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 19, 2019

SUBJECT: Administrative Rule Promulgation

The State Board of Education will be taking action at the December meeting on the following proposed administrative rule changes pursuant to the *Oklahoma Administrative Procedures Act*, 75 O.S. § 250 *et seq.*:

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

The Oklahoma school accountability system developed in accordance with the *Every Student Succeeds Act* (ESSA) is required under 70 O.S. § 1210.545 to include an indicator on the school report card associated with chronic absenteeism. In school years 2017-18 and 2018-19, the accountability statute provided that through administrative rules the State Board of Education would oversee a process for considering schools' requests for medical exemptions from chronic absenteeism for students with significant qualifying medical conditions. Pursuant to House Bill 1988 (2019), the rule mandate placing medical exemption authority at the state level was revoked, and the accompanying rule is currently pending revocation as well.

This new proposed rule authorizes school districts to develop chronic absenteeism medical exemption policies at the local level, which are to be developed in accordance with the guidelines laid out in the rule. Following public comment, adjustments have been made to the proposed rule language recommended to the Board for approval.

(2) Title 210. State Department of Education
Chapter 30. School Facilities and Transportation
Subchapter 5. Transportation
210:30-5-8. School bus driver certification [AMENDED]

The rule that establishes requirements for school bus driver certification is being amended to allow for Commercial Driver License (CDL) holders with current valid CDL licenses

issued in other states to be eligible to apply for Oklahoma school bus driver certification. The proposed amendment will also allow for physicians licensed in other states to sign the annual health certificates required for school bus drivers, and for Department of Veterans Affairs (VA) physicians to sign health certificates for school bus drivers who are veterans of the United States Armed Forces.

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

PLEASE NOTE: Language changes made following public comment appear in *red italics.*

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. ~~*that meets the following criteria:*~~

~~*(A) The condition affects the student so severely as to incapacitate the student from attending school for an identifiable time period or number of school days, or for which the student must receive regular medical care requiring absence from school;*~~

~~*(B) The student is unable to receive instruction through homebound education services for an identifiable time period or number of school days due to the medical condition or its treatment, or homebound education is not appropriate due to brief recurring absences for the purpose of receiving treatment;*~~

~~*(C) 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 by a physician licensed in another state if the student has received related treatment out of state. A copy of the documentation verifying the student's condition shall be filed in the student's educational record. For qualifying circumstances such as sexual assault or other events of a traumatic nature that may not include official documentation, a letter from a school counselor or administrator explaining the student's*~~

~~qualifying circumstances may be accepted as documentation. A medical exemption review committee shall take care to respect and safeguard the privacy of students and others in its review of medical exemption requests.~~

~~(D) Examples of conditions that could be considered "significant medical conditions" for the purposes of this Section may include, but are not limited to:~~

~~(i) The student has a terminal disease or degenerative illness, or the student has been placed in hospice care;~~

~~(ii) The student is comatose;~~

~~(iii) The student has a serious chronic medical condition (a condition lasting three months or more), and is absent for the purpose of receiving condition-related treatment such as chemotherapy or dialysis;~~

~~(iv) The death or life-threatening injury of an immediate family member of the student (student's parent/guardian, sibling, child, or another member of the student's own household); or~~

~~(v) The student has sustained serious mental or physical injury as a result of a catastrophic event such as:~~

~~(I) A natural disaster or other event;~~

~~(II) An act of violence, including but not limited to: acts of physical assault, sexual assault, kidnapping, homicide, torture, or terrorism;~~

~~(III) Drowning;~~

~~(IV) Poisoning, fall, or traumatic brain injury; or~~

~~(V) Fire or explosion in the student's home.~~

~~(E) The term "significant medical condition" shall not include:~~

~~(i) Minor illnesses or injuries that do not incapacitate the student or require recurring treatment;~~

~~(ii) Short term illnesses or injuries resulting in absences of ten (10) or fewer consecutive instructional days, including those that require short term hospitalization of ten (10) or fewer consecutive instructional days;~~

~~(iii) Pregnancy, unless complications of the pregnancy otherwise meet this Section's criteria for a significant medical condition; or~~

~~(iv) Refusal of a parent/guardian to permit the student to attend school or receive homebound services due to the illness, injury, or trauma.~~

~~(v) The occurrence of one of the conditions listed in (D) shall not disqualify a student who is eligible for a medical exemption on a different basis.~~

(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.

