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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: February 28, 2019
SUBJECT: Administrative Rule Promulgation

The State Board of Education will be taking action at the February meeting on the following administrative rule amendments 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 1. General Provisions
210:10-1-12. Acquired Immune Deficiency Syndrome (AIDS)
[REVOKED]

This rule adopted in the 1980s, which had placed purported limits on a student's right to attend public school if they are living with HIV/AIDS, is proposed for revocation due to its outdated content that is not consistent with current law or scientific understanding. The Oklahoma State Department of Health has been consulted and does not object to the revocation of the rule.

- (2) Title 210. State Department of Education
Chapter 10. School Administration and Instructional Services
Subchapter 3. Child Nutrition Program
Part 3. Child and Adult Care Food Program (CACFP)
210:10-3-20. Definitions [REVOKED]
210:10-3-21. Terms defined in CACFP regulations [REVOKED]
210:10-3-22. Agreement [REVOKED]
210:10-3-23. Specification of meal times [REVOKED]
210:10-3-24. Cycle menu [REVOKED]
210:10-3-25. Recordkeeping [REVOKED]
210:10-3-26. Commodities [REVOKED]
210:10-3-27. Meal pattern requirements [REVOKED]
210:10-3-28. Unrecovered funds [REVOKED]
210:10-3-29. Administrative review [REVOKED]
210:10-3-30. Day care home; sponsoring organizations for day care homes (DCH) agreement [REVOKED]
210:10-3-31. Day care homes; administrative review [REVOKED]

- 210:10-3-32. Day care homes; meal pattern requirements [REVOKED]
- 210:10-3-33. Day care homes; unrecovered funds [REVOKED]
- 210:10-3-34. CACFP procedures for conducting audits of CACFP participants [REVOKED]
- 210:10-3-35. CACFP claims processing procedures [REVOKED]
- 210:10-3-36. CACFP approval procedures [REVOKED]
- 210:10-3-37. CACFP appeal procedures [REVOKED]
- 210:10-3-38. CACFP procedures for advance funding [REVOKED]
- 210:10-3-39. CACFP termination procedures [REVOKED]
- 210:10-3-40. Child and Adult Care Food Program (CACFP) general provisions [NEW]**

The current content of the Child and Adult Care Food Program (CACFP) subpart is proposed for revocation, as these rules adopted in 1995 no longer consistently reflect the federal laws and regulations that govern the CACFP program. A new rule is proposed for adoption under this subchapter, incorporating the federal regulations at 7 C.F.R. Part 226 as Oklahoma's governing rules for the program, with any state level policies specifically required by federal law made available on the State Department of Education website and through the Office of Child Nutrition. Incorporating the federal regulations as Oklahoma's CACFP program rules will ensure that state guidelines are always consistent with the governing federal rules, even when changes are made to the program at the federal level.

- (3) Title 210. State Department of Education
 - Chapter 20. Staff
 - Subchapter 1. General Provisions
 - 210:20-1-2. Prohibition on aiding and abetting sexual abuse [NEW]**

This is a rule adoption required under the Every Student Succeeds Act (ESSA). 20 U.S.C. § 7926 directs all state and local education agencies that receive federal funding to adopt a prohibition on their employees and contractors assisting any school employee or contractor in obtaining employment if it is known, or believed based on probable cause, that the person seeking employment engaged in sexual misconduct with a student or minor. This proposed rule satisfies the policy adoption obligation at the state level, and directs school districts and charter schools to adopt their own policies consistent with the federal prohibition.

- (4) Title 210. State Department of Education
 - Chapter 20. Staff
 - Subchapter 18. Lead and Master Teachers [NEW]
 - 210:20-18-1. Lead and master teaching certificates [NEW]**

Pursuant to Senate Bill 980 (2018), the State Board of Education is directed to adopt rules implementing fees and renewal schedules for two new classes of advanced teacher certification, a lead teaching certificate and a master teaching certificate. The advanced certification classes will be available beginning with

the 2021-2022 school year to any qualified applicants recommended by a school board, with lead and master certificates available before that time to teachers recommended by districts participating in a pilot program. The proposed rule clarifies the statutory eligibility requirements for the lead teaching certificate and master teaching certificate, and establishes a fee that is linked by reference to the standard certification fee listed in *Oklahoma Administrative Code* 210:20-9-9. The renewal requirements incorporate the standard certificate renewal process at 210:20-9-96, with additional requirements specific to the two advanced classes of certification. The proposed rule also addresses how a lead teacher or master teacher may return to standard certification if they are no longer eligible for or no longer wish to hold the advanced certification.

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES
SUBCHAPTER 1. GENERAL PROVISIONS**

210:10-1-12. Acquired Immune Deficiency Syndrome (AIDS)

~~(a) The State Department of Education adheres to the following guidelines, upon the recommendation by the Oklahoma State Health Department, in the event a student is diagnosed as having Acquired Immune Deficiency Syndrome (AIDS).~~

~~(1) When a child in the public schools is diagnosed as having AIDS, the State Health Department must be contacted.~~

~~(2) Determinations regarding the location of an AIDS student's educational program will be made on a case-by-case basis by a team composed in each instance of the child's parent or guardian, the child's physician, the local superintendent, a representative of the State Health Department, and a representative of the State Department of Education.~~

~~(3) The team will meet and make a decision as to whether the child in question should be in attendance in the public schools. Such decision will then be recommended to the local board of education.~~

~~(4) In making a recommendation as to the child's attendance in a public school, the team will utilize the guidelines published by the Centers for Disease Control.~~

~~(b) Questions concerning the administration or implementation of these guidelines should be addressed to the State Department of Education. For any medically related questions, contact the State Health Department Sexually Transmitted Disease Division.~~

RULE IMPACT STATEMENT 210:10-1-12

Acquired Immune Deficiency Syndrome (AIDS) [REVOKED]

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

This rule adopted in the 1980s, which had placed purported limits on a student's right to attend public school if they are living with HIV/AIDS, is being revoked due to its outdated content that is not consistent with current law or scientific understanding. The Oklahoma State Department of Health has been consulted and does not object to the proposed revocation.

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 students/potential students who have been "diagnosed as having AIDS" or who are HIV-positive.

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

The rule change will benefit students living with HIV/AIDS by ensuring the administrative rules accurately reflect their right to a free public education, and will benefit school districts by removing outdated content from the regulations.

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:** January 7, 2018

PUBLIC COMMENT SUMMARY

210:10-1-12. Acquired Immune Deficiency Syndrome (AIDS) [REVOKED]

Summary of Public Comment	Agency Response
<p>Commenter, the Oklahoma AIDS Care Fund, expresses "serious concerns" about OAC 210:10-1-12.</p> <p>"This rule, as written, has the potential to inadvertently disclose a student's HIV status to an entire community, lead to litigation and harm a student's overall academic achievement."</p>	<ul style="list-style-type: none"> • The OSDE notes the commenter's concerns, and believes the revocation of this outdated rule is appropriate. <p>The OSDE has consulted the Oklahoma State Department of Health, which also consents to the revocation of the rule.</p>
<p>"Students living with HIV have a right to a free, public education as guaranteed by the Oklahoma Constitution (Article XIII, Sec. 1). Federal laws also protect educational rights of students living with HIV (Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act). Courts have time and again ruled on this issue. However, Rule 210:10-1-12 provides an avenue in which a local school board can attempt to remove these rights based solely on fear. Any attempt to ban a student could result in a costly and sensational lawsuit á la Ryan White which is sure to disclose the student's HIV status."</p>	<ul style="list-style-type: none"> • The OSDE acknowledges that the comment accurately characterizes the applicable laws, which establish a student's right to a public education regardless of medical status. <p>The agency is not aware of an Oklahoma school district having excluded a student from educational opportunities on the basis of 210:10-1-12. However, revocation of the rule is necessary to ensure the Administrative Code is consistent with applicable law and provides appropriate guidance to school districts.</p>
<p>Commenter notes "there is no statutory authority for this rule. The Oklahoma Legislature adopted in 1987 a requirement that HIV education be taught in public schools. The statute, 70 O.S. Sec. 11-103.3, is cited as the authority for this rule but no mention of denial of education is mentioned in the statute."</p>	<ul style="list-style-type: none"> • The OSDE agrees that 70 O.S. § 11-103.3 directs school districts to provide AIDS prevention education, and does not authorize the exclusion of a student from public school due to HIV/AIDS status or any other basis.
<p>"People living with HIV face daily stigma from all sectors of society but shouldn't face it from their own government; therefore, the Oklahoma AIDS Care Fund fully supports the repeal of Rule 210:10-1-12."</p>	<ul style="list-style-type: none"> • The OSDE is committed to ensuring that all Oklahoma students are provided with access to a free, appropriate public education.

Comments submitted by:

Oklahoma AIDS Care Fund

STATUTORY AUTHORITY FOR 210:10-1-12 [REVOKED]

Please note that this statute cited as the authority for the original adoption of 210:10-1-12 does not appear to address or authorize the content of the rule.

Oklahoma Statutes

Title 70. Schools

Chapter 1 - School Code of 1971

Article XI - Curriculum

Section 11-103.3 - AIDS Prevention Education

A. Acquired immune deficiency syndrome (AIDS) prevention education shall be taught in the public schools of this state. AIDS prevention education shall be limited to the discussion of the disease AIDS and its spread and prevention. Students shall receive such education:

1. at the option of the local school district, a minimum of once during the period from grade five through grade six;
2. a minimum of once during the period from grade seven through grade nine; and
3. a minimum of once during the period from grade ten through grade twelve.

B. The State Department of Education shall develop curriculum and materials for AIDS prevention education in conjunction with the State Department of Health. A school district may also develop its own AIDS prevention education curriculum and materials. Any curriculum and materials developed for use in the public schools shall be approved for medical accuracy by the State Department of Health. A school district may use any curriculum and materials which have been developed and approved pursuant to this subsection.

C. School districts shall make the curriculum and materials that will be used to teach AIDS prevention education available for inspection by the parents and guardians of the students that will be involved with the curriculum and materials. Furthermore, the curriculum must be limited in time frame to deal only with factual medical information for AIDS prevention. The school districts, at least one (1) month prior to teaching AIDS prevention education in any classroom, shall conduct for the parents and guardians of the students involved during weekend and evening hours at least one presentation concerning the curriculum and materials that will be used for such education. No student shall be required to participate in AIDS prevention education if a parent or guardian of the student objects in writing to such participation.

D. AIDS prevention education shall specifically teach students that:

1. engaging in homosexual activity, promiscuous sexual activity, intravenous drug use or contact with contaminated blood products is now known to be primarily responsible for contact with the AIDS virus;
2. avoiding the activities specified in paragraph 1 of this subsection is the only method of preventing the spread of the virus;
3. sexual intercourse, with or without condoms, with any person testing positive for human immunodeficiency virus (HIV) antibodies, or any other person infected with HIV, places that individual in a high risk category for developing AIDS.

E. The program of AIDS prevention education shall teach that abstinence from sexual activity is the only certain means for the prevention of the spread or contraction of the AIDS virus through sexual contact. It shall also teach that artificial means of birth control are not a certain means of preventing the spread of the AIDS virus and reliance on such methods puts a person at risk for exposure to the disease.

F. The State Department of Health and the State Department of Education shall update AIDS education curriculum material as newly discovered medical facts make it necessary.

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES
SUBCHAPTER 3. CHILD NUTRITION PROGRAM
PART 3. CHILD AND ADULT FOOD CARE PROGRAM (CACFP)**

210:10-3-20. Definitions

—The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise.

"Administrative Review" means a program compliance evaluation process using forms provided by the State Agency.

"Agreement" means the written consent of obligations between the State Department of Education (SDE) Child Nutrition Programs (CNP) and the Child and Adult Care Food Program applicant.

"Application" means the State Department of Education Child Nutrition Programs' established procedure for determining eligibility of institutions, facilities, and Sponsoring Organizations in the Child and Adult Care Food Program (CACFP)

"Approval Visit" means the technical assistance visit used by the State Agency to complete the approval process for participation in the CACFP.

"CACFP" means Child and Adult Care Food Program.

