



JOY HOFMEISTER

STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

MEMORANDUM

TO: The Honorable Members of the State Board of Education
FROM: Joy Hofmeister
DATE: December 17, 2020
SUBJECT: Administrative Rule Promulgation

The State Board of Education will be taking action at the December meeting on the following proposed rule changes pursuant to the *Oklahoma Administrative Procedures Act*, 75 O.S. § 250 *et seq.* These four rules are currently in place through emergency rulemaking provisions, following approval by the State Board and the Governor earlier this year, and are now proposed for permanent adoption.

- (1) 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 [AMENDED]

The rule that governs Oklahoma School Testing Program (OSTP) emergency medical exemptions for students is being amended to provide specific guidance for a large-scale public health emergency such as the current COVID-19 outbreak. The added content provides:

"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 assessments for all affected students."

- (2) Title 210. State Department of Education
Chapter 10. School Administration and Instructional Services
Subchapter 13. Student Assessment and School Accountability
210:10-13-25. Determination of the chronic absenteeism indicator [NEW]

Pursuant to 70 O.S. § 1210.545, this rule grants school districts the authority to establish local policies for determining whether certain student absences are eligible for medical exemptions from the chronic absenteeism indicator used in the school accountability system. Specific to public health emergencies and similar large-scale emergencies, the rule provides:

"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 Oklahoma school accountability system shall make any appropriate accommodations authorized under federal law to mitigate the effects of the emergency on school accountability determinations for the affected school year(s). Student absences related to a state of emergency shall not be included in the calculation of the chronic absenteeism indicator. If there is any period of time during a state of emergency when public school operations are suspended, interrupted, or otherwise affected by the emergency conditions, the affected dates shall be excluded from the calculation of the chronic absenteeism indicator."

- (3) Title 210. State Department of Education
Chapter 20. Staff
Subchapter 9. Professional Standards: Teacher Education and Certification
210:20-9-94. Period of validity of certificates [AMENDED]

This amendment adds new content to the rule that establishes the validity period of teaching certificates. Historically, the rule placed a limit of two (2) total years on the authorization for an individual to be issued an emergency teaching certificate. Consistent with legislative amendments to 70 O.S. § 6-187, the rule content proposed for permanent adoption authorizes the State Board of Education to issue an emergency certificate to a qualifying applicant for a third or subsequent year. Emergency certified individuals and their employing school districts must meet the qualifications listed in the statute and rule to be eligible for an emergency certificate after they have already held emergency certification for two (2) or more years.

- (4) Title 210. State Department of Education
Chapter 35. Standards for Accreditation of Elementary, Middle Level,
Secondary, and Career and Technology Schools
Subchapter 21. Alternative Instructional Delivery Systems
210:35-21-2. Alternative instructional delivery systems [AMENDED]

These amendments update the administrative rule addressing alternative instructional delivery systems, including virtual instruction provided by means of the internet. The added content requires public school districts and charter schools to adopt policies for "distance learning plans", providing for how instruction will be offered to students outside a traditional classroom setting in the event of an emergency that closes or significantly impacts school campuses. Under the rule, public school distance learning plans must ensure equitable access to instruction for all students regardless of their resources, and distance learning policies must address issues such as attendance and course completion.

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.

RULE IMPACT STATEMENT 210:10-13-23

"Emergency exemptions from assessments required by the Oklahoma School Testing Program" [AMENDED]

a. **What is the purpose of the proposed rule change?**

This is the proposed permanent version of an emergency rule currently in effect. The rule that governs Oklahoma School Testing Program (OSTP) emergency medical exemptions for students is being amended to provide specific guidance for a large-scale public health emergency such as the current COVID-19 outbreak. The added content provides: "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 assessments for all affected students."

b. **What classes of persons will be affected by the proposed rule change and what classes of persons will bear the costs of the proposed rule change?**

The rule change will affect students impacted by a state of emergency such as a public health crisis, and in case of systemic closures due to such an emergency, all students affected by such closures.

c. **What classes of persons will benefit from the proposed rule change?**

The rule change will benefit all students impacted by a state of emergency such as a public health crisis, and in case of systemic closures, all students affected by such closures.

d. **What is the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions?**

The agency does not anticipate any economic impact upon political subdivisions or affected classes as a result of implementation of the proposed rule change at this time.

e. **What is the probable cost to the agency to implement and enforce the proposed rule change?**

The agency does not anticipate any cost to the agency to implement and enforce as a result of the proposed change in the rule at this time. Additional record keeping, if any, will be performed by existing staff.

- f. **What is the economic impact on any political subdivision to implement the proposed rule change?**

The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule change at this time.

- g. **Will implementing the rule change have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act?**

The agency does not anticipate any adverse economic impact on small business as a result of the proposed rule change at this time.

- h. **Are there any other methods which are less costly, nonregulatory, or less intrusive to achieve the purpose of the proposed rule change?**

No.

- i. **Will the rule change impact the public health, safety, and environment, and is the change designed to reduce significant risks to the public health, safety, and environment? If so, explain nature of risk and to what extent the proposed rule change will reduce the risk.**

The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rule at this time.