RULE IMPACT STATEMENT 210:10-13-25

"Determination of chronic absenteeism indicator" [NEW]

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

The Oklahoma school accountability system developed in accordance with the *Every Student Succeeds Act* (ESSA) is required under 70 O.S. § 1210.545 to include an indicator on the school report card associated with chronic absenteeism. In school years 2017-18 and 2018-19, the accountability statute provided that through administrative rules the State Board of Education would oversee a process for considering schools' requests for medical exemptions from chronic absenteeism for students with significant qualifying medical conditions. Pursuant to House Bill 1988 (2019), the rule mandate placing medical exemption authority at the state level was revoked, and the accompanying rule is being revoked as well. This new proposed rule authorizes school districts to develop chronic absenteeism medical exemption policies at the local level, which are to be developed in accordance with the guidelines laid out in the rule.

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 and charter schools.

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

The rule change will benefit school districts and charter schools by providing for district-level determinations of chronic absenteeism medical exemption status based on the guidelines in the rule.

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**: November 12, 2019

PUBLIC COMMENT SUMMARY

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

Summary of Public Comment	Agency Response
1. "With this indicator being included in all schools' calculation on state report cards, it is VITAL this process is equitable for districts across the state. As the district coordinator for submitting chronic absenteeism medical exemptions to the state for my district for the last two years, I know the mindsets educators possess concerning chronic absenteeism. The new rule(s) authorizing school districts to develop chronic absenteeism medical exemption policies at the local level must be crystal clear and there must be some oversight and follow up with districts granting medical exemptions. As a district, we've developed a form that is submitted to doctors that has worked well for us. For any medical exemption request, this document MUST be submitted. We would be happy to share this form."	▪ The Oklahoma State Department of Education (OSDE) commends the commenter's school district on working to develop an approach to medical documentation that has worked well for the district. The OSDE encourages districts to collaborate in developing and sharing resources to help address issues that face their school communities.
2. "I am very pleased to see the draft of the guidelines for local school boards. These guidelines are very well stated and make very clear the intent of the exemptions."	▪ N/A
3. "The Oklahoma State School Boards Association opposes the new proposed rule 210:10-13-25 "Determination of the chronic absenteeism indicator" as an infringement on the authority of local boards of education. *OSSBA respectfully requests the State Board of Education approve a modified version of the rule that would preserve local flexibility in determining medical exceptions to chronic absenteeism.* ...We recommend removing detailed language following enumerated item (c)(2). Specifically, the language beginning with 'that meets the following criteria' in (c)(2) and ends with (c)(2)(E)(v) should be removed in its entirety. Leaving "Significant medical condition means, for the purposes of this Section, a severe, chronic, or life-threatening physical or mental illness, injury, disease, or emotional trauma" in the proposed rule would then allow schools the ability to establish local policies utilizing the above definition as the basis for the determination on medical absences that exceed chronic absenteeism limitations set forth in Oklahoma's ESSA accountability report card."	▪ The OSDE has modified the proposed rule language presented to the State Board of Education for consideration, as recommended by the Oklahoma State School Boards Association (OSSBA). ▪ While maintaining all other proposed content, the proposed rule language presented for approval strikes the condition-specific language as requested by OSSBA. ▪ Although the intent of the stricken language was to provide guidance to districts and included the statement that significant medical conditions are "not limited to" the conditions and scenarios listed as examples, commenters including OSSBA noted that not all districts may interpret the rule to include the intended flexibility for district level determinations about individual student eligibility. In order to provide clarity regarding school district policy authority, the language requested for removal is stricken from the proposed rule language presented for the State Board of Education's consideration.