"CMIA" means Cash Management Improvement Act.

"CNP" means Child Nutrition Programs.

"Compliance" means having met the contractual requirements of the CACFP.

"Component" means a required food group as specified by the USDA. The four food components are milk, meat and meat alternates, fruits and vegetables, and bread and bread alternates.

"Coordinator" means an official employee of the SDE that provides consultative, technical and managerial assistance to CACFP programs. Coordinators also conduct approval visits and administrative reviews of program participants.

"Corrective Action Plan" means a written plan to address deficiencies and identify actions and time frames to be taken for the deficiencies found in an administrative review or audit.

"Cycle Menus" means a set of carefully planned menus that will be rotated according to a definite pattern. Cycle menus contain all required food components.

"DCHs" means Day Care Homes.

"DHS" means the Oklahoma Department of Human Services.

"Family Size and Income Application" means the document used to determine the eligibility status of an enrolled child.

"Minimum Meal Patterns" means the required food components and quantities as set forth by USDA for the CACFP in 7 CFR 226.20 of CACFP regulations.

"Multi-sited Institution" means an institution which has more than one child care facility.

"Organization-wide Audit" means an independent audit of all funds received by an organization, inclusive of federal, state, local, and private funds. The audit requirement applies to CACFP institutions receiving total federal financial assistance that is equal to, or in excess of, \$100,000 and is designed to satisfy the needs of all funding sources. The audit must include a

random sampling of all federal funds the institution receives and must also be conducted by an independent auditor.

"Per Unit Basis" means individual home basis.

"Physical Inventory" means a visual counting and recording of all unopened food and food-related supplies on hand for use in the CACFP.

"Point of Service Count" means the point in the food service operation where a determination can accurately be made that a reimbursable meal has been served.

"Program-specific Audit" means a financial and program compliance audit covering only one specific program (i.e., CACFP).

"Quantity" means the amount of any food item served. Quantities are specified by USDA in CACFP minimum meal pattern requirements.

"Review Month" means the most recent month for which a claim for reimbursement was submitted, provided that such claim covers at least 10 operating days. The review month is examined during an administrative review.

"Schedule A" means a list of facilities or homes and their addresses under an institution's sponsorship.

"Schedule B" means the minimum meal pattern requirements.

"SDE" means the Oklahoma State Department of Education.

"Shift" means an approved time for any approved meal.

"Significant" means any area of noncompliance which is found to be in violation of the ten percent tolerance level of the review period.

"Umbrella Sponsor" means a multi-sited institution.

"USDA" means the United States Department of Agriculture.

210:10-3-21. Terms defined in CACFP Regulations

Additionally, the following words and terms are defined in CACFP Regulations 7 CFR 226 and, as used in this part, have those meanings unless the context clearly indicates otherwise.

- (1) "AFDC Assistance Unit Act"
- (2) "Administrative Costs"
- (3) "Adult"
- (4) "Adult Day Care Center"
- (5) "Adult Day Care Facility"
- (6) "Adult Participant"
- (7) "Advanced Payments"
- (8) "CACFP Child Care Standards"
- (9) "Child Care Center"
- (10) "Child Care Facility"
- (11) "Children"
- (12) "Claiming Percentage"
- (13) "Current Income"
- (14) "Day Care Home"
- (15) "Department"
- (16) "Documentation"
- (17) "Enrolled Child"
- (18) "Enrolled Participant"
- (19) "Family"

- (20) ~~"Fiscal Year"~~
- (21) ~~"FNS"~~
- (22) ~~"FNSRO"~~
- (23) ~~"Food Service Equipment Assistance"~~
- (24) ~~"Food Service Management Company"~~
- (25) ~~"Food Stamp Household"~~
- (26) ~~"Free Meal"~~
- (27) ~~"Functionally Impaired Adult"~~
- (28) ~~"Household"~~
- (29) ~~"Income Standards"~~
- (30) ~~"Income to the Program"~~
- (31) ~~"Independent Center"~~
- (32) ~~"Infant Cereal"~~
- (33) ~~"Infant Formula"~~
- (34) ~~"Institution"~~
- (35) ~~"Key Element Reporting System"~~
- (36) ~~"Meals"~~
- (37) ~~"Medicaid Participant"~~
- (38) ~~"Milk"~~
- (39) ~~"Nonpricing Program"~~
- (40) ~~"Nonprofit Food Service"~~
- (41) ~~"Nonresidential"~~
- (42) ~~"OIG"~~
- (43) ~~"Operating Costs"~~
- (44) ~~"Outside School Hours Care Center"~~
- (45) ~~"Participants"~~
- (46) ~~"Personal Property"~~
- (47) ~~"Pricing Program"~~
- (48) ~~"Program"~~
- (49) ~~"Program Payments"~~
- (50) ~~"Proprietary Title XIX Center"~~
- (51) ~~"Proprietary Title XX Center"~~
- (52) ~~"Reduced price Meal"~~
- (53) ~~"Reimbursement"~~
- (54) ~~"SSI Participant"~~
- (55) ~~"School Year"~~
- (56) ~~"Sponsoring Organization"~~
- (57) ~~"Start-up Payments"~~
- (58) ~~"State"~~
- (59) ~~"State Agency"~~
- (60) ~~"Title XVI"~~
- (61) ~~"Title XIX"~~
- (62) ~~"Title XX"~~
- (63) ~~"Uniform Federal Assistance Regulations"~~
- (64) ~~"Verification"~~
- (65) ~~"Yogurt"~~

210:10-3-22. Agreement

- ~~(a) The State Agency shall require that a meal analysis be conducted to fulfill the review regulations for Sponsoring Organizations.~~
- ~~(b) The State Agency shall limit meal services to a maximum of two shifts.~~
- ~~(c) The State Agency shall require that when an ownership change occurs, the current CACFP Agreement becomes null and void. Notification of such occurrence must be reported immediately to the State Agency. If the new owner chooses to participate in the CACFP, he/she must submit a new application and agreement for participation.~~
- ~~(d) The State Agency shall require that in the operation of the Child and Adult Care Food Program, the institution designate an authorized representative who may act for the governing body/institution in preparing and signing documents, reports and claims for reimbursement pertaining to the installation and operation of the Program. Only one authorized representative may be designated at any time. The authorized representative accepts responsibility for the monthly claim for reimbursement and will receive all correspondence from the State Agency.~~
- ~~(e) The State Agency shall require that multi-sited institutions include the following when fulfilling their monitoring responsibilities:
 - ~~(1) Each child care and adult care facility must be reviewed at least three times each year with not more than six (6) months elapsing between reviews.~~
 - ~~(2) New child care and adult care facilities must have a review conducted during the first six weeks of Program operations.~~
 - ~~(3) Each outside school hours care center must have a review conducted during the first four weeks of Program operations.~~
 - ~~(4) All other outside school hours care centers must be reviewed six times each year with not more than three months elapsing between reviews.~~~~
- ~~(f) The State Agency shall require that each institution designate a trainer. All CACFP personnel must receive training prior to performing Program duties. Documentation must be maintained on all training conducted. Documentation must include topics covered, personnel in attendance, dates, and locations.~~
- ~~(g) The State Agency shall require that public and private nonprofit institutions receiving \$100,000 or more in total federal funds in the previous fiscal year submit to the State Agency an organization wide audit by September 30 each year for the previous fiscal year.~~
- ~~(h) The State Agency shall require that for the purpose of this agreement, Schedule A shall refer to the names and addresses of the child care facilities under the institution's administration.~~
- ~~(i) The State Agency shall require that for the purpose of this agreement, Schedule B shall refer to the minimum meal patterns as set forth in CFR 226.20 and Section 210:10-3-27 of this Part.~~
- ~~(j) The State Agency shall require that institutions supply meals without cost to all enrollees at the service institution.~~
- ~~(k) The State Agency shall require that no Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of the agreement or to any benefit that may arise therefrom: But this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.~~

210:10-3-23. Specification of meal times

~~—The State Agency shall require the following time sequence for meals: at least three (3) hours between main meals (from beginning time to beginning time), two (2) hours between a main meal and a supplement (from beginning time to beginning time). Meals served between the hours~~

of 10 p.m. and 5 a.m. may not be claimed for reimbursement. Suppers must not be served prior to 5 p.m. and not after 8 p.m.

210:10-3-24. Cycle menus

The State Agency shall require institutions to develop and follow a thirty (30) day cycle menu for each main meal and supplement served.

210:10-3-25. Recordkeeping

(a) The State Agency shall require daily food production records be maintained as well as daily meal counts and menus. These production records must reflect actual quantities served, detailing the following: date; total number served; total served by age group, including adults; menu; total quantity served for each required component, including crediting information

(b) The State Agency shall require that an accurate physical count at the point of service (at the time the meal is served) be made of all meals and supplements served to participants. A record of meal counts must be posted after each meal service on the meal count worksheet to support claims for reimbursement. Dual signatures are required on the meal count worksheet.

(c) The State Agency shall require that a physical inventory of CACFP purchased foods be maintained monthly as well as an inventory of USDA donated foods as required by the Department of Human Services.

(d) The State Agency shall require CACFP institutions to maintain all records for five (5) years following the end of the fiscal year. CACFP records which support claims for reimbursement include the following documents (A system equal to or better than forms provided by the State Agency may be utilized.) Records which must be maintained include the following:

- (1) CACFP 1 Institution Application for Participation and Management Plan
- (2) CACFP 1A Civil Rights Data Collection
- (3) CACFP 2 Facility Application for Participation
- (4) CACFP 2A Agreement with School to Furnish Food Service, if applicable
- (5) CACFP 3 Policy Statement/Public Release
- (6) CACFP 4 Family Size and Income Application for Child Care
- (7) ADC 4 Family Size and Income Application for Adult Care, if applicable
- (8) CACFP 4A Household Size and Income Scales for Child Care
- (9) ADC 4A Household Size and Income Scales for Adult Care, if applicable
- (10) CACFP 4B Letter to Household for Child Care
- (11) ADC 4B Letter to Household for Adult Care, if applicable
- (12) CACFP 5 Electronic Funds Transfer Authorization Form, if applicable
- (13) CACFP 6 Agreement
- (14) CACFP 7 Roster
- (15) CACFP 8 Daily Attendance Records Arrival and Departure, if applicable
- (16) CACFP 9 Meal Count Worksheet for Child Care
- (17) ADC 9 Meal Count Worksheet for Adult Care, if applicable
- (18) CACFP 10 Daily Record of Meals Served, if applicable
- (19) CACFP 11 Itemized Receipts/Food Purchasing Form
- (20) CACFP 12 Expenditure Worksheet
- (21) CACFP 13 Claim for Reimbursement for Child Care
- (22) ADC 13 Claim for Reimbursement for Adult Care, if applicable
- (23) CACFP 13A Notification of Title XX/XIX Under 25%