- j. **What detrimental effect will there be on the public health, safety, and environment if the rule change is not implemented?**

The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rule at this time.

- k. **Date Prepared:** October 20, 2020

PUBLIC COMMENT SUMMARY

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

Summary of Public Comment	Agency Response
<p>"I am in favor of permanent adoption of 210:10-13-23, Emergency exemptions from assessments required by the Oklahoma School Testing Program. In the current environment, and in similar emergency situations, it is imperative that the State Board of Education has the ability to approve medical exemptions for all students whose ability to test is compromised during the state testing window."</p>	<ul style="list-style-type: none">▪ The OSDE agrees it is appropriate for emergency exemptions to potentially apply to all students whose ability to test is compromised during the state testing window by an emergency situation beyond student or district control, such as the current COVID pandemic. Permanent adoption of the provisions will allow for such emergency exemptions to be available following the automatic expiration of the emergency rule in September 2021.

STATUTORY AUTHORITY FOR 210:10-13-23

Oklahoma Statutes

Title 70. Schools

Chapter 22 - Testing and Assessment

Oklahoma School Testing Program Act

Section 1210.508-2 - Exceptional Emergency Circumstances

The State Board of Education shall promulgate rules providing for limited exemptions from the mandated tests administered pursuant to the provisions of the Oklahoma School Testing Program Act for students facing exceptional emergency circumstances which prevent the student from being assessed during the testing window. For purposes of this section, exceptional emergency circumstance shall be defined to include situations involving serious accidents or medical emergency events involving the student, a parent or guardian of the student or a sibling of the student.

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

210:10-13-25. Determination of the chronic absenteeism indicator [NEW]

(a) Purpose of the chronic absenteeism indicator. Because chronic absenteeism has been linked to lower academic performance, higher dropout rates, and diminished success after high school, Oklahoma has included chronic absenteeism as an indicator in the school accountability system adopted under the requirements of the *Every Student Succeeds Act* (ESSA). By highlighting the importance of regular school attendance to student success in school and beyond, the State of Oklahoma encourages schools to actively engage with students and their families in eliminating barriers to regular attendance, and to ensure students receive the supports needed to attend school every day.

(b) Authorization of policy establishing a medical exemption from chronic absenteeism. A public school district or charter school may establish a policy providing that student absences which are due to a significant medical condition (a severe, chronic, or life-threatening physical or mental illness, injury, or trauma) may be exempted from inclusion in the calculation of the chronic absenteeism indicator of the applicable student's school site upon determination of eligibility by a medical exemption review committee formed by the district or charter school. A chronic absenteeism medical exemption policy adopted by a public school district or charter school shall be developed in accordance with the guidelines in this Section.

(c) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Chronic absenteeism"** means absence from school at least ten percent (10%) of the time that school is in session and the student is included in membership, eighteen (18) or more days on a 180 day school calendar or ten percent (10%) or more of school days on a 1,080 hours school calendar.

(2) **"Significant medical condition"** means, for the purposes of this Section, a severe, chronic, or life-threatening physical or mental illness, infection, injury, disease, or emotional trauma.

(d) Not all excused absences qualify for medical exemption. Certain student absences are classified as "excused" under state law and/or school policies, meaning that a student is considered absent for a valid reason under law or policy and the absence may not be associated with any penalties to the student. Examples include medically documented absences, which are considered excused under 70 O.S. § 10-105(B), and absences related to the military deployment activities of a student's parent or guardian, which are excused under 70 O.S. § 510.1(V)(E). If a student is absent in relation to their own or their household's homeless status, such related absences should be excused pursuant to the federal McKinney-Vento Act so the related absences do not serve as a barrier to enrollment or retention. These and other types of absences considered under law or policy as a valid basis to be absent from school should be indicated as "excused" in a school's student information system. However, the classification of an absence as "excused" such that no penalties accrue to a student in relation to the absence does not automatically qualify the absence for a medical exemption for purposes of the chronic absenteeism indicator. In order to be eligible for consideration under a chronic absenteeism medical exemption policy, an absence must fall under the definition of "significant medical condition" given in this Section.

(e) Absences from school that do not accrue toward chronic absentee status. A student with disabilities who is on an Individualized Education Program (IEP), or a student with a physical or mental impairment who is on a Section 504 Plan, is considered in attendance and does not accrue absences while receiving offsite services outlined in the IEP or Section 504 plan. A student on an IEP or Section 504 Plan whose condition worsens or who requires more frequent treatments should have their IEP or Section 504 Plan updated accordingly. A student who is receiving homebound education services from their school district is considered in attendance and does not accrue absences while in homebound status.

(f) Effect of exempt absence. If a student has been determined to have a significant medical condition under the district or charter school's medical exemption policy, only absences that are related to the student's identified condition(s) or qualifying circumstances may be exempted from inclusion in the calculation of the chronic absenteeism indicator. Absences that are not related to the student's qualifying condition(s) or circumstances, such as routine illnesses or medical appointments, are not eligible for exemption under a school district's medical exemption policy. The exempt absence(s) of a student who has been granted an exemption of one or more absences from school in accordance with the provisions of this Section shall not be included in the calculation of the chronic absenteeism indicator on the school site report card.