4. "It is my recommendation that this section is removed from the proposed rule change therefore giving our local elected official (local control) the ability to make this determination at the local level. This is the level that has the most knowledge of the Chronic Absence and the families and students that are in this life circumstance. Remove this section: [210:10-13-25(b)(2)(A-E)]"	▪ The commenter's request has been incorporated into the language that is being proposed for adoption.
5. The following comment was received in substantially the same language from seven (7) commenters: "I am requesting that you follow the recommendation of the Oklahoma State School Board Association by removing detailed language following enumerated item (c)(2). Specifically, the language beginning with "that meets the following criteria" in (c)(2)(E)(v) should be removed in its entirety. Leaving "Significant medical condition means, for the purposes of this Section, a severe, chronic, or life-threatening physical or mental illness, injury, disease or emotional trauma" in the proposed rule would then allow schools the ability to establish local policies utilizing the above definition as the basis for the determination on medical absences that exceed chronic absenteeism limitations set forth in Oklahoma's ESSA accountability report card. Failure to remove this detailed language would render HB 1988 meaningless as proposed rule 210:10-13.25 is virtually identical save for one minor modification in paragraph (b) to the language that HB 1988 revoked in rule 210:10-13-24."	▪ The commenters' request has been incorporated into the language that is being proposed for adoption.
5. "As a school principal, I am asking the state board of education to adopt a modified version of the chronic absenteeism medical exemption rule to preserve local decision-making. It is critical for us to determine who receives a medical exemption since it unfairly jeopardizes our state report card. Students who contract the flu, pneumonia, and other lengthy illnesses, but maintain their school work, should not be punished for helping to contain the spread of such illnesses. Thank you for your consideration."	▪ A modified version of the proposed language is being recommended for adoption.
6. "I have looked at the proposed rules and they seem to be the same thing that we had before. I though the legislature gave this control back to the local board. There is no way the State Board would have time to go through the Chronic Absentee files for 500 plus school districts. It demonstrates that whoever is writing these rules has absolutely no trust or respect for the decision	▪ A modified version of the proposed language is being recommended for adoption. ▪ While the OSDE believes the Oklahoma Legislature intended to amend 70 O.S. § 1210.545 such that school districts would have authority to determine medical exemptions from chronic

making ability of the local board of education. We have already discussed this for next year. We have went through scenarios that would never be contemplated in a cookie cutter rule. For instance, we had a student last year who missed many days of school because he was living with his grandmother and had to basically provide her total care in her last few months. This is something that absolutely should be left to the local board, just like the legislature passed the law."	absenteeism, the language of House Bill 1988 (2019) in fact removed any reference to a medical exemption being available. In order to ensure the continued availability to school districts of a chronic absenteeism medical exemption applicable in case of significant medical conditions, the OSDE has proposed this rule under the statute's general grant of rulemaking authority for the school accountability system. Under the proposed rule, a school district holds the authority to determine eligibility for the exemption.
7. "I am an elementary principal. I know my students' needs in this building, actually better than some of their parents. Our demographics in our SW rural Oklahoma towns are not the same as more affluent urban areas. We have a large number of low income housing which draws families, mostly single parent families, or meager to no incomes. I know which of these children have also been exposed in utero to chemical substances which have either affected them mentally, behaviorally, or socially. Our local School Board is informed of our issues with some of these students who are so ill that they are unable to attend for various reasons, but which do meet one or more of the many indicators. Our goal is to have minimum days out, however, there are times some of these students need more days than others. We need the respect to know when a student can be in school successfully, which with respect to legislatures, do not know this."	▪ Under the proposed rule, a school district holds the authority to determine eligibility for a chronic absenteeism medical exemption. ▪ A modified version of the proposed rule language is being recommended for adoption, in order to clarify local authority.
8. "As schools really have no control as to whether a child comes to school or not, I propose that the state board of education adopt a modified version of the chronic absenteeism medical exemption rule to preserve local decision making. If a child has a fever, we try to get the fever reduced with otc medications. If we can't, that child needs to go home. If a child is nauseated and vomiting, that child needs to go home. If a child's parental units will not or feel they cannot afford to take a child to the doctor, they may have the flu and be very sick and stay home. There will be no doctor's note. In my small community and outlying rural area, my teachers, staff and I know our kids. We know their backgrounds, their socio-economic status, what type of home-life they have. Who better than me or my Principals, Counselors, and Teachers will know whether or not our kids are really sick. We have times we know our kids are not and that their parents are not doing what they should and we call the DA on those people. It lasts for a couple of weeks, but a parent's	▪ A modified version of the proposed language is being recommended for adoption. ▪ Please note that the intent of a chronic absenteeism medical exemption policy is to make an exemption available for a "significant medical condition", defined as "a severe, chronic, or life-threatening physical or mental illness, infection, injury, disease, or emotional trauma" (210:10-13-25(c)(2)). While eligibility determinations will be under school district authority, it would not be appropriate for a policy to make the exemption available in case of minor illnesses or routine medical appointments. (Please see subsection (d) of the proposed rule.)

