

March 3, 2022

## **210:15-27-4. Individualized Program of Reading Instruction [AMENDED]**

The Cooperative Council for Oklahoma School Administration (CCOSA) submits the following comments regarding Rule 210:15-27-4 (the “Rule”).

Section (a) of the proposed amended Rule provides as follows:

(a) Eligible students. ~~Each~~ Students enrolled in kindergarten, first, second, and third grade in the public schools of Oklahoma shall be assessed at the beginning, middle, and end of each school year using a screening instrument approved by the State Board of Education. This includes all students except the following: (1) Students assessed through the Oklahoma Alternative Assessment Program (OAAP); and (2) Student with an Individualized Education Program (IEP) in the primary disability category of visual impairment or hearing impairment may be exempt as determined by the student’s IEP team.

The Rule is meant to implement Title 70, Section 1210.508C of the Oklahoma Statutes (the “Statute”), which is part of the Reading Sufficiency Act, and which sets out state law concerning assessments for reading skills.

Section A of the Statute provides as follows:

A. 1. **Each student enrolled in kindergarten in a public school in this state shall be screened at the beginning, middle and end of each school year for reading skills** including, but not limited to, phonemic awareness, letter recognition, and oral language skills as identified in the subject matter standards adopted by the State Board of Education. A screening instrument approved by the State Board shall be utilized for the purposes of this section. *Okla. Stat. tit. 70, § 1210.508C(A) (emphasis added).*

Section B of the Statute similarly provides:

B. **Each student enrolled in first, second and third grade of the public schools of this state shall be assessed at the beginning, middle and end of each school year using a screening instrument approved by the State Board of Education for the acquisition of reading skills** including, but not limited to, phonemic awareness, phonics, reading fluency, vocabulary, and comprehension. *Id. § 1210.508C(B) (emphasis added).*



The Statute does not exempt any kindergarten, first, second, or third grade student from the reading assessment.

Under Oklahoma law, the purpose of any agency's rulemaking authority is to facilitate the administration of legislative policy. *Okla. Stat. tit. 75, § 250.2(B)*. The proposed change to section (a) of the Rule exceeds the administration of Oklahoma legislative policy as reflected in the Statute.

CCOSA supports the two proposed exceptions to assessment included in the Rule. Nevertheless, it is the role and obligation of the Legislature to make law, and it is beyond the power and authority of OSDE to make exceptions to the Statute that the Legislature did not see fit to make. The Statute does authorize OSDE to adopt rules concerning certain specified areas of the Statute. It does not grant OSDE the authority to limit the students subject to screening/assessment.


OSDE seems to have anticipated this issue when it included the following language in the accompanying Rule Impact Statement:

Regarding recommended changes for Eligible Students, there are two groups of students for whom screening is not beneficial when considering the intent of the legislation and best practice for screening. Both groups are identified under IDEA. In order to provide consistency, these two groups are defined in the rules as exempt from screening requirements. This change ensures alignment with mirrored guidance for dyslexia screening and students receiving special education services. Rule Impact Statement (emphasis added)

Respectfully, that reasoning does not overcome the plain language of the Statute or the respective powers of the Legislature and the agency. The Oklahoma Legislature is less than a month into the 2022 session. It could easily make this change. It is simply beyond OSDE's authority to adopt the exceptions included in section (a) of the Rule. That is true whether one likes or dislikes the proposed change, and it is a fundamental tenet of the separation of powers that all agencies must follow.

Thank you for your consideration.

**Cooperative Council for Oklahoma School Administration**

By 

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