- ~~(24) CACFP-13B Report of Facilities Operating Under One Institution~~
- ~~(25) CACFP-14 Preapproval Visit Form, if applicable~~
- ~~(26) CACFP-14A Monitor Review Form, if applicable~~
- ~~(27) CACFP-15 Drop and Add Form, if applicable~~
- ~~(28) Attendance Records (must reflect participants and non-participants, including first and last name)~~
- ~~(29) Menu Planning Book/Production Records~~
- ~~(30) Record of Infant Meals and Quantities Served, if applicable~~
- ~~(31) Record of Monthly Inventory~~
- ~~(32) Canceled Checks (Documentation for CACFP Expenditures)~~
- ~~(33) CACFP Notice of Deposit~~
- ~~(34) Commodity Allocation Receipt, if applicable~~
- ~~(35) Title XX/XIX Documentation, if applicable~~
- ~~(36) Copy of Contract for Meals, Contract Meal Delivery Receipts, if applicable~~
- ~~(37) CN Labels/Product Analysis Statements of On-Site Preparation, if applicable~~
- ~~(38) Blended Rate Worksheet~~
- ~~(39) All Correspondence for State Agency~~
- ~~(e) The State Agency shall require that all Program records be maintained in a central location at the end of the fiscal year.~~
- ~~(f) The State Agency shall require that records be maintained and immediately available at all times at the location approved on the CACFP Application.~~
- ~~(g) The State Agency shall require that the institution have thoroughly itemized receipts (name of food item, number of units purchased, unit size, unit cost, total cost, correct date, and place of purchase) which is signed by the purchaser, the cash register tape total, and the food purchasing form grand total must agree.~~
- ~~(h) The State Agency shall require that a properly approved Family size and Income Application must be categorized according to free, reduced, or not eligible, and be dated and signed by the approval official. Failure to properly approve this application will result in it being classified as "not eligible" (Family size and Income Applications must be taken each fiscal year regardless of previous enrollment). The fiscal year begins October 1 each year and ends September 30.~~
- ~~(i) The State Agency shall require that a monthly record of participation by free, reduced, or not eligible be maintained for each month claiming for reimbursement on the CACFP. The CACFP Attendance Roster must reflect which children are included in the institution's participation data.~~
- ~~(j) The State Agency shall require that when zero income is reported, the approving official should issue temporary approval for thirty (30) days. Income update contacts must be made every 30 days and documented on the Family size and Income Application. At the end of 90 days (after three contacts are made), a new application is required. If the household's income is still zero, a new temporary approval should be issued. At this time written documentation must be provided by the household explaining how food, clothing, and shelter are provided. If a new application and written documentation are not provided by the household, the institution must report the child as not eligible.~~
- ~~(k) The State Agency shall require that all children receiving care must be included on child care center attendance records and are considered to be enrolled in the child care center. Enrolled~~

~~child means a child whose parents or guardians have submitted to an institution a signed document which indicates that the child is enrolled for care and/or instruction.~~

~~(l) The State Agency shall require that all children participating in at least one meal per month must be reported in participation data as free, reduced, or not eligible. For a child to be categorized free or reduced, a fiscal year Family size and Income Application must be properly completed and approved and kept on file.~~

~~(m) The State Agency shall require that documentation to ensure that no meals are claimed over the four (4) meal limit per child be maintained and must reflect arrival and departure times. The arrival and departure times must be kept on all children. The Daily Record of Meals Served form or equal record system must reflect the meal service participation for each child for each day that he/she is in attendance.~~

~~(n) The State Agency shall require that all meals served to children be reported on the claim for reimbursement as either Program meals or nonclaimable meals. Nonclaimable meals are those served over capacity, meals that are missing components, contract meals served to children enrolled at another center, etc. Income must be reported for nonclaimable children's meals. The price charged for each meal must reflect at least the total cost of the meal, including the value of commodities (the current value of commodities is the current cash in lieu of commodities rate).~~

~~(o) The State Agency shall require that all meals served to adults be reported on the Claim for Reimbursement as Program meals or nonprogram meals. Income from nonprogram adult meals must be reported. The price charged for the meal must reflect at least the total cost of the meal, including the value of commodities. Program adults are those involved in the preparation, service, and/or supervision of the participants during the meal service. Supervision means sitting with and eating the same meal served the participants.~~

210:10-3-26. Commodities

~~(a) The State Agency shall require that institution approvals made after June 1 will be eligible only for cash in lieu of commodities through the end of the following June~~

~~(b) The State Agency shall require that institutions file at least one claim per fiscal year quarter to receive commodities. If one claim per quarter is not submitted to the State Agency, the institution will automatically be placed on the cash in lieu of commodities for the duration of the fiscal year.~~

210:10-3-27. Meal pattern requirements

~~(a) The State Agency shall require that one of the following methods be used in determining the credibility of breads/bread alternates when reviewing recipes:~~

~~(1) Calculating the weight of each ingredient separately when determining the primary ingredient by weight (this will be treating the recipe exactly the same as a purchased product—neither grains nor sugars would be added together in the calculations); or~~

~~(2) Calculating the weight of like ingredients to be added together when determining the primary ingredients by weight.~~

~~(b) The State Agency shall require that whole grain or enriched meal or flour be the predominant ingredient by weight as specified on the label or recipe for all bread/bread alternate products. Whole grains are: barley, wheat, oats, corn, and rice. If the flour or meal used is not whole grain or enriched, it must list the following four nutrients: iron, thiamine, riboflavin, and niacin.~~

~~(c) The State Agency shall require one (1) ounce serving of meat/meat alternate be served at least once a week for Breakfast. This is in addition to the three (3) components required at every reimbursable breakfast served.~~

~~(d) The State Agency shall require that the quantity charts will be used to determine amounts of food needed for the CACFP. These charts are developed using the USDA Food Buying Guide. Therefore, the Food Buying Guide will be the resource material used when evaluating a Program's compliance with meal pattern requirements.~~

210:10-3-28. Unrecovered funds

~~—If an institution terminates the CACFP and owes the State Agency funds due to an overclaim, the institution must submit a payment schedule immediately to repay the debt. The State Agency shall approve a payment schedule of at least one-half (1/2) of an average month's reimbursement for the fiscal year in which the assessment was made.~~

210:10-3-29. Administrative review

~~(a) The State Agency shall require that the State Department of Education Child Nutrition Programs use the administrative review instrument to assess compliance with USDA Regulations and Oklahoma SDE/CNP Codified Policies.~~

~~(b) The State Agency shall require that a corrective action plan be submitted within 15 days from the date of date administrative review letter notifying the institution of the review findings when areas of noncompliance are plan during the administrative review process. The corrective action plan is required to address deficiencies and identify the actions and timeframes to be taken for the deficiencies found.~~

~~(c) The State Agency shall require that money owed to the State Agency as a result of an administrative review or audit be reclaimed by deducting one-half (1/2) of future reimbursement claims until total amount is collected.~~

~~(d) The State Agency shall require that when conducting administrative reviews, component and quantity issues be addressed as follows:~~

~~(1) Components: The reviewer will examine menus, food production records, receipts, inventory records, and any other support documents needed to evaluate meal components. Meals missing components during the current fiscal year will be disallowed and funds reclaimed.~~

~~(2) Quantities: The reviewer will evaluate the food production records for the review month to determine if adequate quantities to meet minimum meal patterns were served. Any of these meals with inadequate quantities will be disallowed and funds reclaimed for the review month. Inventory records, receipts, and any other support documents may be used to substantiate quantities and meals claimed.~~

~~(e) The State Agency shall require that for the purpose of the administrative review, the following terms shall mean:~~

~~(1) Review Month: for administrative reviews, shall cover the most recent month for which a claim for reimbursement was submitted, provided that such claim for reimbursement covers at least ten (10) operating days.~~

~~(2) Significant: any area of noncompliance which is found to be in violation of ten percent (10%) tolerance level of the review period.~~

~~(f) The State Agency shall require that administrative review follow-up procedures be as follows: When a corrective action plan is not sufficient to close an administrative review, a~~

~~follow-up visit will be scheduled using the administrative review follow-up action form. The reviewer will assess whether areas of noncompliance were corrected within sixty (60) calendar days of the administrative review. The reviewer will use the administrative review follow-up form to document the findings. If the review can be closed due to all areas of noncompliance being corrected, the appropriate reports indicating such will be sent to the State Agency by the reviewer. If areas of noncompliance still exist, a second follow-up will be scheduled using the administrative review follow-up action form. If at this first follow-up the institution is considered seriously deficient, the administrative review follow-up form must indicate so and then termination procedures are to be followed.~~

210:10-3-30. Day care homes; sponsoring organizations for day care homes (DCH) agreement

~~(a) The State Agency shall retain the authority to determine the limits of a reasonable budget, depending upon the size of the Program, duties, and economic conditions of the locale. Adjustments, revisions, or justification shall be on file before approval of the budget.~~

~~(1) If the budgeted administrative costs exceed the allowable amounts calculated under Section 226.12 (a) of USDA Regulations (number of participating homes multiplied by the applicable reimbursement rates plus ten percent [10%] growth allowance) the State Agency shall have the Sponsoring Organization submit:~~

~~(A) documentation providing the source and amount of income to support the additional expenses; or~~

~~(B) a revised administrative budget reflecting reduced costs; or~~

~~(C) a statement explaining how the excess administrative costs will be handled.~~

~~(2) An initial cap not to exceed fifty (50) homes shall be placed on the number of day care homes to be approved for new Sponsoring Organizations. The State Agency shall approve additional homes only if the Sponsoring Organization provides a plan for expansion and, upon the first administrative review conducted within ninety (90) days of approval, evidence of administrative financial capability is demonstrated.~~

~~(3) A cap shall be placed on the number of DCHs for Sponsoring Organizations already participating in the CACFP if the staffing pattern and management plan do not reflect sufficient administrative capability to administer more. Additional homes shall be approved commensurate with the organization's capabilities.~~

~~(4) The budget shall be viewed as a planning document. Amendments shall become an integral component in the budget process and, as such, any budget increase shall be justified in writing before approval by the State Agency and shall not be approved retroactively.~~

~~(b) The State Agency shall place a cap on the number of DCHs to participate with a sponsor if deficiencies in administrative or financial capabilities are noted during a review or audit due to an excessive number of homes. The State Agency shall identify the number of DCHs the Sponsoring Organization can effectively administer and immediately notify the sponsor that it has ten (10) days in which to submit to the State Agency a plan to reduce the homes to the approved cap.~~

~~(1) A Sponsoring Organization that has been identified as being deficient due to audit or review findings shall be notified immediately that no additional homes shall be approved until such time as an acceptable plan is submitted to correct the deficiencies.~~

~~(2) When serious deficiencies such as fraud or misuse of funds result and corrective action would not be practical, immediate termination of the Sponsoring Organization's agreement~~

~~with CACFP shall be accomplished in accordance with uniform Federal Assistance Regulations as referenced in Section 226.25 (a) of USDA CACFP regulations.~~

~~(c) The State Agency shall not make payments for meals or administration of any DCH approved unless the home has participated at least ten (10) days in the first month of participation.~~

~~(d) The State Agency shall not allow sponsors to approve applications for DCH providers for more than five (5) days per week unless the State Agency is furnished with justification for additional days and grants prior approval.~~

~~(e) The State Agency shall not allow sponsors to approve meal services between the hours of 10 p.m. and 5 a.m.~~

~~(f) The State Agency shall disallow payment(s) to Sponsoring Organizations submitting amended claims. The State Agency shall withhold payments until the Sponsoring Organization demonstrates that it has established procedures to produce a final claim on time each month. The State Agency must ensure that no future adjustments in claims are paid outside the claiming timeframe except in those instances when justified by on-site State Agency review or independent audit.~~

~~(g) The State Agency shall require that the Sponsoring Organization represents and warrants that:~~

~~(1) All Program records will be immediately available, upon request, by state and/or federal personnel.~~

~~(2) It will not pay personnel on a "per unit" basis either for recruitment or ongoing monitoring activities. The State Agency may grant an exception to this provision where warranted by special circumstances.~~

~~(3) Any changes on provider applications must be received in the State Office by the first of each month to be considered for payment for the previous month. This includes additions, deletions, and licensing verification. Sponsors need to ensure that all applications are complete and correct.~~

~~(4) All children with enrollment data will have the opportunity to participate in the Child and Adult Care Food Program. Day care home sponsors must have current, properly completed, and approved Family size and Income Applications on file for any providers who claim their own children's meals. Provider's own children may receive CACFP meal benefits if the provider's household qualifies for free or reduced price meals and at least one nonresidential child, enrolled and receiving care in the provider's home, is in attendance and participating in the meal service. Households that receive food stamps or "Aid to Families With Dependent Children" (AFDC) or "Food Distribution Program on Indian Reservations" (FDPIR) benefits must contain the children's names, the food stamp or AFDC or FDPIR case number for each child, and the signature of an adult household member. Application for all other households must contain: children's names; names of all household members; the amount of income each person received last month and where it came from, which is to be totaled by the institution; and the signature of an adult household member and that adult's social security number or the word "none" if the adult does not have a social security number. A properly approved Family size and Income Application must be dated and signed by the approving official.~~

~~(h) The State Agency shall require that a Sponsoring Organization cannot use funds received for provider's payments for administrative expenses. Funds disbursed to Sponsoring Organizations for payments to providers must be received and the checks cashed by providers, or~~