realization that most of the letters about fines and jail time will never be enforced due to the fact that we have no local municipal police and must depend on county deputies to enforce truancy laws, a repeat cycle will occur. My school lies in two counties and one county will say it has to go to the county where the school physically lies and the other county will tell me the parents reside outside our jurisdiction so it is very difficult. As this is part of our grade cards, I feel our hands are tied and the system sets us up to fail. My HS attendance was an 93.4 and we received a B on our report card. Every school in the state either has a 90-100 as an A scale or a 93-100 as an A scale, yet our 93.8 was a B. Transient students do not count on our academic portion of our report cards, but a transient student who is sick all the time will sure drop us in the Chronic Absenteeism count. We need help with these issues. Please consider leaving this up to local control."	
9. "I encourage the state board of education to adopt a modified version of the chronic absenteeism medical exemption rule to preserve local decision-making. Thank you for your consideration."	▪ A modified version of the proposed language is being recommended for adoption.
10. "I would like to ask the public comment committee to adopt a modified version of Chronic Absenteeism medical exemption rule that preserves the local decision-making of the school board. Unfortunately, we see very diverse and unique cases of medical exemptions and allowing the local board to set those guidelines would allow us to serve those students best, providing them with the best resources, education, and support possible."	▪ A modified version of the proposed language is being recommended for adoption.
11. "I am kindly requesting that the Rules Committee leave the determination as what constitutes chronic absenteeism up to local school boards."	▪ A modified version of the proposed rule language is being recommended for adoption, in order to clarify local authority.
12. "This rule does not give school boards power to determine medical exemptions as intended by the new law. It merely moves the administrative task of applying the same definitions to the school district level. I support the OSSBA recommendations to modify this rule."	▪ A modified version of the proposed rule language is being recommended for adoption, in order to clarify local authority. ▪ While the OSDE believes the Oklahoma Legislature intended to amend 70 O.S. § 1210.545 such that school districts would have authority to determine medical exemptions from chronic absenteeism, the language of House Bill 1988 (2019) in fact removed any reference to a medical exemption being available. In order to ensure the continued availability to school districts of a chronic absenteeism medical exemption applicable in case of significant medical conditions, the OSDE has

	proposed this rule under the statute's general grant of rulemaking authority for the school accountability system. Under the proposed rule, a school district holds the authority to determine eligibility for the exemption.
13. "I am writing this email concerning the chronic absenteeism. Extended medical problems or doctors appointments should not be considered chronic absenteeism and should be a local decision. A school has no control over this issue and should not be held accountable for something a district can't control. In no way should this be a part of the A-F evaluation of a school district. This whole A-F evaluation section concerning attendance needs to be reevaluated for effectiveness on school improvement. I base my concerns on being a school superintendent for 20 years in this state. You have effectively set up school districts for failure."	▪ The school accountability system is governed by statute at 70 O.S. § 1210.545, and the structure of the system itself—including an indicator for chronic absenteeism—cannot be modified under the State Board of Education's rulemaking authority. ▪ Public comments are a part of the administrative record for proposed rule changes, and these comments will be included in the record that is reviewed by the Legislature in considering the final approval of state agency rule actions.
14. "How will be able to determine when it is truly medical or not? Parents will tell you that is is medical related weather it is or not. Will they be required to have a dr note?"	▪ The specific documentation required in determining eligibility for a chronic absenteeism medical exemption will be governed by a school district's adopted policy.
15. "I understand this is for students, but I would like to see the State address chronic absenteeism in school employees, both certified and support. It is ridiculous how much some people miss when they work the fewest days per year and have the most liberal leave policy in any industry in existence. This includes going on vacations during the year when they have no vacation leave, per se, and also when they elect to have surgery that is not an emergency and could be done when they are on break."	▪ N/A
16. "Chronic absenteeism as currently defined already disproportionately reflects negatively upon schools serving large numbers of military children and Native American children due to the cultural expectations of both groups. Chronic Absenteeism reporting also disproportionately reflects negatively upon schools serving large numbers of poor children and single-parent children. Furthermore, the grades assigned are misleading due to the state and federal officials use of "meaningful differentiation" to ensure that 5% of districts fail and only 5% of districts receive an "A". <u>The OKSDE should not add any regulations that further limit school districts' local control of this already damaging metric.</u>"	▪ A modified version of the proposed language is being recommended for adoption.

