



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

## MEMORANDUM

**TO:** The Honorable Members of the State Board of Education  
**FROM:** Joy Hofmeister  
**DATE:** February 27, 2020  
**SUBJECT:** Administrative Rule Promulgation

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

- (1) Title 210. State Department of Education  
Chapter 20. Staff  
Subchapter 9. Professional Standards: Teacher Education and Certification  
**210:20-9-96. Requirements for renewal or reissuance of certificates**  
**[AMENDED]**

Provisions are being added to the rule governing the renewal of educator certificates issued by the State Department of Education, to provide for the availability of a due process hearing in the event a standard certificate is denied for renewal. The procedures will substantially align with the due process provisions that apply to the revocation of a teaching certificate.

- (2) Title 210. State Department of Education  
Chapter 20. Staff  
Subchapter 41. Teacher and Leader Effectiveness Evaluation System  
**210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview**  
**[AMENDED]**  
**210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System [AMENDED]**

The Teacher and Leader Effectiveness (TLE) Evaluation System rules are being updated to reflect changes to law since the rules' adoption. Terminology clarifications are made to reflect current law and practice, including alignment with the current statutory definition of "Teacher". The governing statute also now authorizes career teachers to be evaluated every three (3) years if they receive a district evaluation rating of "Superior" or "Highly Effective", and the rules must be updated accordingly.

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

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

**210:20-9-96. Requirements for renewal or reissuance of certificates**

**(a) Standard certificate.**

(1) To renew a standard certificate a teacher must submit the appropriate application, pay the appropriate processing fee specified in subsection 210:20-9-9 (d) and complete one of the following options:

(A) Option I--the applicant shall have completed a minimum of three (3) years of school experience in an accredited school during the five (5) year validity of the standard certificate. Applicants who have completed fewer than three (3) years of school experience may substitute coursework in professional education and/or specialization from an accredited college or university for each year of experience they are lacking at the following rate: with two (2) years of experience, complete three (3) semester hours; with one (1) year of experience, complete four (4) semester hours; or with zero (0) years of experience, complete five (5) semester hours. College credit must be completed within the five (5) year period immediately preceding the date of application for renewal. Teachers who teach one-half day in an accredited school each school year for the five (5) year validity period of their certificate may renew a standard certificate. The following provisions apply if the certificate has been expired more than five (5) years: If the certificate has been expired for more than five years and the teacher was certified in and teaching in another state and has three years of experience within the five year period immediately preceding the date of application for renewal the experience will apply toward renewal.

(B) Option II--a teacher or administrator who is not employed as a teacher or administrator and holds a valid Oklahoma Standard Teaching Certificate may satisfy requirements for renewal of the Standard Teacher Certificate by completing seventy-five (75) points in professional development programs, conferences and seminars approved by a public school district. A combination of professional development points, higher education credits and/or teaching experience may also be used for renewal of a valid standard teaching certificate. Only programs, conferences and seminars recognized for professional development credit by an Oklahoma public school district at the time the teacher attends the programs, conferences or seminars may be used to fulfill the renewal requirement. The individual seeking certification renewal is responsible to maintain his/her professional development attendance forms to submit to the State Department of Education. Exact combinations of professional development points, college credit hours and years of teaching experience will be determined by the Professional Standards Section of the State Department of Education.

(C) Option III--Issue a two-year certificate immediately and then complete the following requirement. Successful employment for one year in an Oklahoma accredited school or accredited college or university. An administrator will provide supervision and a teacher or appropriate colleague will provide assistance as needed. Ultimately,



certification is contingent on the district or college/university-level evaluation of the candidate.

(2) School experience, for purposes of renewing a standard certificate, is experience as a teacher, supervisor, or administrator in a school, college, or university accredited by either a state board of education or state board of regents.

(3) If a standard certificate has been expired for one (1) year or more, the applicant must undergo a new criminal history record check, as provided for at 70 O.S. § 5-142. Applicant is responsible for any fees associated with the criminal history record check.

(b) **Provisional certificates.**

(1) **Nonvocational provisional certificates.** Nonvocational provisional certificates may be renewed if requirements outlined by the State Department of Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(2) **Vocational provisional certificates.** Vocational provisional certificates may be renewed if requirements outlined by the State Department of Education and/or the Oklahoma Department of Vocational and Technical Education toward meeting requirements for a standard certificate are met during the term of validity of the provisional certificate.

(c) **Supplemental renewal regulations.**

(1) Experience as a professional employee of a state education agency or professional educational organization is considered valid experience for the renewal of a standard or professional certificate.

(2) Teachers who teach one-half day in an accredited school (nursery--higher education) each year for the validity period of their certificate may renew a standard or professional certificate.

(3) Teaching experience with the Oklahoma Department of Corrections Educational System, the Oklahoma Department of Human Services as a vocational rehabilitation counselor, with optional/special function schools in Oklahoma accredited by the North Central Association of Colleges and Schools, experience in the Head Start Program, full-time active military service, or experience as a member of the Oklahoma Legislature may be accepted in meeting requirements for renewal of a standard or professional certificate.