(g) Reporting absences determined medically exempt to the State Department of Education. A school district or charter school that has adopted a chronic absenteeism medical exemption policy in accordance with this Section, and has determined under the policy that one or more student absences are medically exempt from inclusion in the chronic absenteeism indicator, shall report such absences determined medically exempt to the Oklahoma State Department of Education (OSDE) Office of Accountability. To ensure that an absence which has been determined eligible for a medical exemption by a school district's medical exemption review committee is identified as exempt in sufficient time for the absence to be excluded from the chronic absenteeism calculation, the Office of Accountability may set an annual deadline for the reporting of such medically exempt absences. The reporting of absences identified under a district's policy as medically exempt may require the submission of the district's chronic absenteeism medical exemption policy and documentation of the medical exemption review committee's approval of the exempted absences. All documentation considered during the medical exemption review committee's consideration of potentially eligible absences shall be maintained by the school district or charter school and shall be available to regional accreditation officers for auditing purposes.

(h) 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 Oklahoma school accountability system shall make any appropriate accommodations authorized under federal law to mitigate the effects of the emergency on school accountability determinations for the affected school year(s). Student absences related to a state of emergency shall not be included in the calculation of the chronic absenteeism indicator. If there is any period of time during a state of emergency when public school operations are suspended, interrupted, or otherwise affected by the emergency conditions, the affected dates shall be excluded from the calculation of the chronic absenteeism indicator.

RULE IMPACT STATEMENT 210:10-13-25

"Determination of the chronic absenteeism indicator" [NEW]

a. **What is the purpose of the proposed rule change?**

This is the proposed permanent version of an emergency rule currently in effect. The rule grants school districts the authority to establish local policies for determining whether certain student absences are eligible for medical exemptions from the chronic absenteeism indicator used in the school accountability system. Specific to public health emergencies and similar large-scale emergencies, the rule provides:

"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 Oklahoma school accountability system shall make any appropriate accommodations authorized under federal law to mitigate the effects of the emergency on school accountability determinations for the affected school year(s). Student absences related to a state of emergency shall not be included in the calculation of the chronic absenteeism indicator. If there is any period of time during a state of emergency when public school operations are suspended, interrupted, or otherwise affected by the emergency conditions, the affected dates shall be excluded from the calculation of the chronic absenteeism indicator."

b. **What classes of persons will be affected by the proposed rule change and what classes of persons will bear the costs of the proposed rule change?**

The rule change will affect public schools impacted by a state of emergency's effects on student attendance or school closure.

c. **What classes of persons will benefit from the proposed rule change?**

The rule change will benefit public schools impacted by a state of emergency's effects on student attendance or school closure, by ensuring the emergency conditions do not negatively impact school accountability determinations for the affected school year(s).

d. **What is the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions?**

The agency does not anticipate any economic impact upon political subdivisions or affected classes as a result of implementation of the proposed rule change at this time.

e. **What is the probable cost to the agency to implement and enforce the proposed rule change?**

The agency does not anticipate any cost to the agency to implement and enforce as a result of the proposed change in the rule at this time. Additional record keeping, if any, will be performed by existing staff.

- f. **What is the economic impact on any political subdivision to implement the proposed rule change?**

The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule change at this time.

- g. **Will implementing the rule change have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act?**

The agency does not anticipate any adverse economic impact on small business as a result of the proposed rule change at this time.

- h. **Are there any other methods which are less costly, nonregulatory, or less intrusive to achieve the purpose of the proposed rule change?**

No.

- i. **Will the rule change impact the public health, safety, and environment, and is the change designed to reduce significant risks to the public health, safety, and environment? If so, explain nature of risk and to what extent the proposed rule change will reduce the risk.**

The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rule at this time.

- j. **What detrimental effect will there be on the public health, safety, and environment if the rule change is not implemented?**

The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rule at this time.

- k. **Date Prepared:** October 20, 2020

STATUTORY AUTHORITY FOR 210:10-13-25

Oklahoma Statutes

Title 70. Schools

Chapter 22 - Testing and Assessment

**Section 1210.545 - Annual Reports for Oklahoma School Testing Program -
Rules - Grades**

A. Except as otherwise provided, as part of the accountability system developed as provided for in Section 1210.541 of this title, the State Board of Education shall prepare annual reports of the results of the Oklahoma School Testing Program which describe student achievement in the state, and each school site, pursuant to the Elementary and Secondary Education Act of 1965 (ESEA) as reauthorized by P.L. No. 114-95, also known as the Every Student Succeeds Act (ESSA), and any related federal regulations.

G. Further, the grade of an elementary or middle school site shall include, but not be limited to, a measure of status for English language arts (ELA), math and science, growth in ELA and math, English Language Proficiency Assessment (ELPA) progress, and chronic absenteeism.