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

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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.

B. The annual report as required pursuant to subsection A of this section shall identify school sites as having one of the following grades for each indicator, separately, and by a single overview grade of all indicators, defined according to rules of the State Board of Education:

1. "A" means schools making excellent progress;

2. "B" means schools making above average progress;

3. "C" means schools making satisfactory progress;

4. "D" means schools making less than satisfactory progress; and

5. "F" means schools failing to make adequate progress.

C. Each school that has students who are tested and included in the school grading system as provided for in this section shall receive a school grade, except as follows:

1. A school shall not receive a school grade if the number of students tested and included in the school grading system is less than the minimum sample size necessary for statistical reliability and prevention of the unlawful release of personally identifiable student data. The State Board of Education is directed to establish the lowest minimum sample size necessary to meet the requirements of this paragraph; and

2. The academic performance of students who are enrolled full-time in an online program that is offered by a school district or charter school that is not the district of residence or is not located in the district of residence of the student shall be reported separately by the school district or charter school and shall not be included when determining the grade of the school site or charter school.

D. The State Board of Education may adopt alternate systems of accountability for statewide virtual charter schools, alternative education programs as defined in Section 1210.568 of this title, and schools serving only grades prekindergarten or kindergarten through two.

E. The grade of a school shall be based on a multimeasures approach to accountability in accordance with 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 federal regulations that include, but are not limited to, the following indicators:

1. Statewide assessments, including the establishment of student performance bands;

2. Graduation rates for high schools;

3. Statewide academic measures for elementary and middle schools;

4. English language proficiency for English learners; and

5. At least one additional statewide measure of school quality or student success, including, but not limited to, school climate, school safety, student engagement, educator engagement, and/or advanced coursework and postsecondary readiness.

F. Of the indicators included in subsection E of this section, not less than seventy percent (70%) of the overview grade must be given to indicators 1, 2, 3 and 4 and, in the aggregate, with not more than thirty percent (30%) of the grade given to indicator 5.

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.

I. The annual report shall identify the performance of each school as having improved, remained the same, or declined. This school improvement rating shall be based on a comparison of the student and school performance data of the current year to the previous year data.

J. The State Department of Education shall annually develop a school site report card to be delivered to parents throughout each school district. The report card shall be in accordance with the requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized and amended by P.L. No. 114-95, also known as the Every Student Succeeds Act (ESSA) and includes the grade for the school, information regarding school improvement, an explanation of school performance, and indicators of return on investment. The report card for each school site shall be published annually by the Department on its website, and every school district shall provide the school site report card to the parent or guardian of each student enrolled in the school site. In order to provide information regarding school performance for school report cards issued during the 2016-2017 and 2017-2018 school year, the Department shall include an explanation of the changes to the statewide system of student assessments as required in Section 1210.508 of this title and how the transition in assessments may impact school performance. The Department shall issue school report cards using the 2016-2017 school year assessment data that is available.

K. The Legislature may factor in the performance of schools in calculating any performance-based funding policy that is provided to public school districts.

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

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION
SUBCHAPTER 5. TRANSPORTATION

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

(a) **General criteria.**

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

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

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

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

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

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

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

(3) No school district board of education shall assign or allow to be assigned any school bus driving duty involving the transportation of students to any employee or volunteer, regardless of contract status (e.g. coach, teacher, mechanic), unless that person has all required supporting documentation required for school bus drivers on file with the school district and a valid Oklahoma State Department of Education School Bus Driving Certificate as provided for in this section.

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

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

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

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

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

(6) All school bus drivers shall have an annual health certificate signed by a physician licensed by ~~this~~ any state within the United States of America (U.S.), or a nurse or physician

assistant who is licensed to practice in ~~this~~any state within the U.S. and who is working under the supervision of a medical doctor (MD) or doctor of osteopathy (DO) licensed by ~~this state~~any state within the U.S. A school bus driver who is a veteran of the United States Armed Forces may submit a health certificate signed by a licensed physician of the U.S. Department of Veterans Affairs Veterans Health Administration. The certificate shall be filed in the office of the chief administrative officer of the local school district or designee of the chief administrative officer attesting that such physician, or other authorized health care professional working under the supervision of a physician, has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician or other authorized health care professional, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination is in compliance with the physical qualifications and examination requirements at Subpart E of the Federal Motor Carrier Safety Regulations, 49 CFR §§ 391.41 to 391.50.