~~the funds must be returned to the State Agency. Reasons for the Sponsoring Organization returning provider reimbursement to the State Agency include, but are not limited to:~~

- ~~(1) Provider moved; unable to locate.~~
- ~~(2) Provider check not cashed by expiration date (imposed by Sponsoring Organization).~~
- ~~(3) Unearned provider payment discovered after claim submitted.~~
- ~~(4) Ineligible payment due to audit/review.~~

~~(i) The State Agency shall require that CACFP funds recovered from provider payments or CACFP funds not disbursed to providers will be returned to the State Agency.~~

~~(j) The State Agency shall require that individuals actively engaged in the day-to-day operations of any Sponsoring Organization, either full or part time, cannot participate in the CACFP as a DCH provider.~~

~~(k) The State Agency shall require that any provider knowingly terminated for cause by another Sponsoring Organization will not be approved to participate under any sponsorship for a five (5) year period.~~

- ~~(1) The State Agency shall require that a meal analysis must be conducted to be counted as a review. One (1) of these reviews must be conducted on Saturday or Sunday for each home approved to operate more than five (5) days per week.~~

~~(m) The State Agency shall require that no DCH provider shall be allowed to care for another provider's own children.~~

~~(n) The State Agency shall require that three hours shall elapse between the beginning of one main meal service and the beginning of the next main meal service. At least two hours shall elapse between the beginning of a main meal and the beginning of a supplement. Suppers shall not be served prior to 5 p.m. or after 8 p.m.~~

~~(o) The State Agency shall require that pre-planned/printed menus shall not be used by providers to record the meal components served to children in their care and each Sponsoring Organization shall ensure that meal components are manually recorded by the provider on a meal-by-meal basis daily.~~

~~(p) The State Agency shall require that all records will be maintained for five (5) years following the end of the fiscal year and/or until any pending audit is resolved.~~

~~(q) The State Agency shall require that no Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.~~

~~(r) The State Agency shall require that for the purpose of this Agreement, the term provider's own children shall mean: Natural children, adopted children, children by legal guardianship, and/or all residential children in the household who are part of the economic unit of the family. A family is defined as a group of related or unrelated individuals who are not residents of an institution or boarding house but who are living as one economic unit. An economic unit is a group of related or unrelated people who share housing and/or all significant income and expenses. A foster child in residence with a provider is not considered in the definition of provider's own children.~~

~~(s) The State Agency shall require that this Agreement shall be effective with respect to meals served during the period commencing on the date of approval of the Agreement and ending the following September 30, unless terminated earlier as herein provided. The State Agency may approve the Fiscal Year Agreement by notice in writing given to the Sponsoring Organization, for such period as funds are available for carrying out the Program. (This Agreement may be~~

~~terminated upon ten (10) days written notice on the part of either party hereto, and the State Agency may terminate this agreement after receipt of evidence that the terms and conditions of this Agreement and the regulations governing the Program have not been fully complied with by the Sponsoring Organization. Any termination of this Agreement by the State Agency shall be in accordance with applicable laws and regulations. No termination or expiration of this Agreement, however, shall affect the obligation of the Sponsoring Organization to maintain and retain records and to make such records available.)~~

~~(t) The State Agency shall require that the terms of this Agreement shall not be modified or changed in any way other than by the consent in writing of both parties hereto.~~

~~(u) The State Agency shall require that the reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of Budget in accordance with Federal Reports Act of 1942.~~

~~(v) The State Agency shall require that in order to qualify for reimbursement under this Agreement in conducting the food service in the day care homes listed in Schedule A, providers will:~~

~~(1) Participate with the Sponsoring Organization for at least one (1) year. If home does not complete year's participation, approval to participate with another Sponsoring Organization will not be made until the following fiscal year.~~

~~(2) Attend a Sponsoring Organization CACFP in-service training session annually.~~

~~(3) Develop a 30-day menu cycle for each main meal and supplement served~~

~~(4) Prepare meals on the basis of current participation trends with the objective of providing only one meal per child at each meal service.~~

~~(5) Submit no claim for reimbursement for more than two meals and one supplement or one meal and two supplements per child daily.~~

~~(6) Provide documentation to ensure that no meals are claimed over the three (3) meal limit per child daily. Documentation must be maintained and must reflect arrival and departure times. The record system must reflect the meal service participation for each child for each day that he/she is in attendance.~~

~~(7) Not forbid the availability of the Program as disciplinary action. Meals cannot be used as a reward or as a punishment.~~

~~(w) The State Agency shall require that day care home providers maintain full and accurate records of the Program, including those set forth in this Agreement and retain such records for a period of five (5) years after the end of the fiscal year to which they pertain and/or until any pending audit is resolved.~~

~~(x) The State Agency shall require that, upon request, day care home sponsors and providers make all accounts and/or records pertaining to the Program immediately available to the State Agency and/or the USDA for audit or administrative review.~~

~~(y) The State Agency shall require that public and private nonprofit institutions receiving \$100,000 or more total federal funds in the previous fiscal year submit an organization wide audit by September 30 each year for the previous fiscal year.~~

~~(z) The State Agency shall require that the Sponsoring Organization keep full and accurate records respecting its food service to serve as a basis for the claim for reimbursement and for audit and review purposes. Those Sponsoring Organizations approved for participation in the Child and Adult Care Food Program must maintain separate records for each day care home. The records to be maintained and available at all times at the location approved on the CACFP application include, but are not limited to, the following:~~

~~(1) Sponsor Recordkeeping requirements include:~~

- ~~(A) DCH 1 Sponsor Application~~
- ~~(B) DCH 1A Sponsor Civil Rights~~
- ~~(C) DCH 1B Sponsor Policy Statement~~
- ~~(D) DCH 1C Sponsor Agreement With SDE~~
- ~~(E) DCH 1D Sponsor Electronic Funds Transfer~~
- ~~(F) DCH 1E Basic Responsibilities Outline~~
- ~~(G) DCH 1F Civil Rights Complaint Filing Procedure~~
- ~~(H) DCH 2 Provider Facility Application~~
- ~~(I) DCH 2A Provider Family Size and Income Application~~
- ~~(J) DCH 2B Provider Income Scale~~
- ~~(K) DCH 2C Letter to Provider~~
- ~~(L) DCH 2D Provider Agreement With Sponsor~~
- ~~(M) DCH 3 Notification of Meal Changes~~
- ~~(N) DCH 4 Providers Eligible to Claim Their Own Children's Meals~~
- ~~(O) DCH 5 Training Schedule~~
- ~~(P) DCH 6 Review Schedule~~
- ~~(Q) DCH 6A Pre-approval Visit Form~~
- ~~(R) DCH 6B Monitor Review Form~~
- ~~(S) DCH 7 Enrollment Data~~
- ~~(T) DCH 8 Daily Arrival and Departure Record~~
- ~~(U) DCH 8A Daily Record of Meals Served~~
- ~~(V) DCH 8B Weekly Meals Served~~
- ~~(W) DCH 8C Infant Meals Served~~
- ~~(X) DCH 9 Expenditure Worksheet~~
- ~~(Y) DCH 10 CACFP Payment Voucher~~
- ~~(Z) DCH 11 CACFP Disbursement Register~~
- ~~(AA) DCH 12 Claim for Reimbursement~~
- ~~(BB) DCH 12A Claim Attachment~~
- ~~(CC) 30-day Cycle Menu for Each Provider for Each Meal Service Approved~~

~~(2) Provider Recordkeeping requirements are:~~

- ~~(A) DCH 7 Enrollment Data~~
- ~~(B) DCH 8 Daily Arrival and Departure Record (Attendance Records)~~
- ~~(C) DCH 8A Daily Record of Meals Served (Meal Count by Type)~~
- ~~(D) DCH 8B Weekly Meals Served (Recorded Daily on a Meal by Meal Basis)~~
- ~~(E) DCH 8C Infant Meals Served, if applicable~~
- ~~(F) 30-day Cycle Menu for Each Main Meal and Supplement Served~~

~~(aa) The State Agency shall require that for the purpose of this Agreement, Schedule A shall refer to the names and addresses of day care home providers under the Sponsoring Organization's administration.~~

~~(bb) The State Agency shall require that for the purpose of this Agreement, Schedule B shall refer to the minimum meal patterns as set forth in CFR 226.20 and OAC 210:10-3-27.~~

~~(cc) The State Agency shall require the basic responsibilities as outlined for umbrella sponsors of family day care homes Child Nutrition Programs. Sponsor responsibilities include:~~

~~(1) Prior to beginning of operation, sponsors shall:~~

- ~~(A) Complete and submit in duplicate application packet for approval.~~

- ~~(B) Submit copies of Recordkeeping forms for approval.~~
- ~~(C) Submit copies of all materials used for outreach purposes and any instructional material(s) left with providers.~~
- ~~(2) After beginning operation, sponsors shall:

 - ~~(A) Maintain itemized receipts and invoices, as well as payroll records, to support administrative costs incurred and reported on monthly claims for reimbursement. These costs are incurred for administering the food service program. These records must be immediately available for review or audit.~~
 - ~~(B) Monitor all homes. One of the three reviews must be conducted on Saturday or Sunday for each home approved to operate more than five days per week. Six reviews are required if a provider has been terminated by another Sponsoring Organization.~~~~
- ~~(3) Monitoring responsibilities which shall include as a minimum:

 - ~~(A) Menu analysis;~~
 - ~~(B) Meal analysis;~~
 - ~~(C) Record analysis;~~
 - ~~(D) At home assistance for nutrition education, meal preparation, sanitation, recordkeeping, etc.~~~~
- ~~(4) Conducting annual in-service workshops (individual training in the home does not constitute a workshop). Sponsors shall maintain documentation on training session date(s) and location(s), as well as topics presented and names of participants.

 - ~~(A) Annual inservice workshops shall include as a minimum:

 - ~~(i) Training in nutrition and meal pattern requirements;~~
 - ~~(ii) Training in food preparation and sanitation;~~
 - ~~(iii) Training in better management procedures; and~~
 - ~~(iv) Training in recordkeeping requirements.~~~~
 - ~~(B) Annual inservice workshop training shall be conducted by Sponsoring Organization.~~~~
- ~~(dd) The State Agency shall require that in the agreement between Sponsoring Organization and day care home, in accordance with CACFP regulations, the Sponsoring Organization agrees to:

 - ~~(1) Provide CACFP recordkeeping forms to providers;~~
 - ~~(2) Limit each meal service to a maximum of two shifts; and~~
 - ~~(3) Keep all CACFP records on a daily and meal by meal basis.~~~~

210:10-3-31. Day care homes; administrative review

- ~~(a) The State Agency shall require that the State Department of Education Child Nutrition Programs Section will use the administrative review instrument to assess compliance with USDA Regulations and Oklahoma SDE/CNP Codified Policies.~~
- ~~(b) The State Agency shall require that money owed to the State Agency as a result of an administrative review or audit will be forwarded to the State Agency by the sponsor within the timeframe set by the State Agency.~~
- ~~(c) The State Agency shall require that when conducting administrative reviews, the reviewer will evaluate the cycle menus, weekly meals served form, and any other support documents for the review month to determine if adequate components were served to meet minimum meal pattern requirements. Any of these meals with inadequate components will be disallowed and funds reclaimed for the review month.~~

~~(d) The State Agency shall require that a corrective action plan be submitted within fifteen (15) days from the date of the administrative review letter notifying the institution of the review findings when areas of noncompliance are found during the administrative review process. The corrective action plan is required to address deficiencies and identify the actions and timeframes to be taken for the deficiencies found.~~

~~(e) The State Agency shall require that for the purpose of the administrative review, the following terms shall mean:~~

~~(1) Review month: for administrative reviews, shall cover the most recent month for which a claim for reimbursement was submitted, provided that such claim for reimbursement covers at least ten (10) operating days.~~

~~(2) Significant: any area of noncompliance which is found to be in violation of 10 percent tolerance level for the review period.~~