H. The grade of a high school site shall include, but not be limited to, a measure of status for English language arts (ELA), math and science status, English Language Proficiency Assessment (ELPA) progress, graduation rate, chronic absenteeism, and postsecondary opportunities. For purposes of this section postsecondary opportunities shall include Advanced Placement, International Baccalaureate, dual and concurrent enrollment, internships, mentorships and apprenticeships, and industry certifications. The Board shall adopt a time line for moving from completion of such opportunities to crediting achievement of such opportunities.

L. The State Board of Education shall promulgate rules to implement the provisions of this section.

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF
SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION
AND CERTIFICATION
PART 9. TEACHER CERTIFICATION**

Language changes made following the public comment period appear in red italics.

210:20-9-94. Period of validity of certificates

(a) Standard certificates normally have a validity period of five (5) years. The standard certificate will expire five (5) years from the nearest thirtieth day of June either preceding or following the effective date of the certificate.

(b) Provisional certificates, vocational and/or nonvocational, will have a validity period established by the State Department of Education.

(c) Emergency certificates normally have a validity period of one (1) school year. The certificate will expire the thirtieth day of June of the school year for which it was issued. The validity period for an emergency certificate may be extended for one (1) additional school year at the request of the superintendent of the employing district, subject to the approval of the State Board of Education. *The maximum validity period for an emergency certificate extended by State Board approval will be two (2) years.* At the request of the superintendent of the employing district, an emergency certificate may be renewed by the State Board of Education for ~~one (1)~~an additional year for an individual who has been employed by a school district for two (2) *or more* years, provided the following criteria are met:

- (1) The individual has been granted an emergency certificate for *at least* two (2) years;
- (2) The individual has a rating of "Effective" or higher on the qualitative portion of the last evaluation conducted pursuant to 70 O.S. § 6-101.16;
- (3) The individual has not successfully completed the competency examinations required by applicable law;
- (4) The individual, via the requesting school district, submits a portfolio of their work to the State Board of Education, which shall include evidence of progress toward standard certification;
- (5) The employing school district board of education agrees to renew the individual's contract for the ensuing fiscal year; and
- (6) The superintendent of the employing school district submits to the State Board of Education the reason the emergency certificate should be renewed, and provides evidence of the district's attempts to, and inability to, hire a teacher who holds a standard teaching certificate.

~~(d) The maximum validity period for an emergency certificate extended by State Board approval will be two (2) years~~ *three (3) years.* Individuals employed by a school district under an emergency or provisional certificate shall not be considered career teachers and therefore not entitled to the protections of the Teacher Due Process Act of 1990.

RULE IMPACT STATEMENT 210:20-9-94

"Period of validity of certificates" [AMENDED]

Notes added following the close of the public comment period appear in red italics.

a. **What is the purpose of the proposed rule change?**

This is the proposed permanent version of an emergency rule currently in effect. Historically, the rule that establishes the validity period of teaching certificates has placed a limit of two (2) total years on the authorization for an individual to be issued an emergency teaching certificate. The provisions proposed for adoption authorize the State Board of Education to issue an emergency teaching certificate to a qualified individual for a third consecutive year, bringing the maximum validity period of an emergency certificate extended by State Board approval to three (3) years.

While the emergency version of 210:20-9-94 limited a qualified individual to three (3) total years of emergency certification, 70 O.S. § 6-187 has since been amended to incorporate an extension of emergency teaching certification upon State Board approval, and does not prohibit an eligible individual from holding an emergency teaching certificate for more than three (3) total years.

The permanent rule language presented to the State Board for consideration does not limit emergency certification for qualified individuals to a specific number of years, for consistency with new the statutory authorization.

b. **What classes of persons will be affected by the proposed rule change and what classes of persons will bear the costs of the proposed rule change?**

The rule change will affect school districts that have employed an emergency certified teacher for two consecutive years, and wish to employ the individual for a third year of emergency certified teaching in the event a teacher with a standard certificate cannot be hired. The change will also affect emergency certified teachers who have not yet completed the requirements for standard certification, but who meet the eligibility requirements for a third year of emergency certification.

c. **What classes of persons will benefit from the proposed rule change?**

The rule change will benefit the school districts and emergency certified individuals described above.

d. **What is the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions?**

The agency does not anticipate any economic impact upon political subdivisions or affected classes as a result of implementation of the proposed rule change at this time.

- e. **What is the probable cost to the agency to implement and enforce the proposed rule change?**

The agency does not anticipate any cost to the agency to implement and enforce as a result of the proposed change in the rule at this time. Additional record keeping, if any, will be performed by existing staff.

- f. **What is the economic impact on any political subdivision to implement the proposed rule change?**

The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule change at this time.

- g. **Will implementing the rule change have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act?**

The agency does not anticipate any adverse economic impact on small business as a result of the proposed rule change at this time.

- h. **Are there any other methods which are less costly, nonregulatory, or less intrusive to achieve the purpose of the proposed rule change?**

No.

