A) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving a school bus or on duty by using a portable glucose monitoring device with a computerized memory, and take corrective action if necessary;
 - (B) The individual shall maintain blood glucose logs, three months from the current date (or the date that insulin use began, whichever is shorter).
 - (i) If the employing district has cause to require a medical evaluation as authorized by (5) of this subsection, logs maintained pursuant to this subsection must be provided to the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) treating the individual.
 - (ii) Blood glucose logs must be created by an electronic blood glucose meter that stores every reading, records date and time of reading, and from which data can be downloaded and printed.
- (3) Superintendents or their designees who hire individuals who hold a diabetes exemption certification must keep on file in a separate medical record:
 - (A) A current copy of the diabetes exemption certificate of the individual;
 - (B) The contact information of the board certified medical doctor (MD) or doctor of osteopathy (DO) who is treating the individual;
 - (C) Record of the annual medical certification issued by the board certified medical doctor (MD) or doctor of osteopathy (DO) pursuant to (1)(B) of this subsection; and
 - (D) Copies of any medical certifications obtained pursuant to (5) of this subsection.
- (4) Superintendents or their designees shall not allow an individual holding a diabetes exemption certificate to drive if their blood glucose level is outside of a range of 100 mg/dl to 400 mg/dl one (1) hour prior to driving. If the individual's blood glucose level is below 100 mg/dl or above 400 mg/dl, then the driver cannot operate a school bus or transport school children as an employee of any school district until the blood glucose measure is within the target range.
- (5) In the event an individual holding a diabetes exemption is involved in an incident directly caused by the individual's diabetic condition, the individual cannot operate a school bus or transport school children as an employee of any school district until the individual has been certified in writing as medically able to safely resume work related duties by the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) by whom they are being treated.

[OAR Docket #13-1143; filed 7-29-13]