~~(f) The State Agency shall require that the administrative review follow up procedures be as follows. When a corrective action plan is not sufficient to close an administrative review, a follow up visit will be scheduled using the administrative review follow up action form. The reviewer will assess whether areas of noncompliance were corrected within sixty (60) calendar days of the administrative review. The reviewer will use the administrative review follow up form to document the findings. If the review can be closed due to all areas of noncompliance being corrected, the appropriate reports indicating such will be sent to the State Agency by the reviewer. If areas of noncompliance still exist, a second follow up will be scheduled using the administrative review follow up action form. If at this first follow up the institution is considered seriously deficient, the administrative review follow up form must indicate so and then termination procedures are to be followed.~~

210:10-3-32. Day care homes; meal pattern requirements

~~(a) The state shall require that one of the following methods be used in determining the credibility of bread/bread alternates when reviewing recipes:~~

~~(1) Calculating the weight of each ingredient separately when determining the primary ingredient by weight (this will be treating the recipe exactly the same as a purchased product—neither grains nor sugars would be added together in the calculations); or~~

~~(2) Calculating the weight of like ingredients to be added together when determining the primary ingredients by weight.~~

~~(b) The State Agency shall require that whole grain or enriched meal or flour must be the predominant ingredient by weight as specified on the label or recipe for all bread/bread alternate products. Whole grains are: barley, wheat, oats, corn, and rice. If the flour or meal used is not whole grain or enriched, it must list the following four nutrients: iron, thiamine, riboflavin, and niacin.~~

~~(c) The State Agency shall require that the quantity charts will be used to determine amounts of food needed for the CACFP. These charts are developed using the USDA Food Buying Guide. Therefore, the Food Buying Guide will be the resource material used when evaluating a Program's compliance with meal pattern requirements.~~

210:10-3-33. Day care homes; unrecovered funds

~~The State Agency shall require that if an institution terminates the CACFP and owes the State Agency funds due to an overclaim, the institution must submit a payment schedule immediately~~

to repay the debt. The State Agency shall approve a payment schedule of a minimum of one-half (1/2) of an average month's reimbursement for the fiscal year in which the assessment was made.

210:10-3-34. CACFP procedures for conducting audits of CACFP participants

~~(a) All required audits for participants of the CACFP are contracted for with a certified public accounting firm. The firm must have a permit to practice in the State of Oklahoma, be on the State Accounting Board's list of approved government auditors, and meet the requirements of GOVERNMENT AUDITING STANDARDS. After the application process for the new fiscal year is completed, the accounting firm is notified as to which entities require audit coverage in accordance with USDA Regulations 226.8 and OMB Circulars A-128 or A-133, as applicable.~~

~~(1) Program Specific Audits are conducted on the following institutions:~~

~~(A) Proprietary Title XX/XIX Institutions receiving \$25,000 or more in total CACFP funds in the previous fiscal year. This information is taken from actual monies received from claims filed with the SDE.~~

~~(B) Private Nonprofit Institutions or Public Government Institutions receiving between \$25,000 and \$100,000 in total federal funds in the previous fiscal year. This information is taken from the new fiscal year application.~~

~~(C) Entities determined by the SDE as needing Program Specific Audits. The decision to add institutions at SDE's discretion will be based on the recommendations of the area consultant or the auditing firm.~~

~~(2) Organization Wide Audits are required to be submitted to the SDE by the following Institutions:~~

~~(A) Private Nonprofit Institutions receiving \$100,000 or more in total federal funds in the previous fiscal year. This information is taken from the new fiscal year application.~~

~~(B) Public Government Institutions receiving \$100,000 or more in total federal funds in the previous fiscal year. This information is taken from the new fiscal year application.~~

~~(b) After notification by the SDE of the entities requiring a Program Specific Audit, the accounting firm schedules the audits and sends the SDE a schedule of audit dates. The SDE notifies each institution by letter of the date and time of the audit and what information needs to be made available by the institution to the auditor. When the audit is complete, the accounting firm sends three copies of the audit report and accompanying supplementary schedules to the SDE. The report is verified by the SDE and, if necessary, a claim adjustment is made. The audited institution is notified by letter of the audit results and provided a copy of the audit report. Closure procedures are as follows:~~

~~(1) Over/under claims of less than \$100 with no material internal control weaknesses: The audit is closed by the SDE. No fiscal action is required, therefore Appeal Procedures are not enclosed.~~

~~(2) Over/under claims of less than \$100 with material internal control weaknesses: No fiscal action is requested, therefore Appeal Procedures are not enclosed. Corrective Action Plan (CAP) by the Institution is requested within 30 days from the date the letter was sent from the SDE. The CAP is then forwarded to the area consultant for approval. The consultant determines if the audit can be closed by the CAP or if a follow up visit is necessary. If the Institution fails to submit a CAP, then the consultant must conduct a follow up visit. The audit is closed either by the consultant submitting a report approving the CAP or by the consultant submitting a follow up visit report.~~

~~(3) Over/under claims of more than \$100: Fiscal action is required, therefore the Appeal Procedures are enclosed for Institutions that do not concur with the findings. If an appeal of the findings is not requested, then it is assumed that the Institution concurs with the findings. A Corrective Action Plan (CAP) by the Institution is requested within thirty (30) days from the date the letter was sent from the SDE. The CAP is then forwarded to the area consultant for approval. The consultant determines if the audit can be closed by the CAP or if a follow-up visit is necessary. If the institution fails to submit a CAP, then the consultant must conduct a follow-up visit. The audit is closed either by the consultant submitting a report approving the CAP or by the consultant submitting a follow-up visit report.~~

~~(c) For institutions requiring submission of an Organization Wide Audit, the SDE contacts each one by letter. The letter states that the audit for the previous fiscal year must be forwarded to the SDE no later than September 30 of the current fiscal year.~~

~~(1) Once an audit is received by the SDE, it is forwarded to the auditing firm for a desk review to determine the following:~~

~~(A) Whether the audit was performed in accordance with generally accepted auditing standards, GOVERNMENT AUDITING STANDARDS and OMB Circular A-128 or A-133, as applicable;~~

~~(B) That Child and Adult Care Food Program funds disbursed by the Department of Education Child Nutrition Program to the institution were included within the scope of the organization wide audit;~~

~~(C) The impact of any reportable conditions or instances of noncompliance identified in the organization wide audit on the Child and Adult Care Food program.~~

~~(2) Upon completion of the desk review, the accounting firm returns the organization wide audit report to the SDE along with the accounting firm's opinion concerning the adequacy of the audit report and a recommendation as to whether additional quality control procedures should be taken. The SDE contacts the institution by letter stating the audit results of the desk review and what, if any, further quality control procedures are needed. Closure procedures are as follows:~~

~~(A) Compliance:~~

~~(i) When the desk review reflects that the organization wide audit is in compliance, the audit is closed by a letter from the SDE.~~

~~(ii) No fiscal action is required, therefore Appeal Procedures are not enclosed.~~

~~(B) Noncompliance:~~

~~(i) When the audit report reflects noncompliance, the Institution is notified by the SDE in writing as to why the audit is unacceptable. The Institution must submit another audit or addendums to the audit that would render the audit is made in compliance. Until the audit is acceptable, the SDE will withhold future reimbursements from the Institution until the audit is made in compliance. The institution will be given the right to appeal the claims withheld~~

~~(ii) If the Organization Wide Audit contains discrepancies, the certified public accounting firm under contract with SDE shall have the option of conducting a work paper review. Results will be forwarded to the SDE who will then notify the institution of the findings.~~

~~(iii) No fiscal action is required, therefore Appeal Procedures are not enclosed.~~

~~(C) Institutions not submitting audit by deadline: For audits not received by September 30 of the current fiscal year (auditing the previous fiscal year) the Institution's application~~

to participate in the new fiscal year (beginning October 1) will not be approved. USDA Regulation Section 226.11 (a) states that the SDE "may make payment for meals served in accordance with provisions of the CACFP in the calendar month preceding the calendar month in which the agreement is executed." Therefore, as long as the audit of an institution is received by SDE by November 30, then the Application can be approved to claim for the month of October. If the audit is not received by November 30, then the institution will lose its reimbursement for at least October (due to the fact that the Institution would not have an approved application on file for the new fiscal year), and any subsequent months following until the audit is received. Once an audit is received, the application is approved and a letter is sent to the Institution stating when its application became effective. If reimbursement was not paid due to the application not being approved, the Institution will be given the right to appeal the claims not being paid.

210:10-3-35. CACFP claims processing procedures

— In order for a child/adult care facility to be eligible for reimbursement for meals served and administrative costs incurred, the facility must be licensed by the Department of Human Services, with a copy of the license, or documentation that a license is being issued, on file in the Child Nutrition Programs Section. Child and adult care centers that operate in public schools who meet state requirements and centers that operate in federal facilities, such as Tinker Air Force Base, who are licensed by the federal government, are not required to have a license on file. Each facility is required to have an approved Application and a signed contract with the Department of Education. In the approved Application, the facility must state whether it is public, private nonprofit, or proprietary Title XX or XIX with the appropriate documentation attached. Once an Application is completed within the office, an approval visit of new institutions is conducted by the CNP area consultant. The consultant then notifies the office as to when the Institution may begin participating. When all necessary requirements for approval are met, the Secretary adds the Institution to the CACFP data base for the fiscal year in which the Institution has been approved. After the Secretary does this, she/he gives the application to the Claims Processor Supervisor. This person inputs all the information into the computer data base that is necessary to process claims. This includes the effective date of license, licensed capacity, Title XX/XIX information, approved categories of cost, approved types of meals, number of days approved for operation, etc. The Application is then filed with all other approved Applications for that particular fiscal year. The information in the computer is then transferred to a hard copy of an office card. This is done so that if information is needed on a particular Institution, the claims processor can pull the card rather than switching computer programs in the middle of claims processing. The cards are filed at the claims processor's desk. The Child Nutrition Programs receptionist opens the mail, stamps the claim with the date it arrived, and directs it to the claims processor who attaches the office card to the claim. As the claim is processed, any information entered into the computer is also written on the card. The card remains with the claim throughout the processing of the claim. Payments, adjustments, and year-to-date cost totals are posted to the card for each month that claims are written on the back of the card. Percentage factors for the number of free, reduced, and not eligible meals, and supplements are noted monthly on the cards. Institutions are reimbursed based on the number of meals served times a blended rate or cost, whichever is less. After claims processors audit the claims, the Claims Processor Supervisor batches the claims in bundles and gives them to the Administrative Assistant. This person completes a journal voucher sheet for each batch of claims and enters the

~~total amount of the batch into a log book and assigns the next sequential claim number and journal entry number to the journal entry voucher sheet. The Administrative Assistant then gives the batch back to the Claims Processor Supervisor for her/him to build a magnetic file. The magnetic file is then received by the Financial Manager, via computer. The financial manager then transfers the file to Data Services where a magnetic tape is generated. This is considered Day "1" under the Cash Management Improvement Act (CMIA). From this point, the CMIA CNP timeline is in effect:~~

- ~~(1) Day 1: By 1 p.m. the Payment File must have been uploaded to the Tandem in Data Services. Data will run computer programs which will format CN Payment File, assign warrant numbers, and a warrant effective date for three (3) days in advance, and create a payment disbursement file for the Treasurer and Journal Record File for the Office of State Finance (OSF). Data Services will give summary report to Child Nutrition to use to draw federal funds and complete the deposit form. If done after 1 p.m., Day 1 will be the next day. At 1 p.m. the File of Payment Disbursements must be received by the Treasurer's Office. Child Nutrition draws federal funds for deposit in Treasurer's bank account. Deposit form is sent to Treasurer. Journal Record File and form are sent to OSF. After 1 p.m. the Treasurer's Office processes disbursement file and prepares electronic funds transfer (EFT) records.~~
- ~~(2) Day 2: Treasurer sends EFT record to State Treasurer designated bank, which will warehouse the EFT until effective date (Day 3). Data runs "Notices of Payment" on Tandem. If any paper warrants are issued, the Treasury sends them to the State Agency. Child Nutrition picks up payment notices and mails them to the payees.~~
- ~~(3) Day 3: The federal fund deposit into Treasurer's account is effective. The State Treasurer designated bank sends EFT to payees' banks.~~

