

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES
SUBCHAPTER 13. STUDENT ASSESSMENT AND SCHOOL ACCOUNTABILITY

210:10-13-23. Emergency exemptions from assessments required by the Oklahoma School Testing Program

(a) **Purpose.** Any public school district or public charter school may request an exemption from the administration of one or more statewide criterion-referenced tests and/or end-of-instruction exams administered pursuant to the provisions of the Oklahoma School Testing Program Act at 70 O.S. § 1210.508 et seq., for any of its enrolled students who are unable to participate in the assessment or a make-up assessment at any time during the testing window due to a documented significant medical emergency. The procedures set forth in (d) of this Section shall govern submission, processing, and evaluation of all requests for emergency exemptions submitted to the State Department of Education.

(b) **Application.** The provisions of this Section are not applicable to assessment determinations made by local school district staff, school administrators, or teachers pursuant to federal guidelines and state administrative rules. The requirements of this Section shall not interfere with the processes and procedures utilized by local school districts and charter schools to refrain from testing up to five percent (5%) of enrolled students. Such decisions shall continue to be made in accordance with local district policies and without review or approval of the State Department of Education.

(c) **Definitions.** The following words and terms, when used in this Section, shall have the following meanings:

(1) **"Immediate family member"** shall mean a parent, legal guardian, sibling, or child of the student for whom the exemption is requested.

(2) **"Significant medical emergency"** shall mean the debilitating onset of a severe or life-threatening physical or mental illness, infection, injury, disease and/or emotional trauma that meets all of the following criteria:

(A) The condition arises from an accident, disaster, crisis, or other exigent circumstances beyond the control of the student, the parents/legal guardians of the student, and the student's school or school district;

(B) The condition affects the student so severely as to incapacitate the student from participation in the assessment and corresponding make-up assessment at any time during the testing window;

(C) The condition affects the student so severely as to prevent the enrolled student from receiving instruction at school, at home, or through internet or online instruction;

(D) The student's incapacity to participate cannot be remedied with state-approved accommodations provided to the student by the school district as necessary to ensure equitable access to the assessment during the testing window; and

(E) The school or school district has been provided with written documentation of the condition that is verified in writing by a physician licensed to practice in the State of Oklahoma, or licensed in another jurisdiction and certified by an American Board of Medical Specialties (ABMS) Member Board or an American Board of Physician Specialties (ABPS) Member Board. A copy of the documentation verifying the student's condition shall be filed in the student's educational record.

(F) The term "significant medical emergency" shall not include:

- (i) Short term, or minor illnesses or injuries;
 - (ii) Pregnancy (unless complications of a pregnancy otherwise meet the definition of a "significant medical emergency" herein);
 - (iii) Placement of the student in a juvenile detention or correctional facility; or
 - (iv) Refusal of a student or parent to participate in the assessment.
 - (v) The occurrence of one of the conditions listed in (F) shall not disqualify a student who is eligible for an emergency medical exemption on a different basis.
- (G) Examples of situations that could be considered a "significant medical emergency" may include, but shall not be limited to conditions in which:
- (i) The student is in the final stages of a terminal disease or degenerative illness, or the student has been placed in hospice care;
 - (ii) The student has been admitted to a hospital, infirmary, or other health care or treatment facility for the duration of the testing window that prohibits the student's secure access to the examination;
 - (iii) The student is comatose for the duration of the testing window;
 - (iv) The student has a serious chronic medical condition that will be worsened or intensified by external circumstances, and the student's physician determines that participation in the assessment could result in a significant medical emergency;
 - (v) The student has sustained serious mental or physical injury as a result of an accident, unintentional injury, or other catastrophic event such as:
 - (I) A transportation accident;
 - (II) A natural disaster or other event resulting in a declared state of emergency;
 - (III) An act of violence, including but not limited to: acts of physical assault, rape, kidnapping, homicide, torture, or terrorism;
 - (IV) Drowning;
 - (V) Poisoning, fall, or traumatic brain injury;
 - (VI) Fire or explosion in the student's home when the student was present;
 - (VII) Death or life-threatening injuries to, or significant medical emergency of, an immediate family member resulting from one of the examples in subparagraph (G).

(d) **Procedure.** Requests for emergency exemptions shall be submitted and evaluated in accordance with the following provisions:

- (1) All requests for emergency exemptions shall be electronically submitted by the school district or charter school through the State Department of Education testing application no later than 5:00 p.m. of the last day of the testing window.
- (2) The request for emergency exemption shall include all of the following information:
 - (A) A brief description of the significant medical emergency for which the exemption is requested;
 - (B) A brief explanation of why the emergency prevents the student's participation in the assessment;
 - (C) The date of the onset of the emergency;
 - (D) The expected or estimated duration/recovery period of the significant medical emergency;
 - (E) The number of days of instruction the student has missed as a result of the emergency and the number of any additional days of instruction the student is estimated or anticipated to miss after the date of submission of the exemption; and

(F) A copy of the written documentation provided by the student's physician pursuant to (c)(2)(E) of this Section.

(3) The request shall be supplemented by copies of any documentation subsequently requested by the State Department of Education necessary to document the information required by this paragraph and the definitions of "significant medical emergency" and "immediate family member" set forth in (c) of this Section.

(4) If a complete request for an emergency exemption is received during the applicable testing window, the State Department of Education will issue an approval or denial of the request and notify the school district or charter school of the determination within five (5) business days. The school district or charter school will receive notification through the Department's electronic testing application system. Incomplete requests will not be processed until all documentation required by (c)(2) of this Section has been submitted to the State Department of Education.