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

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

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

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

(b) **School bus driver certificate requirements.**

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

(A) Is at least 18 years of age;

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

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

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

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

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

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

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

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

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

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

(A) Is at least 18 years of age;

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

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

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

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

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

(C) Each applicant has a health certificate on file signed by a licensed physician, or a nurse or physician assistant who is licensed to practice in ~~this~~any state within the U.S. and who is working under the supervision of a medical doctor (MD) or doctor of osteopathy (DO), and meets all vision requirements;

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

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

(F) Notwithstanding the provisions of this paragraph, in order to renew any school bus driver certificate which has been expired for more than one year, a driver must successfully complete a renewal course approved by the State Department of Education. Such a course must, at a minimum, include topics on:

(i) Railroad crossings;

(ii) Emergency evacuation procedures;

(iii) Mirror placement;

(iv) Pick-up and drop-off procedures;

(v) Sound driving practices; and

(vi) Accident procedures.

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

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

(1) Individuals who wish to obtain an Oklahoma School Bus Driver's Certificate and meet all other requirements of this Section, but cannot meet the vision requirements in (a)(3) of this Section in both eyes due to the presence of a monocular vision condition, may obtain an exemption from the vision requirements of (a)(3) of this Section by providing evidence

showing that Applicant is exempt from the requirements of 49 C.F.R. § 391.41, has fully adapted to the monocular vision condition, and is capable of safely operating a school bus for the purpose of transporting school children. Such evidence must consist of documentation for each one of the following:

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

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

(C) One of the following:

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

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

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

(A) Applicant must have been examined by a licensed ophthalmologist or optometrist within sixty (60) days prior to obtaining the Commercial Driver License and within one year of applying for the State Department of Education monocular vision exemption. Applicant must provide the State Department of Education a copy of ~~the~~ official documentation of~~Oklahoma State Department of Public Safety vision form documenting~~ the vision examination from the Applicant's CDL licensing jurisdiction.

(B) In addition, if not included on the official ~~Oklahoma State Department of Public Safety~~documentation of the vision ~~form~~exam, Applicant must submit additional documentation, in which a licensed ophthalmologist or optometrist identifies and describes:

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

(ii) The date of the examination;

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

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

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

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

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

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

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

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

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

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

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

(i) A signed, notarized statement from the individual's present or past employer(s) on company letterhead; or

(ii) An affidavit by the Applicant.

(C) Applicant shall provide the State Department of Education with a Motor Vehicle Report demonstrating that applicant's driving record during the three (3) year period prior to the date the application is filed:

(i) Contains no suspensions or revocations of Applicant's driver's license for the operation of any motor vehicle (including Applicant's personal vehicle);

(ii) Contains no record of involvement in an accident involving negligence attributable to the monocular vision condition;

(iii) Contains no record of a serious traffic offense attributable to the monocular vision condition (e.g., erratic unsafe lane changes, following too closely, etc.)

(4) Individuals who receive the vision exemption to drive a bus for an accredited school in Oklahoma must submit to their employer a copy of the documentation required by (1)(C) of this subsection.

(d) **Certification of drivers with insulin-dependent diabetes mellitus.**

(1) Any person with diabetes mellitus requiring insulin by injection shall not be eligible for a school bus certificate unless the individual meets all other requirements of (a) and (b) of this Section, and the individual possesses and maintains either:

(A) An authority letter issued by ~~the Oklahoma State Department of Public Safety (DPS)~~Applicant's CDL licensing jurisdiction qualifying the individual as exempt from the physical requirements of 49 C.F.R. § 391.41; or

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

(2) Upon hire, exempted individuals will be required to agree to and comply with the following conditions:

(A) Blood glucose levels shall be self-monitored one (1) hour prior to driving and at least once every four (4) hours while driving a school bus or on duty by using a portable

glucose monitoring device with a computerized memory, and take corrective action if necessary;

(B) The individual shall maintain blood glucose logs, three months from the current date (or the date that insulin use began, whichever is shorter).