210:10-3-36. CACFP approval procedures

- ~~(a) An Application and Agreement to participate in the CACFP is received from the Institution by the State Agency. The State Agency date stamps the Application in the box in the upper right corner of the Application and logs it in.~~
- ~~(b) Within fifteen (15) days from receipt of the Application, the State Agency will review it. A checklist will be completed on the Application, outlining what items are complete or incomplete. Depending on what information is submitted on the Application, the State Agency may contact the Institution for further details. This could be done by telephone or by returning the Application to the Institution for more information. If the Application is returned to the Institution, the steps above are repeated until the State Agency determines that the Application is complete.~~
- ~~(c) When the Application is found to be complete, a memo is sent to the area coordinator for that Institution. The memo instructs the coordinator as to the date the Institution had a completed Application on file. The coordinator is then given a thirty (30) day timeframe from the point the Application was completed to conduct an approval visit. The coordinator is also mailed the Institution's recordkeeping forms and a copy of the Institution's Application and Facility Application.~~
- ~~(d) The coordinator then conducts an approval visit and instructs the Institution on the requirements of the CACFP. All forms and requirements are discussed. The coordinator then approves the Institution to begin participating that day; or if the coordinator finds that all the required records are being kept, she/he may date the approval as far back as to the beginning of the previous month in which the Application was completed.~~

~~(e) After the approval date has been determined, the coordinator completes an Approval Visit Form, which is signed by a representative of the Institution indicating that the Institution understands the CACFP and will begin claiming meals for reimbursement on the specified date. A copy of the Approval Visit Form is left with the Institution. The form is then submitted to the State Agency by the coordinator.~~

~~(f) When the State Agency receives the Approval Visit Form from the coordinator, a file is set up, the Institution is assigned an Agreement Number, it is then logged and added to the Agreement Book. The coordinator is mailed an agreement page for her/his territory. A copy of the Institution's approved Application is returned to the Institution.~~

~~(g) For Institutions approved as Proprietary Title XX/XIX the Application must be denied for approval when documentation is not provided to verify that the Title XX/XIX facility received compensation under Title XX/XIX for at least twenty five percent (25%) of its enrolled participants or twenty five percent (25%) of its licensed capacity. This information is taken from only the month previous to when the Application was received in the State Agency. In a case such as this, the coordinator would deny the Application effective the Approval Visit date. The coordinator would then submit the report to the State Agency which in turn would notify the Institution by letter, including the right to appeal the decision. The Institution must reapply if they wish to participate in the CACFP.~~

~~(h) For any Application that is denied, the Institution will be given the right to appeal. The appeal procedures will be enclosed with a letter from the State Agency outlining the reasons the Application was denied. This letter will be sent to the Institution return receipt requested.~~

210:10-3-37. CACFP appeal procedures

~~(a) An Institution will be notified in writing by certified mail, return receipt requested, of the grounds upon which the State Department of Education (SDE) based its action. The notice will inform the Institution of its right to appeal. Two types of appeals are authorized:~~

~~(1) The Institution may request a review of the records. Upon receipt of such a request, the SDE will appoint a review official to conduct the review; or~~

~~(2) The Institution may request a hearing. Upon receipt of a request for a hearing, the SDE will appoint a review official to conduct the hearing.~~

~~(b) The written request for a review of records or for a hearing must be filed by the Institution not later than fifteen (15) calendar days from the date the Institution receives the notice of action. A hearing will be held by the review official in addition to, or in lieu of, a review of written information submitted by the Institution only if the Institution so specified in the letter requesting the appeal. Therefore, the written request must specify which type of appeal is requested. The SDE will acknowledge the receipt of the request for appeal within ten (10) calendar days.~~

~~(c) The Institution may refute the information contained in the notice of action in person and by written documentation presented to the review official. In order to be considered, written documentation must be filed with the SDE not later than thirty (30) calendar days after the Institution received the notice of action. The Institution may be represented by legal counsel or another person. The following applies to the two types of appeals:~~

~~(1) Review of the records procedures~~

~~(A) Upon receipt of an appeal requesting a review of the records, the SDE will notify the Institution of the timelines for submission of documents.~~

~~(B) Failure to submit written documentation to refute the action taken by the SDE within the thirty (30) day time period will constitute the Institution's waiver of the appeal, resulting in the action taken by the SDE being upheld.~~

~~(2) Hearing~~

~~(A) Upon receipt of an appeal requesting a hearing, the SDE will notify the Institution of the timelines for submission of documents.~~

~~(B) Written documentation submitted after the thirty (30) day time period will not be considered at any point during the appeal process, including the hearing.~~

~~(C) If the Institution chooses to be represented by legal counsel, it will notify the Child Nutrition Programs Director of the counsel's name and address.~~

~~(D) The Institution and SDE will be notified by certified mail of the time, date, and place of the hearing. The notice must be provided at least ten (10) calendar days prior to the hearing.~~

~~(E) Failure of the Institution or its representative to appear at a scheduled hearing will constitute the Institution's waiver of the right to a personal appearance before the review official unless the review official agrees to reschedule the hearing.~~

~~(F) The SDE will have representatives in attendance at the hearing who may provide information and documentation supporting the action taken.~~

~~(d) SDE's documents and information relating to the Institution and the action taken will be available for inspection and copying pursuant to Open Records Fee Schedule at the Child Nutrition Programs office.~~

~~(e) The review official will be an independent and impartial official rather than, and not accountable to, any person authorized to make decisions that are subject to appeal.~~

~~(f) The review official will make a determination based on information provided by the SDE, the Institution, and the laws and regulations governing the Child and Adult Care Food Program.~~

~~(g) Within sixty (60) calendar days of receipt of the request for review, the review official's determination will be delivered to the Institution and the SDE.~~

~~(h) The SDE's action will remain in effect during the appeal process. However, participating Institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent danger to the health or welfare of participants. If the Institution or facility has been terminated for this reason, the SDE will so specify in its notice of action. Institutions electing to continue operation while appealing terminations will not be reimbursed for any meals served during the period of the appeal if the SDE's action is upheld.~~

~~(i) The determination by the review official is the final administrative determination to be afforded to the Institution~~

~~(j) Pursuant to the federal regulations, appeals will not be allowed on decisions made by Food Nutrition Services on requests for exceptions to the claims submission deadlines or requests for upward adjustments to claims.~~

210:10-3-38. CACFP procedures for advance funding

Procedures relative to advance funding are:

(1) An Institution requests advanced funding:

(A) Advance funding is indicated on the CACFP Application for Participation; or

(B) State Agency receives a written request from an Institution already participating in the CACFP.

- ~~(2) The State Agency denies or approves the advance funding request:~~
- ~~(A) If denied, the Institution receives written notice to that effect and the Institution is given the right to appeal the decision. The CACFP Appeal Procedures are followed.~~
- ~~(B) If approved, the Institution receives written notice to that effect and a copy of the CACFP Procedures for Advance Funding~~
- ~~(3) Instructions to the Institutions that are approved include:~~
- ~~(A) A projected claim must be filed by the 10th of the month (or the 15th of the month for Day Care Home [DCH] Sponsors) prior to the month for which the advance is to be made. Example: A projected June claim is due by May 10 (or by May 15 for DCH Sponsors.)~~
- ~~(B) The actual claim is then due by the 10th of the next month (or by the 15th of the next month for DCH Sponsors). Example: An actual May claim is due by June 10 (or by June 15 for DCH Sponsors).~~
- ~~(C) Each month a comparison is made of actual claim against the advance made to ensure that the level of funds advanced does not exceed actual reimbursement claimed.~~
- ~~(D) After three advance payments have been made, the Institution's claim for reimbursement for the third month prior to the month for which the next advance is to be paid shall be validated by the State Agency before further advances are approved. The CNP coordinator assigned to the county in which the Institution is located will schedule a visit for this purpose. Once the claim is validated, advance funding will continue. If further advance funding is denied at this point, the Institution will be notified in writing and be given the opportunity to appeal the decision~~
- ~~(E) If, as a result of year-end reconciliation as required by the USDA Uniform Federal Assistance Regulations (7 CFR 3015), the State Agency determines that reimbursement earned by the Institution during the fiscal year is less than the amount paid, including advance funding, the State Agency shall demand repayment of the outstanding balance.~~

210:10-3-39. CACFP termination procedures

- ~~(a) An Administrative Review/Follow-up is received by the State Agency from the coordinator. The coordinator indicates in the review/follow-up that the center is seriously deficient.~~
- ~~(b) A letter will be mailed from the State Agency to the Institution indicating that a review was conducted, concurring with the findings of the review. The letter will require the Institution to submit a Corrective Action Plan (CAP) within fifteen (15) days from the date of the letter. The letter will specifically reiterate each finding. The letter will also state the amount of any overclaim. The letter will be sent "return receipt requested" and state the institution is considered to be seriously deficient. The institution will be given the right to appeal actions taken by the State Agency.~~
- ~~(c) When the Corrective Action Plan is received from the Institution, the State Agency will forward it to the coordinator for review. The coordinator will examine the CAP and schedule a follow-up visit, sending written notification on the Administrative Review Action Form. If the Corrective Action Plan has not been received by the State Agency on the 15th day from the date of the letter (must be postmarked by the 15th day), the coordinator will send the Institution a notice using the above-mentioned form, stating that the CAP must be provided by the time of the~~

follow-up. The coordinator will also document that date of the follow-up visit. (It may be necessary for the coordinator to check with the State Agency prior to sending this form to make sure the CAP was not postmarked by the 15th day.)

(d) A first follow-up (after an Institution has been declared seriously deficient) will be conducted after the Administrative Review letter has been sent from the State Agency to the Institution. If violations have not been corrected within sixty (60) calendar days of the Administrative Review, the coordinator will document on the Administrative Review Follow-up Form that this Institution continues to be seriously deficient. The coordinator will assess additional fiscal action for the months claimed since the original Administrative Review. The report will also state that termination will result at the time of the second follow-up visit if items continue to be found in noncompliance.

(e) A letter from the State Agency, sent by "return receipt requested," is forwarded to the Institution stating what the coordinator found during the first follow-up. The letter will also state, as did the report from the consultant, that the Institution continues to be seriously deficient and that termination will result if items are not found to be corrected at the time of the second follow-up. If additional funds are reclaimed, the Institution is given the right to appeal this new overclaim amount.

(f) A second follow-up must be conducted within forty-five (45) days from the date of the Administrative Review Follow-up letter. If the corrective action is not satisfactory by the time the second follow-up is conducted, the Institution may be terminated. Coordinator will report results of the visit to the State Agency on the Administrative Review Follow-up Form.

(g) A letter from the State Agency will be forwarded to the Institution stating what the coordinator found on the second follow-up. The letter will state that the Institution is terminated effective the date of the second follow-up. The Appeal Procedures will be enclosed, giving the Institution the right to appeal the termination decision. If the overclaim has not been paid in full, the Institution is requested to submit a payment plan immediately to the State Agency.

(h) All correspondence with the Institution will be documented and USDA will be notified that the Institution should be added to the Seriously Deficient List updated by FNS.

210:10-3-40. Child and Adult Care Food Program (CACFP) general provisions

The Oklahoma State Department of Education (OSDE) Office of Child Nutrition recognizes the federal administrative regulations at 7 C.F.R. Part 226, governing the Child and Adult Food Care Program (CACFP), as the applicable regulations for the CACFP program as administered by the State of Oklahoma. To the extent that the governing regulations at 7 C.F.R. Part 226 refer to additional procedures or requirements that must be adopted by a state as part of its implementation of the CACFP program, the OSDE Office of Child Nutrition will adopt conforming policies and make such policies available on the OSDE website, to be updated each time a change in a CACFP policy is made at the federal or state level.