- i. **Will the rule change impact the public health, safety, and environment, and is the change designed to reduce significant risks to the public health, safety, and environment? If so, explain nature of risk and to what extent the proposed rule change will reduce the risk.**

The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rule at this time.

- j. **What detrimental effect will there be on the public health, safety, and environment if the rule change is not implemented?**

The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rule at this time.

- k. **Date Prepared:** October 20, 2020

Updated December 7, 2020, to reflect changes following public comment.

PUBLIC COMMENT SUMMARY

210:20-9-94. Period of validity of certificates [AMENDED]

Summary of Public Comment	Agency Response
<p>"If teacher and school district can provide documentation that teachers are at least effective in instruction, working toward passing certification exams, and improving certification exams. Then SDE may approve an additional year of certification on a case by case basis.</p> <p>Documentation could include:</p> <p>TLE evaluations Teacher Classroom Walkthrough Notes Parent/Student interviews OSAT/OPTE training conducted OSAT/OPTE test scores & improvement Administrator Letter of Recommendation."</p>	<ul style="list-style-type: none">▪ The rule language presented to the State Board for consideration has been adjusted to eliminate the three (3) year limit on a qualified individual holding an emergency teaching certificate, provided all statutory eligibility conditions are met.

STATUTORY AUTHORITY FOR 210:20-9-94

Oklahoma Statutes

Title 70. Schools

Chapter 1 - School Code of 1971

Oklahoma Teacher Preparation Act

Article VI-A - Teacher Licensure and Certification

Section 6-187 - Competency Examination - Eligibility - Certification - Offering of Examinations

F. 1. Nothing in the Oklahoma Teacher Preparation Act shall restrict the right of the State Board of Education to issue an emergency or provisional certificate, as needed. Provided, however, prior to the issuance of an emergency certificate, the district shall document substantial efforts to employ a teacher who holds a provisional or standard certificate. In the event a district is unable to hire an individual meeting this criteria, the district shall document efforts to employ an individual with a provisional or standard certificate in another curricular area with academic preparation in the field of need. Only after these alternatives have been exhausted shall the district be allowed to employ an individual meeting minimum standards as established by the State Board of Education for the issuance of emergency certificates.

2. The State Board of Education may renew the emergency or provisional certificate of an individual who has been employed by a school district board of education for at least two (2) years if the following criteria are met:

- a. the individual has been granted an emergency or provisional certificate pursuant to paragraph 1 of this subsection for two (2) years,
- b. the individual has not successfully completed the competency examinations required by this section,
- c. the individual submits a portfolio of his or her work to the State Board of Education, which shall include evidence of progress toward standard certification,
- d. the employing school district board of education agrees to renew the individual's contract to teach for the ensuing fiscal year, and
- e. the superintendent of the employing school district submits to the State Board of Education the reason the emergency or provisional certificate should be renewed and provides evidence of the district's inability to hire a teacher who holds a standard certificate.

3. Individuals employed by a school district under an emergency or provisional certificate shall not be considered career teachers and therefore not entitled to the protections of the Teacher Due Process Act of 1990.

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE
LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS
SUBCHAPTER 21. ALTERNATIVE INSTRUCTIONAL DELIVERY SYSTEMS**

210:35-21-2. Alternative instructional delivery systems

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) ~~"Synchronous instruction" means the instructor and student's primary interactions are in real time. Regular classroom instruction is synchronous instruction, as well as two-way interactive video. Web-based instruction that requires real-time interaction between student(s) and instructor as the primary format of instruction is also synchronous instruction.~~

(2) **"Asynchronous instruction"** means instructor and student interaction is not dependent on real time. Asynchronous instruction allows the student to engage in learning activities anywhere at ~~anytime~~ any time. For instruction to be considered asynchronous, the primary format of instruction does not depend on real-time interaction of the participants.

(3) ~~"Web-based instruction" means the use of the World Wide Web as the primary medium of instruction, with a computer serving as the primary tool of instruction. Web-based instruction may be synchronous or asynchronous.~~

(2) **"Distance learning plan"** means a plan implemented under a public school district or charter school's distance learning policy as authorized by subsection (c), describing any means by which instruction will be delivered to students outside a traditional school setting. A distance learning plan must meet the requirements listed in subsection (c) of this Section.

(3) **"Synchronous instruction"** means the instructor and student's primary interactions are in real time. Regular classroom instruction is synchronous instruction, as well as two-way interactive video. Virtual instruction that requires real-time interaction between student(s) and instructor as the primary format of instruction is also synchronous instruction.

(4) **"Two-way interactive video instruction"** means real-time (synchronous) interaction between student(s) and instructor by means of an electronic medium that provides for both audio (sound) and video (sight) signal. Students and instructors participating in two-way interactive video instruction may both see and hear each other in an approximation of real-time.

(5) **"Virtual instruction"** means the use of the internet or other such digital information transmission systems as the primary medium of instruction. Virtual instruction may be synchronous or asynchronous, or may combine synchronous and asynchronous instruction.