(i) If the employing district has cause to require a medical evaluation as authorized by (5) of this subsection, logs maintained pursuant to this subsection must be provided to the ~~Oklahoma~~ board certified medical doctor (MD) or doctor of osteopathy (DO) treating the individual.

(ii) Blood glucose logs must be created by an electronic blood glucose meter that stores every reading, records date and time of reading, and from which data can be downloaded and printed.

(C) The individual shall carry a source of rapidly absorbable glucose at all times while operating a school bus; and

(D) The individual shall meet the annual physical examination requirements for drivers with metabolic diseases set forth by the Department of Public Safety in OAC 595:10-5.

(E) The individual shall notify the Department of Public Safety and the State Department of Education of any changes in physical or mental ailments or conditions which may cause loss of control or partial control or may otherwise render the individual incapable of properly controlling a school bus.

(3) Superintendents or their designees who hire individuals who hold a diabetes exemption certification must keep on file in a separate medical record:

(A) A current copy of the diabetes exemption certificate of the individual;

(B) The contact information of the board certified medical doctor (MD) or doctor of osteopathy (DO) who is treating the individual;

(C) Record of the annual medical certification issued by the board certified medical doctor (MD) or doctor of osteopathy (DO) pursuant to (1)(B) of this subsection; and

(D) Copies of any medical certifications obtained pursuant to (5) of this subsection.

(4) An individual holding a diabetes exemption certificate shall immediately notify the superintendent (or the superintendent's designee) of the school district in which the individual is employed if the individual's blood glucose level is outside of a range of 100 mg/dl to 400 mg/dl one (1) hour prior to driving. Upon receipt of such notice, the superintendent or the superintendent's designee shall not allow the individual holding the diabetes exemption certificate to drive. If the individual's blood glucose level is below 100 mg/dl or above 400 mg/dl, then the driver cannot operate a school bus or transport school children as an employee of any school district until the blood glucose measure is within the target range.

(5) In the event an individual holding a diabetes exemption is involved in an incident directly caused by the individual's diabetic condition, the individual cannot operate a school bus or transport school children as an employee of any school district until the individual has been certified in writing as medically able to safely resume work related duties by the certified medical doctor (MD) or doctor of osteopathy (DO) by whom they are being treated.

RULE IMPACT STATEMENT 210:30-5-8

"School bus driver certification" [AMENDED]

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

The rule that establishes requirements for school bus driver certification is being amended to allow for Commercial Driver License (CDL) holders with current valid CDL licenses issued in other states to be eligible to apply for Oklahoma school bus driver certification. The proposed amendment will also allow for physicians licensed in other states to sign the annual health certificates required for school bus drivers, and for Department of Veterans Affairs (VA) physicians to sign health certificates for school bus drivers who are veterans of the United States Armed Forces.

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 current and prospective school bus drivers for Oklahoma public schools.

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

The rule change will benefit school districts and the bus drivers they employ, by removing the restrictions requiring Oklahoma-only CDL and medical licensure, and ensuring all properly qualified individuals may apply for Oklahoma school bus driver certification.

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**: November 12, 2019

PUBLIC COMMENT SUMMARY

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

Summary of Public Comment	Agency Response
1. "I do agree that a current out of state cdl license should be allowed to apply for Oklahoma school bus driver certification. It will help in recruiting new drivers for all surrounding school districts."	▪ The Oklahoma State Department of Education (OSDE) hopes the rule change will be helpful to districts in recruiting qualified school bus drivers who are licensed in other states.

STATUTORY AUTHORITY FOR 210:30-5-8

Oklahoma Statutes

Title 70. Schools

Chapter 1 - School Code of 1971

Article III - State Department of Education

Section 3-104 - State Board of Education - Powers and Duties

The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall:

1. Adopt policies and make rules for the operation of the public school system of the state;

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6. Have authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state subject to the provisions of Section 6-184 of this title, and shall formulate rules governing the issuance and revocation of certificates for superintendents of schools, principals, supervisors, librarians, clerical employees, school nurses, school bus drivers, visiting teachers, classroom teachers and for other personnel performing instructional, administrative and supervisory services, but not including members of boards of education and other employees who do not work directly with pupils, and may charge and collect reasonable fees for the issuance of such certificates:

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18. Provide for the supervision of the transportation of pupils;

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