RULE IMPACT STATEMENT 210:10-3

**Updates to CACFP Subchapter
[Revocation of existing rules for Child and Adult Food Care Program (CACFP)
and adoption of a new rule incorporating federal CACFP guidelines]**

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

The current content of the Child and Adult Care Food Program (CACFP) subpart is being revoked, as these rules adopted in 1995 no longer consistently reflect the federal laws and regulations that govern the CACFP program. A new rule is proposed for adoption under this subchapter, incorporating the federal regulations at 7 C.F.R. Part 226 as Oklahoma's governing rules for the program, with any state level policies specifically required by federal law made available on the State Department of Education website and through the Office of Child Nutrition. Incorporating the federal regulations as Oklahoma's CACFP program rules will ensure that state guidelines are always consistent with the governing federal law and rules, even when changes are made to the program at the federal level.

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 entities that participate in the Child and Adult Care Food Program (CACFP).

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

The rule change will benefit entities that participate in the CACFP, by ensuring that the state program guidelines consistently reflect current federal requirements.

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:** January 7, 2018

STATUTORY AUTHORITY FOR 210:10-3

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;

8. Be the legal agent of the State of Oklahoma to accept, in its discretion, the provisions of any Act of Congress appropriating or apportioning funds which are now, or may hereafter be, provided for use in connection with any phase of the system of public education in Oklahoma. It shall prescribe such rules as it finds necessary to provide for the proper distribution of such funds in accordance with the state and federal laws;

9. Be and is specifically hereby designated as the agency of this state to cooperate and deal with any officer, board or authority of the United States Government under any law of the United States which may require or recommend cooperation with any state board having charge of the administration of public schools unless otherwise provided by law;

10. Be and is hereby designated as the "State Educational Agency" referred to in Public Law 396 of the 79th Congress of the United States, which law states that said act may be cited as the "National School Lunch Act", and said State Board of Education is hereby authorized and directed to accept the terms and provisions of said act and to enter into such agreements, not in conflict with the Constitution of Oklahoma or the Constitution and Statutes of the United States, as may be necessary or appropriate to secure for the State of Oklahoma the benefits of the school lunch program established and referred to in said act;

11. Have authority to secure and administer the benefits of the National School Lunch Act, Public Law 396 of the 79th Congress of the United States, in the State of Oklahoma and is hereby authorized to employ or appoint and fix the compensation of such additional officers or employees and to incur such expenses as may be necessary for the accomplishment of the above purpose, administer the distribution of any state funds appropriated by the Legislature required as federal matching to reimburse on children's meals;

14. Have general supervision of the school lunch program. The State Board of Education may sponsor workshops for personnel and participants in the school lunch program and may develop, print and distribute free of charge or sell any materials, books and bulletins to be used in such school lunch programs. There is hereby created in the State Treasury a revolving fund for the Board, to be designated the School Lunch Workshop Revolving Fund. The fund shall consist of all fees derived from or on behalf of any participant in any such workshop sponsored by the State Board of Education, or from the sale of any materials, books and bulletins, and such funds shall be disbursed for expenses of such workshops and for developing, printing and distributing of such materials, books and bulletins relating to the school lunch program. The fund shall be administered in accordance with Section 155 of Title 62 of the Oklahoma Statutes;

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF
SUBCHAPTER 1. GENERAL PROVISIONS**

210:20-1-2. Prohibition on aiding and abetting sexual abuse.

(a) General prohibition. Pursuant to 20 U.S.C. § 7926, it is prohibited for any individual who is employed by a school district or charter school, is under contract with a school district or charter school, or is in any capacity the agent of a school district or charter school, to assist any school employee, contractor, or agent in obtaining a new job if the individual or agency knows, or has probable cause to believe, that such person engaged in sexual misconduct with a minor or a student.

(b) Limited exception. The prohibition in subsection (a) shall not apply if the information giving rise to the probable cause:

- (1) Has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and
- (2) Has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) and the associated implementing regulations under 34 C.F.R. Part 106, or any succeeding regulations; and
- (3) One of the following conditions has occurred:
 - (A) The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law; or
 - (B) The school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or
 - (C) At least four (4) years have passed from the date on which the information was reported to a law enforcement agency, and the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent.

(c) Local policies. Pursuant to 20 U.S.C. § 7926, a school district or charter school shall adopt a policy consistent with federal law and this administrative rule, prohibiting its employees, contractors, or agents from assisting any individual currently or formerly associated with the district in an employee, contractor, or agent capacity from obtaining new employment if the individual or district knows, or has probable cause to believe, that such person has engaged in sexual misconduct with a minor or student.

(d) Reporting obligation. In addition to the federal prohibition on assisting in the employment of individuals known or believed based on probable cause to have engaged in sexual misconduct with a minor or student, Oklahoma school districts and charter schools are required by 70 O.S. § 6-101.25 to notify the State Board of Education if a superintendent has recommended a teacher's termination or non-reemployment based on allegations of sexual misconduct or any other crime listed in 70 O.S. § 3-104(6), and the teacher is either terminated or non-reemployed, or resigns from their position.

(e) Certification. Notwithstanding the applicability of any exceptions listed in subsection (b) of this rule, the State Board of Education may suspend or revoke any certificate issued by the

Board, impose other sanctions against the holder of such a certificate, or decline to issue a certificate to an applicant if the individual:

- (1) Has assisted another person in obtaining, or seeking to obtain, a new job, other than by routine transmission of administrative and personnel files; and
- (2) Knew, or had probably cause to believe, that the person assisted has previously engaged in sexual misconduct with a minor or student.

RULE IMPACT STATEMENT 210:20-1-2

Prohibition on aiding and abetting sexual abuse [NEW]

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

This is a rule adoption required under the Every Student Succeeds Act (ESSA), the federal legal framework for public education that replaced No Child Left Behind. 20 U.S.C. § 7926 directs all state and local education agencies that receive federal funding to adopt a prohibition on their employees and contractors assisting any school employee or contractor in obtaining employment if it is known, or believed based on probable cause, that the person seeking employment engaged in sexual misconduct with a student or minor. This proposed rule satisfies the policy adoption obligation at the state level, and directs school districts and charter schools to adopt their own policies consistent with the federal prohibition.

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, and their employees and contractors.

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

The rule change will benefit school districts and charter schools by ensuring their compliance with 20 U.S.C. § 7926, and by promoting student safety.

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:** January 7, 2019

STATUTORY AUTHORITY FOR 210:20-1-2

20 U.S.C. § 7926. Prohibition on aiding and abetting sexual abuse

(a) In general

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this chapter shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

(b) Exception

The requirements of subsection (a) shall not apply if the information giving rise to probable cause-

(1)(A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and

(B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and

(2)(A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

(B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or

(C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(c) Prohibition

The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

(d) Construction

Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF
SUBCHAPTER 18. LEAD AND MASTER TEACHERS**

210:20-18-1. Lead and master teaching certificates.

(a) Purpose. Pursuant to Senate Bill 980 (2018), two advanced classes of teacher certification, a lead teaching certificate and a master teaching certificate, are available to applicants who meet the statutory criteria and make application to the State Board of Education.

(b) Effect of lead or master certification status on school districts. Because a teacher certified as either a lead teacher or a master teacher is subject to contract requirements under 70 O.S. § 6-190 in addition to those that apply to a teacher with standard certification, a school district shall consider the school district obligations to teachers who hold a lead or master teaching certificate when recommending a teacher for advanced certification, and when entering an employment contract with such a teacher. If a person who holds a lead or master teaching certificate changes school districts during the validity period of the certificate, the terms of the contracts required under 70 O.S. § 6-190 shall be subject to approval by the new employing school district.

(1) School board recommendation for lead or master teaching certificate. In order for a teacher to be eligible for a lead or master teacher certificate, the board of education of the teacher's employing school district must submit a recommendation to the State Board of Education indicating that the local board has determined the applying teacher's eligibility under the statutory criteria and is in favor of the teacher's advanced certification. The school district that recommends a teacher for lead or master teacher certification will be responsible for meeting the contract requirements associated with the advanced certification beginning with the school year following submission of the application.

(2) Contract requirements for lead and master teachers. In addition to the contract requirements applicable to all certified teachers employed by Oklahoma public school districts, the following additional terms apply to the advanced certification classes:

(A) Lead teachers. An individual who holds a lead teaching certificate may have a teaching load of not more than seventy-five percent (75%) student instruction to allow the teacher to mentor other teachers. The contract of a lead teacher shall provide for an additional ten (10) days to be used to strengthen instructional leadership, as well as a salary supplement of at least three thousand dollars (\$3,000) or the district's daily rate of pay, whichever is higher, in addition to the salary the teacher is entitled to under 70 O.S. § 18-114.14.

(B) Master teachers. An individual who holds a master teaching certificate may have a teaching load of not more than fifty percent (50%) student instruction to allow the master teacher to spend time on co-teaching, co-planning, peer reviews, and other duties mutually agreed on by the district superintendent and the master teacher. The contract of a master teacher shall provide for an additional fifteen (15) days to be used to strengthen leadership, as well as a salary supplement of at least five thousand dollars (\$5,000) or the district's daily rate of pay, whichever is higher, in addition to the salary the teacher is entitled to under 70 O.S. § 18-114.14.

(c) Criteria for lead teaching certificate. The State Board of Education shall issue a lead teaching certificate to any person who upon application:

(1) Has a minimum of five (5) years of experience as a teacher, as reflected in the official record of teacher experience maintained by the State Department of Education Office of School Personnel Records;

(2) Participates in a meaningful individualized program of professional development as provided for in 70 O.S. § 6-101.10;

(3) Has earned a "highly effective" or "superior" rating on their most recent district evaluation conducted pursuant to 70 O.S. § 6-101.16; and

(4) Has been recommended by their employing school district for lead teacher certification.

(d) **Criteria for master teaching certificate.** The State Board of Education shall issue a master teaching certificate to any person who upon application:

(1) Has a minimum of seven (7) years of experience as a teacher;

(2) Has either:

(A) Earned a "superior" rating on their most recent district evaluation conducted pursuant to 70 O.S. § 6-101.16; or

(B) Earned a "highly effective" rating on their most recent district evaluation conducted pursuant to 70 O.S. § 6-101.16 and holds or has held National Board certification; and

(3) Has been recommended by their employing school district for master teacher certification.

(e) **Fees and renewal schedule for lead and master teaching certificates.** The application fee for a lead teaching certificate or a master teaching certificate shall be the same as the fee for a standard teaching certificate as established in *Oklahoma Administrative Code* 210:20-9-9. The validity period of a lead teaching certificate or a master teaching certificate shall be the same as the validity period of a standard teaching certificate as established in *Oklahoma Administrative Code* 210:9-9-94. Renewal procedures and timelines for a lead teaching certificate or a master teaching certificate shall be the same as those established for a standard teaching certificate in *Oklahoma Administrative Code* 210:20-9-96, with the additional requirement that a lead teaching certificate may only be renewed if the teacher received a "superior" or "highly effective" rating on their most recent district evaluation, and a master teaching certificate may only be renewed if the teacher received either a "superior" rating on their most recent district evaluation, or received a "highly effective" rating and holds or has held a National Board certification.

(f) **Standard certification available to lead or master teacher who no longer meets requirements.** An individual who holds a lead teaching certificate or a master teaching certificate may obtain a standard teaching certificate if they no longer meet the requirements for the advanced certification, or no longer wish to hold the advanced certification. Upon receipt of a written request for standard certification from an individual who holds a lead or master teaching certificate, the State Department of Education shall issue a standard teaching certificate with a validity period that ends on the same date as the lead or master teaching certificate currently held by the individual. Upon issuance of the standard teaching certificate, the lead teaching certificate or master teaching certificate previously held by the individual shall be deemed void. A lead teacher or master teacher who returns to standard teaching certification is responsible for notifying the school district(s) where they are currently employed, as well as any district with which a contract has been entered for the following school year, of their change in certification class.

RULE IMPACT STATEMENT 210:20-18-1

Lead and master teaching certificates [NEW]

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

Pursuant to Senate Bill 980 (2018), the State Board of Education is directed to adopt rules implementing fees and renewal schedules for two new classes of advanced teacher certification, a lead teaching certificate and a master teaching certificate. The advanced certification classes will be available beginning with the 2021-2022 school year to any qualified applicants recommended by a school board, with lead and master certificates available before that time to teachers recommended by districts participating in a pilot program. The proposed rule will clarify the statutory eligibility requirements for the lead teaching certificate and master teaching certificate, and establish a fee that is linked by reference to the standard certification fee listed in *Oklahoma Administrative Code* 210:20-9-9. The renewal requirements will incorporate the standard certificate renewal process at 210:20-9-96, with additional requirements specific to the two advanced classes of certification. The rule will also outline how a lead teacher or master teacher may return to standard certification if they are no longer eligible for or no longer wish to hold the advanced certification.