(4) The State Board of Education shall recognize full-time service as a member of the staff of the ~~house of representatives~~House of Representatives, the ~~senate~~Senate or the ~~legislative service bureau~~Legislative Service Bureau in an area related to education as valid experience for renewal of the standard certificate. This experience is calculated at the same rate as it is for other teachers.

(5) Any person who is receiving retirement compensation from the Teacher Retirement System may renew the last standard or professional certificate for the purpose of substitute teaching.

(6) A minimum of two-thirds of a school year (120 days or 720 hours) acquired in not more than two (2) contractual school years during the validity of the certificate in accredited schools may be considered as one (1) year of school experience.

(7) A teacher who has taught more than one-half of a day for 120 days or more will be considered as having had one year of experience.

(8) Substitute teachers, unless under contract, may count experience acquired in not more than two (2) consecutive years during the validity of the certificate.



(9) Student teaching, experience in nonaccredited schools, experience while not holding a valid certificate, and experience while providing contracted services will not be accepted as school experience for purposes of renewal.

(10) Applications for renewal of standard certificates will not be accepted prior to January 1 of the year in which the certificate expires.

**(d) Due process procedures in case of denial to renew a certificate.** *Upon the denial of an individual's application to renew a standard teaching certificate, the State Board of Education shall notify the superintendent of the district that currently employs or most recently employed the certified individual based on the personnel reports currently on file with the State Department of Education.* An individual whose application for renewal of a standard certificate is denied may request a hearing to be conducted by the State Board of Education or a hearing officer delegated such authority by the Board. Such a hearing shall not be available to an individual who holds an emergency or provisional teaching certificate. A request for a hearing on denial of renewal shall be filed with the Executive Secretary of the State Board of Education. The following procedures apply to hearings and deliberations held pursuant to such requests:

**(1) Hearing procedures.**

**(A) Hearing and appointment of a hearing officer.** Upon filing the application with the Secretary of the Board, the Secretary shall set the matter for a hearing. The Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board.

**(B) Attendance of witnesses.** If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, the individual shall notify the Chairperson of the State Board of Education at least fifteen (15) calendar days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson shall thereupon subpoena, by mail, the desired witness to attend in accordance with the provisions of this subsection. Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists and any exhibits no later than fifteen (15) calendar days prior to the hearing.

**(C) Subpoenas.** Subpoenas and/or subpoenas duces tecum may be issued in accordance with the following procedures:

**(i) Issuance of subpoenas.** Subpoenas for the attendance of witnesses, or for the production of books, records, papers, objects, or other evidence of any kind as may be necessary and proper for the purposes of a proceeding shall be issued by the Secretary of the Board at the direction of the Chairperson; upon order of the Board; or at the request of any party to a proceeding before the Board. The signature of the Secretary shall be sufficient authentication for any subpoena.

**(ii) Service of subpoenas.** Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma.

**(iii) Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

**(iv) Enforcement of subpoenas.** Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to



answer a question put to her or him in the course of any individual proceeding or other authorized action of the Board, the Board as soon as convenient shall consider the issue of enforcement of the subpoena. By resolution, it may direct application to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may order a stay or continuance of the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(v) **Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

(D) **Right to representation.** Any party to the individual proceeding shall at all times have the right to representation by counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.

(E) **Legal counsel to State Board of Education.** An attorney for the State Board of Education shall present evidence to the Board, in furtherance of the application. If deemed necessary by the Chairperson of the Board, a request may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

(F) **Disqualification of a Board member or hearing officer.** A Board member or hearing officer shall withdraw from any individual proceeding in which the individual cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of their inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(G) **Notice of facts.** The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or their attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(H) **Presentation and consideration of evidence.** The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of 75 O.S. § 310.



- (I) **Order of procedure.** The order of procedure at the hearing shall be as follows:
- (i) Opening statements by legal counsel of both parties;
  - (ii) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;
  - (iii) Closing arguments by legal counsel of both parties; and
  - (iv) Submission of case to the Board or the hearing officer for decision.
- (J) **Continuance of a hearing.** The Board or hearing officer may continue or adjourn the hearing at any time for a specified time by notice or motion. The Board or hearing officer may grant a continuance upon motion of a party for good cause shown if written request is filed and served on all parties of record and filed with the Secretary of the Board at least five (5) days prior to the date set for hearing. A respondent may be granted only one (1) continuance.
- (2) **Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.
- (A) **Decision.** Decisions shall be issued in accordance with the following procedures:
- (i) After hearing all evidence, and all witnesses, the State Board of Education or, if applicable, the hearing officer, shall render its decision on whether the certificate shall be revoked.
  - (ii) The decision of the State Board of Education or a hearing officer presiding at the hearing shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.
  - (iii) If the holder of the certificate fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (d)(1)(J) of this Section, demonstration of good cause, the Board or hearing officer shall hold the party in default and issue an order sustaining the allegations set forth in the application.
  - (iv) If the applicant fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in subsection (d)(1)(J) of this Section, demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the application shall be dismissed.
- (B) **Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.
- (C) **Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312.