(b) **Alternative Instructional Delivery System.** ~~Internet-based~~ Virtual instructional programs offered for instructional purposes and/or high school credit shall be approved by and under the supervision of the ~~local~~ board of education of the school district where the course is offered. The State Board of Education reserves the right to request information and materials sufficient to evaluate the proposed course(s) for the purposes of course code alignment and other authorized purposes.

(c) **Local board policy.** All ~~local~~ school district boards of education in the state of Oklahoma shall adopt policies regarding ~~Internet-based~~ virtual instructional courses which shall comply with the following guidelines.

(1) ~~Web-based~~ Virtual and two-way interactive video instruction shall be viewed as methods by which the public schools within the state can expand their course offerings and

access to instructional resources. These ~~new~~ technologies should not be viewed solely as substitutes for direct, face-to-face student and teacher interactions, but as a means of expanding the ability of the local district to bring the world of knowledge to their students. With the exception of a charter school authorized by its sponsor to provide virtual instruction only, or during emergency circumstances as addressed below, a public school shall offer in-person classroom instructional opportunities in addition to any virtual instructional opportunities offered to students.

(A) Virtual instruction in distance learning plans. As authorized 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 that leads to the temporary emergency closure of school campuses or otherwise significantly impacts the operation of public schools in Oklahoma as determined by the State Board of Education, public schools may implement distance learning plans which provide for distance learning that is accessible to all students. Further, a public school district or charter school may adopt a policy providing for the short-term implementation of a distance learning plan due to a localized emergency, such as a weather-related school closure or a localized public health emergency. A school's approved academic calendar may build in one or more emergency closure "makeup days" to be delivered through the distance learning plan, in the same manner as a school district's calendar may build in additional standard school days to be held as makeup days in case of emergency weather closures.

(B) Virtual instruction in home-based education. A public school district or charter school may adopt a distance learning plan policy that provides for virtual or partially virtual instruction to deliver home-based education to a student who cannot attend school in person for a period of time due to extended medical or other issues, pursuant to Oklahoma Administrative Code 210:10-1-5. If a school district or charter school delivers its home-based education program solely through virtual instruction, any participating student who does not already have access to the necessary connectivity and/or device(s) shall be provided the connectivity and device(s) necessary to access the instruction free of charge.

(C) Distance learning plan requirements. A school district or charter school shall submit a copy of its distance learning plan to the Oklahoma State Department of Education (OSDE) Office of Accreditation within ten (10) business days of adoption by the school district board of education or charter school governing board. If an update or revision of the policy is adopted, such amended policy shall also be submitted to the OSDE Office of Accreditation within ten (10) business days of adoption. A public school policy authorizing the implementation of a local distance learning plan must include the following considerations:

(i) Equitable access. Participation in the distance learning plan must be accessible to every student regardless of household resources. This means that if a public school requires students to engage with instruction or content using the internet or other means of remote connectivity, the district must ensure the student has access to the connectivity and any device(s) necessary, and if not, the district must provide them for student use free of charge. If a school district or charter school cannot provide connectivity and device access for the use of all students due to limitations such as budget and/or geography, but plans to use virtual instruction as part of its distance

learning plan as authorized in subsection (c)(1)(A), the distance learning plan must provide for alternate methods to deliver equitably equivalent instruction to all students. Such alternate means could include approaches such as paper packets of instructional materials supplemented by periodic direct contact with teachers, in person or by telephone or other method of communication. A school district must ensure that the student has access to all materials necessary for participating in a public school's distance learning plan, and if the student does not already have the necessary materials, must ensure access free of charge, e.g., by providing packets of paper instructional materials, blank paper for assignment completion, and writing instruments or other supplies as appropriate for the grade level or subject area (e.g., geometric compass, protractor, crayons/colored pencils if required for assignment completion). If a public school's policy for distance learning allows for different instructional delivery methods due to the inability to provide connectivity and device(s) to all students, the policy must address the school's method(s) for making individualized determinations of which students would be able to access virtual instruction and which would not, including equitable plans for serving students who would not have access to virtual instruction.

(ii) **Alignment with standards.** A local distance learning plan must provide that instruction and content provided through virtual education or other distance learning delivery methods is consistent with the Oklahoma Academic Standards for the subject area and/or grade level in which credit is awarded. Instruction and content provided through distance learning delivery methods other than virtual instruction must be equitably equivalent to the instruction and content provided through virtual instruction.

(iii) **Policies.** As a condition of adopting an authorized local distance learning plan, a school district or charter school shall establish clear written policies for students receiving instructional services in the plan, which must include measurements of attendance for students and staff, awarding of credits for course completion, and participation in extracurricular activities. Separate attendance policies may be appropriate for full-time virtual education and part-time virtual education. Attendance policies for distance learning provided by means other than virtual education may consider factors such as assignment completion and engagement with instructional supports, provided no student shall have a grade lowered or be otherwise penalized for failure to engage with instructional supports the student does not have the resources to access (e.g., telephone service, internet access, transportation). Records of student enrollment and attendance in virtual instruction programs shall be maintained through the school district or charter school's authorized student information system, consistent with all requirements of Oklahoma Administrative Code 210:10-1-5. Virtual attendance policies for Oklahoma school districts and charter schools shall include the following provisions:

(I) The *first date of* attendance for a student participating in a virtual instruction program shall be the date on which the student first completes an instructional activity as defined in 70 O.S. § 3-145.8; and

(II) The defined time period, assignment completion status, or other means used to determine student attendance in the virtual program shall meet or exceed the minimum measures of virtual attendance listed at 70 O.S. § 3-145.8(B).