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 teachers who are eligible for lead or master teaching certification, and their employing school districts.

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

The rule change will benefit teachers who obtain an advanced certification by ensuring they have adequate time for mentoring and other leadership duties, and entitling them to a salary supplement associated with their additional role. School districts that recommend a teacher for advanced certification will benefit from the enhancement of professional development and instructional strategies mentoring among their teaching professionals.

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. Once the advanced certification classes are implemented, a school district that chooses to recommend a teacher for advanced teaching certification will be responsible for meeting the statutory contract terms associated with the lead or master certificate under 70 O.S. § 6-190.

- 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:** January 7, 2018

PUBLIC COMMENT SUMMARY

210:20-18-1. Lead and master teaching certificates [NEW]

Summary of Public Comment	Agency Response
<p>"This will lead to your best teachers requesting to be out of the classroom for 1 to 3 periods per day. This certainly does not help those students. How does this work in an elementary class where the student only has one teacher per day. Professional Development is to be given to teachers under the Lead or Master."</p>	<ul style="list-style-type: none"> This appears to be a general concern about the statutory provisions for lead and master teaching certificates, rather than about the content of the implementing rule the OSDE is required to adopt under 70 O.S. § 6-190(J). <p>A teacher's employing school district must choose to recommend the teacher for advanced certification in order for a lead or master teaching certificate to be issued.</p>
<p>"When looking at the fiscal impact statement, it is stated that there will be no fiscal impact to schools. This could not be more false. If a teacher is taken out of the classroom, another teacher (which we don't have) will have to replace them in the classroom. A lead teacher, this would be one class period at a minimum 6500.00 and a maximum of 8700.00 then add for the 10 extra days a minimum of 3514.00 and a maximum of 3519.00. A master teacher this would be 3 class periods a minimum of 23275.00 and a maximum of 30422.00 then add for the 15 extra days a minimum/maximum of 5857.00. These are very simple calculations using salary schedule amounts with fixed costs of .1715 added."</p>	<ul style="list-style-type: none"> The fiscal impact given in the Rule Impact Statement refers to projected fiscal effects that would be <i>due to the rule change</i>. <p>While there will be a financial impact on a school district that chooses to recommend a teacher for lead or master teacher certification—such as the example given in the comment—only a district that chooses to recommend a teacher for lead or master certification would experience any financial impact. As stated in the statute and the proposed rule, a district that does not choose to make such a recommendation will not be affected by the statutory salary supplement requirements for advanced certifications.</p> <ul style="list-style-type: none"> The proposed rule does not establish the salary supplements associated with lead and master teaching certificates, which were established by the Oklahoma Legislature in Senate Bill 980 (2018).
<p>"The Legislature has stated they want more money in the classroom, this does the exact opposite, it takes your best teachers out of the classroom and their replacements are currently going to be emergency certified teachers in many hard to fill areas."</p>	<ul style="list-style-type: none"> The OSDE notes the commenter's concerns, but the availability of, and requirements associated with, the advanced teaching certificates were established by the Legislature and may only be amended through further legislative action.

<p>"Changing certification based on evaluation systems seems best suited to be issued at the state department level if the criteria is unilateral statewide. We currently, as a state, issue teaching certificates (regular, alternative, emergency) at the state level. It's hard to fathom why differentiated certificates would be issued at any other level than the state in order to have the same credence as other certificates....</p> <p>As accountability is discussed throughout the state, placing the certification determination on 500+ different boards of education across the state does not seem to be a sustainable or consistent system of teacher credentialing but rather a reactionary approach to a teacher shortage."</p>	<ul style="list-style-type: none"> • The lead and master teaching certificates will be issued at the state level. An initial eligibility determination must be made at the school district level, since the statutory eligibility criteria include the results of teaching evaluations performed by a teacher's employing school district as well as a recommendation by the district. <p>Because of the salary supplements and professional duties associated with lead and master teaching certificates, both the statute and the proposed rule direct school districts to consider the ability of the district to meet the additional contractual obligations to a lead or master teacher before recommending a teacher to the State Board of Education for an advanced certificate.</p>
<p>"Adequate funding for operations of Oklahoma's public schools is still being sought by the Governor, the Oklahoma State Department of Education, the Oklahoma legislature, and others. With that in mind, it appears unwise to create this additional requirement that would demand additional funding to support it.</p> <p>"The language states 'shall' which places this financial responsibility on the local district with no guarantee or additional funding to meet the need."</p>	<ul style="list-style-type: none"> • It is accurate that under 70 O.S. § 6-190, a school district is responsible for an annual salary supplement of \$3,000 for a lead teacher and a salary supplement of \$5,000 for a master teacher. The statute directs districts to "consider the ability of the school district to fulfill the additional requirements" when recommending a teacher for an advanced certification. <p>The OSDE continues to join other education stakeholders in advocating for appropriate funding of Oklahoma's public schools.</p>
<p>"The current teacher evaluation system, while intended to be a data driven and objective system, still relies on the calibration of the evaluator in each district. With the language, as presented, a district sending or receiving a teacher with master or lead teaching status shifts the unfunded financial burden to a sister district.</p> <p>"This does not appear to be good for public education in Oklahoma as a whole. In recent years when funding was limited, many districts in our state sought to hire novice teachers rather than veteran</p>	<ul style="list-style-type: none"> • Consistent with the authorizing statute, the proposed rule provides that "If a person who holds a lead or master teaching certificate changes school districts during the validity period of the certificate, the terms of the contracts required under 70 O.S. § 6-190 shall be subject to approval by the new employing school district." <p>This language means a school district that <i>newly employs</i> a teacher who already holds a lead or master teaching certificate would have to approve a lead or master teaching contract, as appropriate, in order to be responsible for</p>

<p>teachers to reduce expenses. That is unwise as we need the best teachers in the classroom regardless of years of experience; however, the rationale was understandable for those districts struggling with operational funding. This tiered certification system, without clear guidance, could lead to the same unintended consequence.</p> <p>"Our state is currently motivated to return to a five-day school week as a four-day is unattractive to potential businesses coming to Oklahoma. This is a worthwhile goal. If a district is operationally challenged in funding trying to return to five day, hiring teachers who are not lead or master teachers would be something they might consider to maximize limited funding. Again, this could be an unintended consequence of such a system."</p>	<p>the associated salary supplement.</p> <p>If a lead or master teacher who changes employment to a new school district does not have a lead or master teaching contract approved by the new district, the teacher would return to standard certification as addressed in subsection (f) of the rule.</p>
<p>"This proposal also begs the question of whether this is intended to be a merit pay system in Oklahoma. Until funding is adequate to take care of basic services – class sizes as outlined in [HB] 1017, the elimination of any waivers due to shortages or lack of funding, etc., it appears unwise to add a new 'program' that may add requirements just for the sake of attempting to entice teachers to remain in the profession with no long term, strategic funding plan currently in place. Additionally, in a time of a teacher shortage, merit pay may sound enticing but it would be interesting to explore research in an effort to find any high quality studies that state that merit pay – based on a single instrument of evaluation – has a long-term positive effect on student learning or teacher retention."</p>	<ul style="list-style-type: none"> • The OSDE notes the commenter's concerns, and encourages ongoing research into student educational outcomes.

Comments submitted by:

Superintendent of Frederick Public Schools
Superintendent of Owasso Public Schools

STATUTORY AUTHORITY FOR 210:20-18-1

Oklahoma Statutes

Title 70. Schools

Chapter 1 - School Code of 1971

Article VI-A - Teacher Licensure and Certification

Section 6-190 - Contract with Certified or Licensed Teachers - Criteria for Issuance of License and Certificate to Teach - Lead and Master Teaching Certificates - Promulgate Rules

A. The board of education of each school district shall employ and contract in writing, as required in Section 6-101 of this title, only with persons certified to teach by the State Board of Education in accordance with the Oklahoma Teacher Preparation Act, except as otherwise provided for by Section 6-101 of this title and by other law.

H. The Board shall issue a lead teaching certificate to any person who upon application:

1. Has successfully completed the requirements of this subsection;
2. Has a minimum of five (5) years of experience as a teacher;
3. Participates in a meaningful individualized program of professional development, as provided for in Section 6-101.10 of this title;
4. Has earned a "highly effective" or "superior" rating pursuant to Section 6-101.16 of this title; and
5. May have a teaching load of not more than seventy-five percent (75%) student instruction to allow the teacher to mentor other teachers.

I. 1. The Board shall issue a master teaching certificate to any person who upon application:

- a. has successfully completed the requirements of this subsection,
- b. has a minimum of seven (7) years of experience as a teacher, and
- c. (1) has earned a "superior" rating pursuant to Section 6-101.16 of this title, or
(2) has earned a "highly effective" rating pursuant to Section 6-101.16 of this title and holds or has held a National Board certification from the National Board for Professional Teaching Standards.

2. Teachers with a master teaching certificate may assume leadership roles that include but are not limited to:

- a. the planning and delivery of professional development activities designed to improve instructional strategies,
- b. the facilitation of an instructional leadership team within the building or school district in which the lead teacher is assigned, and
- c. the mentoring of other teachers and participation in evaluations of other teachers.

3. Teachers with a master teaching certificate may have a teaching load of not more than fifty percent (50%) student instruction to allow the lead teacher to spend time on:

- a. co-teaching,
- b. co-planning,
- c. peer reviews, and

d. other duties mutually agreed upon by the superintendent and the master teacher, and may be used to satisfy the qualitative evaluation component for teachers as required by Section 6-101.16 of this title by performing the duties set forth in this paragraph.

J. The State Board of Education shall adopt rules to implement a renewal schedule and associated fees for lead and master teaching certificates. The rules shall allow a teacher that no longer meets the requirements of a lead or master teaching certificate to make application for the standard teaching certificate.

K. The terms of the contracts issued to those holding lead and master teaching certificates shall include the following:

1. Lead: an additional ten (10) days to be used to strengthen instructional leadership. A person with a lead teaching certificate shall receive an annual salary supplement of at least Three Thousand Dollars (\$3,000.00) or the district's daily rate of pay, whichever is higher, in addition to the salary for which the teacher qualifies pursuant to Section 18-114.14 of this title; and

2. Master: an additional fifteen (15) days to be used to strengthen leadership. A person with a master teaching certificate shall receive an annual salary supplement of at least Five Thousand Dollars (\$5,000.00) or the district's daily rate of pay, whichever is higher, in addition to the salary for which the teacher qualifies pursuant to Section 18-114.14 of this title.

If a person with a lead or master teaching certificate changes school districts during the life of the certificate, the terms of the contracts required in this subsection shall be subject to approval by the new employing school district.

L. 1. Any person who is eligible for a lead or master teaching certificate described in this section shall make application for the following school year with the State Board of Education. The application shall include a recommendation from the local board of education and determination that the applicant has met the statutory criteria. In reviewing an application, the local school board of education and the superintendent shall consider the ability of the school district to fulfill the additional requirements described in subsections H and I of this section before making a recommendation to the State Board of Education.

2. The State Department of Education shall develop an application to implement the provisions of this subsection and make it available to school districts.

M. Beginning in the 2021-2022 school year, the Department shall make the teaching certificates provided for in this section available for any person who has received a recommendation from their local board of education and who meets the eligibility criteria.

N. For the 2019-2020 and 2020-2021 school years, the Department shall identify school districts to implement the teaching certificates provided for in this section on a pilot program basis with the assistance of public-private partnerships, funding from philanthropic organizations or federal grants.

O. The Department shall seek funding necessary for the administration of this section. If funding for the administration of the teaching certificates listed in paragraphs H and I is not available, the Department shall not be required to fulfill the requirements listed in subsections K, L, M and N of the section.

P. The State Board of Education shall promulgate rules to implement the provisions of this act.