(5) Requests for emergency exemptions submitted to the State Department of Education that fall outside of the provisions of 70 O.S. § 1210.508-2 and this Section may be referred to the appropriate agency and/or division within the Department and administratively closed. If the request for an emergency exemption is received during the applicable testing window, the Department will notify the school district or charter school through the electronic testing application system within five (5) business days that the request falls outside of the provisions of this Section.

(e) **Exemptions for students with disabilities.** All students receiving special education services and/or state-approved assessment accommodations must have a written IEP and/or Section 504 plan that documents how the student will participate in assessments administered pursuant to the OSTP. The existence of an IEP and/or a Section 504 plan, or the homebound status of the student, shall not be a basis for granting an exemption pursuant to this section. To qualify for an exemption, a homebound student or a student on an IEP or Section 504 plan must experience a significant medical emergency as defined in (c)(2)(A) through (c)(2)(E).

(f) **Federal and state reporting.** Any student who has received an exemption from one or more examinations in accordance with the provisions of this Section shall not be included in the calculation of the participation rate of the school and/or school district in the assessments mandated by federal and state law.

(g) **Duration.** Any request for an exemption from the administration of one or more statewide criterion-referenced tests and/or end-of-instruction tests granted pursuant to the procedures set forth in this Section shall be valid only for the current testing window in which the request was submitted.

(h) **Appeal of a denial of a medical exemption.** A request for a medical exemption that has been denied by the State Department of Education for failure to meet the criteria for "significant medical emergency" outlined in (c)(2) of this Section may be appealed to the State Board of Education in accordance with the following procedures:

(1) **Petition for appeal.** The school district or charter school in which the student is enrolled may appeal the Department's denial of a medical exemption to the State Board of Education. The parent or legal guardian of a student, an individual who has been issued letters of guardianship of the person of a student pursuant to the Oklahoma Guardianship and Conservatorship Act, or an adult who has assumed permanent care and custody of a student in accordance with local district policies and applicable state law must grant permission to the school district or charter school to file a petition for appeal to the State Board of

Education. Parental consent shall be provided in writing and shall be documented by the requesting school district or charter school.

(2) **Filing requirements.** A petition for appeal must comply with the following requirements:

(A) **Time of filing.** The petition for appeal must be submitted in writing to the Secretary of the State Board of Education within ten (10) business days after the date the school district receives notice of the Department's denial of the medical exemption.

(B) **Method of filing.** Petitions for appeal may be submitted to the Secretary of the State Board of Education in person or by mail. A petition submitted by mail will be accepted as timely if the mailing envelope contains a postmark dated on or before the date of the filing deadline.

(C) **Verification of a petition for appeal.** The petition for appeal must be signed by the school Superintendent or the school Superintendent's designee, or charter school administrator or designee, for the purpose of verifying that, to the best of the individual's knowledge, the information submitted in the appeal is accurate and correct.

(D) **Acceptance of a petition for filing.** Upon receipt of the petition for appeal, the Secretary of the Board of Education shall file the petition and obtain copies of all records and information submitted by the school district or charter school to the State Department of Education pursuant to (c) of this Section. Copies of agency records and additional documentation submitted in the petition for appeal shall be provided to members of the State Board of Education for consideration. Only timely filed petitions for appeal shall be brought to the State Board of Education for consideration. The Board shall take action on the petition no later than twenty (20) calendar days after the date of the receipt of a timely filed petition.

(3) **Review of petitions.** Because the privacy of individual student data is protected by the Family Educational Rights and Privacy Act (FERPA) and Oklahoma's Student Data Accessibility, Transparency, and Accountability Act, the State Board of Education shall review petitions for appeal in executive session as authorized by 25 O.S. § 307 (A)(7). The State Board of Education shall evaluate each petition for appeal based on the following criteria to determine whether a "significant medical emergency" exists as contended by the appealing school district or charter school:

(A) The applicability of the criteria outlined in (c)(2) of this section related to the determination of a "significant medical emergency";

(B) The severity of the exigent circumstances giving rise to the student's condition;

(C) The extent of the student's incapacitation;

(D) The projected efficacy of allowable testing accommodations; or

(E) The existence of newly discovered documentation or newly available information that significantly and substantively reflects on the student's mental and/or physical state of being.

(4) **Actions on a petition for appeal.** After review of the petition for appeal in accordance with (h)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the information provided in the written appeal.

(A) The Board shall consider each petition for appeal on an individual basis and shall issue an approval or denial of the request for an emergency exemption.

(B) The Secretary of the Board shall notify the school district or charter school and the State Department of Education in writing of the Board's determination.

(C) The State Department of Education shall document each determination in the testing application to maintain an accurate agency record of each request for an emergency exemption.

(D) Requests for student medical exemptions granted by the State Board of Education will be processed pursuant to (f) and (g) of this Section. Students denied medical exemptions by the State Board of Education will be included in the calculation of the participation rate of the school and/or school district in the assessments mandated by federal and state law.

(i) Effect of public health emergencies or other declared emergencies. In the event of an emergency declared by a federal or state government entity that impacts the operation of public schools in Oklahoma, or upon an action taken by the State Board of Education declaring such an emergency, the State Department of Education shall be authorized to approve emergency medical exemptions from OSTP assessment requirements for all students whose ability to test is compromised by the emergency conditions. If a state of emergency suspends, interrupts, or otherwise substantially affects public school operations during the state testing window, the State Department of Education shall be authorized to approve general medical exemptions from OSTP assessment requirements for all affected students.