(2) To ensure equitable access to instruction, in the development of a policy authorizing a distance learning plan as addressed in (c)(1), it is strongly recommended that a school district or charter school consult a working group of community stakeholders. Diligent efforts shall be made to include persons of different backgrounds and experiences to provide for the development of a distance learning plan that is accessible to the entire school community. Such a working group should include: school leaders and teachers; parents/guardians and other community members representing different socioeconomic statuses, racial and ethnic identities, and cultural perspectives; representatives of any Native American tribal nation(s) with territory or members served by the district; and other persons or groups identified by the district whose perspectives are appropriate to consider in the development of a distance learning plan.

(2)(3) The local school board or charter school shall be the entity granting student credit for completion of courses offered by means of ~~Internet-based~~ virtual instruction, including instruction provided by means of an authorized contract with an instructional services provider. The ~~local~~ district school board or charter school governing board will assume ~~all~~ the same responsibility for ~~such course work~~ courses offered by such means as for all other courses offered by the district.

(3)(4) Only students who are ~~regularly~~ enrolled in the school district, either as resident students or transfer students, shall be allowed to enroll in alternative instructional delivery systems courses offered for credit through the local school district.

(4)(5) A district board of education may authorize enrollment on a part-time basis utilizing Internet-based courses for students who have ~~dropped out of school or have been suspended from school~~ provided such student was enrolled at any time in a public school in this state ~~during the previous three (3) school years~~ previously been denied a diploma, pursuant to 70 O.S. § 11-103.6(Q).

(5)(6) Students enrolled on a full-time basis shall be authorized to enroll in ~~Internet-based~~ virtual courses.

(6)(7) The principal or designee of the local school shall evaluate and ~~approve/disapprove~~ approve or disapprove all students' requests to participate in courses delivered by means of ~~Internet-based~~ virtual instruction, provided that all requests eligible pursuant to Oklahoma Administrative Code 210:15-34 are approved as provided therein. Only those enrollments approved by such a process shall be eligible for credit granted by the local school district.

(7)(8) A certified staff member shall be identified by ~~the local~~ each school principal to serve as the building level contact person to assist students enrolling in online courses and serve as a liaison to the online teachers and provider(s).

(8)(9) Students earning credit by means of ~~Internet-based~~ virtual instruction shall participate in all assessments required by the Oklahoma School Testing Program. ~~No student shall be allowed to participate in these assessments at a place other than the school site at which the student is enrolled.~~

(9)(10) Courses offered for credit by means of ~~Internet-based~~ virtual instruction shall be aligned with the ~~Priority Academic Student Skills (PASS)~~ Oklahoma Academic Standards. Districts may also establish additional criteria as a basis for course selection, provided any additional criteria are consistent with 70 O.S. § 1-111 Oklahoma Administrative Code 210:15-34.

~~(10)~~(11) Oklahoma ~~statute~~legal provisions limiting the number of students public school teachers may supervise in each period of instruction and the total number of students allowed daily shall apply to synchronous ~~web-based~~virtual and two-way interactive video courses, provided any associated moratorium or exemption that applies to traditional classroom instruction shall also apply to synchronous instruction. The number of students each instructor may be required to supervise in asynchronous ~~web-based~~virtual courses shall be established by means of local school board policy.

~~(11)~~(12) Each teacher of two-way interactive video ~~and or web-based~~virtual courses shall be provided inservice training pertaining to the methodology of instructional delivery and the technical aspects of distance learning.

~~(12)~~(13) The issues regarding the monitoring of student progress, graded assignments, and testing in ~~Internet-based~~virtual instruction courses shall be addressed by the local school board policy.

~~(13)~~(14) The security of individual student data and records shall be addressed by the local school board policy. No individual student data obtained through participation in ~~Internet-based~~virtual instruction courses shall be used for any purposes other than those that support the instruction of the individual student. Under all circumstances, the provisions of the Family Educational Rights and Privacy Act (FERPA) apply to student data held or accessed by any public school or its contractors or agents, including any contracted provider of virtual instruction or other distance learning media.

~~(14) District level aggregated data obtained through participation in Internet based instruction courses shall be addressed by the local school board policy.~~

(15) All federal and state statutes and regulations pertaining to student privacy, the transmission or posting of images or other content on the internet or "World Wide Web", copyright of materials, Federal Communications Commission (FCC) rules pertaining to the public broadcasting of audio and video, and other such issues shall apply to virtual instruction platforms, media, and any associated content~~be addressed by the local school board policy.~~

(16) Prior to the beginning of instruction, cooperating school districts sharing courses by means of two-way interactive video technology shall, by means of contractual agreement, address such issues as the instruction costs, ~~bell~~instruction schedules, school calendars, student behavior, teacher evaluation, textbooks or other course materials, class periods and other such interactive video sessions, student grades and grading policies, teacher load, and instructor employment.

(17) With the exception of distance learning plans implemented in emergency circumstances as authorized in (c)(1)(A),~~Contractual~~contractual agreements shall~~may~~ be established between the school district and parent(s), or legal guardian, of students participating in alternative instructional delivery system courses prior to the beginning of instruction. These contracts may address such issues as grading criteria, time allotted for course completion, student attendance, and the responsibility for ~~course costs and equipment~~ necessary to access the course content.

(18) Instructors of ~~Internet-based~~virtual courses shall be:

(A) certified in Oklahoma or another state to teach in the content area of the course offered, or;

(B) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course.

(19) Districts shall establish criteria for determining the appropriateness of particular ~~Internet-based~~virtual courses for individual students prior to student enrollment in such courses, which shall be consistent with the provisions of 70 O.S. § 1-111 and Oklahoma Administrative Code 210:15-34.

Rule Impact Statement 210:35-21-2

"Alternative instructional delivery systems" [AMENDED]

a. **What is the purpose of the proposed rule change?**

This is the proposed permanent version of an emergency rule currently in effect. The amendment updates the administrative rule addressing alternative instructional delivery systems, including virtual instruction provided by means of the internet. The added content requires public school districts and charter schools to adopt policies for "distance learning plans", providing for how instruction will be offered to students outside a traditional classroom setting in the event of an emergency that closes or significantly impacts school campuses. Under the rule, public school distance learning plans must ensure equitable access to instruction for all students regardless of their resources, and distance learning policies must address issues such as attendance and course completion.

b. **What classes of persons will be affected by the proposed rule change and what classes of persons will bear the costs of the proposed rule change?**

The rule change will affect public school districts and charter schools.

c. **What classes of persons will benefit from the proposed rule change?**

The rule change will benefit the students and school communities of public school districts and charter schools, by ensuring plans are in place to safely and effectively provide instruction in an emergency that significantly impacts school operations.

d. **What is the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions?**

The agency does not anticipate any economic impact upon political subdivisions or affected classes as a result of implementation of the proposed rule change, in that no new expenditures are required by the amendment. School districts that wish to newly implement virtual instruction options for distance learning may incur additional expenses relating to equipment and infrastructure, with costs that would vary according to the products and services selected by the district.

e. **What is the probable cost to the agency to implement and enforce the proposed rule change?**

The agency does not anticipate any cost to the agency to implement and enforce as a result of the proposed change in the rule at this time. Additional record keeping, if any, will be performed by existing staff.

f. **What is the economic impact on any political subdivision to implement the proposed rule change?**

The agency does not anticipate any economic impact on any political subdivision to implement the proposed rule change at this time.

- g. **Will implementing the rule change have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act?**

The agency does not anticipate any adverse economic impact on small business as a result of the proposed rule change at this time.

- h. **Are there any other methods which are less costly, nonregulatory, or less intrusive to achieve the purpose of the proposed rule change?**

No.

- i. **Will the rule change impact the public health, safety, and environment, and is the change designed to reduce significant risks to the public health, safety, and environment? If so, explain nature of risk and to what extent the proposed rule change will reduce the risk.**

The agency does not anticipate any impact on public health, safety, or environment as a result of implementation of the proposed rule at this time.

- j. **What detrimental effect will there be on the public health, safety, and environment if the rule change is not implemented?**

The agency does not anticipate any detrimental effect on public health, safety, or environment as a result of failure to implement the proposed rule at this time.

- k. **Date Prepared:** October 20, 2020

STATUTORY AUTHORITY FOR 210:35-21-2

Oklahoma Statutes

Title 70. Schools

Chapter 1 - School Code of 1971

Article III - State Department of Education

**Section 3-104.4 - Standards for Accreditation of Public Schools - Assistance
- Compliance**

A. The State Board of Education shall adopt standards for the accreditation of the public schools in this state according to the requirements of Section 3-104.3 et seq. of this title, to be effective as set forth in Section 3-104.3 et seq. of this title. The accreditation standards shall incorporate the curricular standards established pursuant to Section 11-103.6 of this title. The accreditation standards shall equal or exceed nationally recognized accreditation standards to the extent that the standards are consistent with an academic results oriented approach to accreditation. The accreditation adopted by the State Board shall encompass accreditation for elementary schools, middle schools, junior high schools, and high schools. The accreditation standards shall be made available for public inspection at the offices of the State Department of Education.

F. The State Board shall provide assistance to districts in considering the possibility of meeting accreditation requirements through the use of nontraditional means of instruction. The State Board shall also assist districts in forming cooperatives and making arrangements for the use of satellite instruction or other instructional technologies to the extent that use of such instructional means meets accreditation standards.