If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (h) of this Section, the final agency order shall represent exhaustion of all administrative remedies by the State Board of Education. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any. *If an individual's appeal of a denial of renewal is successful following a hearing held under this Section, the certificate shall be reissued. If a certificate that was initially denied for renewal is reissued based on a successful appeal, the State Board of Education shall notify the superintendent of the district that currently employs or most recently employed the certified individual based on the personnel reports currently on file with the State Department of Education.*

(D) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(3) **Record of hearing.**

(A) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense. In accordance with the requirements of 75 O.S. § 309, the record shall include:

- (i) All pleadings, motions, and intermediate rulings;
- (ii) Evidence received or considered during the individual proceeding;
- (iii) A statement of matters officially noticed;
- (iv) Questions and offers of proof, objections, and rulings thereon;
- (v) Proposed findings and exceptions;
- (vi) Any decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (vii) All other evidence or data submitted to the Board or hearing officer in connection with their consideration of the case.

(B) The State Board shall electronically record the proceedings, with the exception of executive sessions. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

(4) **Rights to a rehearing, reopening or reconsideration.**

- (A) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.
- (B) A petition for a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:
- (i) Newly discovered or newly available evidence, relevant to the issues;
  - (ii) Need for additional evidence adequately to develop the facts essential to proper decision;
  - (iii) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;
  - (iv) Need for further consideration of the issues and the evidence in the public interest; or
  - (v) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.
- (C) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.
- (D) Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.
- (5) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.



## **RULE IMPACT STATEMENT 210:20-9-96**

### **"Requirements for renewal or reissuance of certificates" [AMENDED]**

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

Provisions are being added to the rule governing the renewal of educator certificates issued by the State Department of Education, to provide for the availability of a due process hearing in the event a standard certificate is denied for renewal. The procedures will substantially align with the due process provisions that apply to the revocation of a teaching certificate.

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 the State Board of Education and applicants for renewal of a standard teaching certificate.

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

The rule change will benefit applicants for renewal of a standard teaching certificate by providing for a due process procedure in the event a standard certificate is denied for renewal.

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.

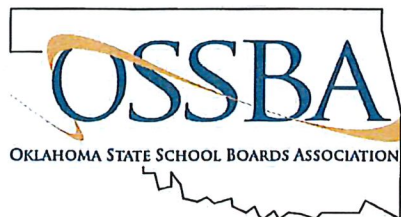
- k. **Date Prepared:** January 9, 2020



## PUBLIC COMMENT SUMMARY

### 210:20-9-96. Renewal or reissuance of certificate [AMENDED]

Summary of Public Comment	Agency Response
<p>Commenter, Oklahoma State School Boards Association (OSSBA), recommends the following changes to the proposed language of the rule amendment:</p> <ul style="list-style-type: none"> <li>▪ In lieu of the proposed language, add procedures PRIOR to the denial of a certificate reissuance.</li> <li>▪ Provide notice to the employing school district of an intent to deny renewal.</li> <li>▪ Provide notice to the employing school district of a denial [of renewal].</li> </ul> <p>"We recommend removing the proposed language and instead adding procedures PRIOR to the denial of reissuance of a certificate. Providing a hearing after a certificate has not been renewed creates legal issues for school districts. The employing school district is not a party to the certificate revocation process and will not have knowledge that they may be inadvertently paying someone who is not legally certified by the State Department of Education. At no point in the process is there language which would notify the school district employer that a certificate has not been renewed. The district should receive notice prior to the hearing as well as after the hearing in order to be able to properly safeguard against payment to an uncertified individual."</p>	<ul style="list-style-type: none"> <li>▪ Language has been added to the proposed amendment providing that if a standard teaching certificate is denied for renewal, the State Board shall notify the superintendent of the school district that employs or most recently employed the individual whose certificate was denied for renewal. Such notification shall be made to the superintendent of the most recently employing district according to the school personnel records submitted to the State Department of Education.</li> <li>▪ Language has also been added to the proposed amendment clarifying that if an individual is successful in their appeal of a denial of renewal, the certificate the individual is eligible for shall be reissued. In case of a successful appeal, the superintendent of the individual's most recently employing school district shall be notified of the successful appeal and reissuance of the certificate.</li> <li>▪ It is not feasible to provide an opportunity to appeal the denial of a certificate renewal prior to the denial. When an application for renewal is received, it is reviewed to verify that the applicant for renewal continues to meet the requirements to hold an Oklahoma teacher certification. If the applicant meets the requirements, the certificate is renewed. If the applicant does not meet the criteria to hold an Oklahoma teaching certificate, the renewal is denied. There is no midpoint in the process when an individual has been determined not to be eligible to hold certification, but has also not been denied renewal.</li> </ul> <p>Instances when a teaching certificate is denied for renewal involve circumstances for which the State Board of Education would seek revocation of the individual's certificate were it not expired or imminently expiring. (E.g., substantiated allegations of misconduct involving students, felony convictions or guilty pleas, or violent or abusive conduct.)</p> <p>(Please note that the denial of teaching certificate renewal triggering an appeal right parallels the appeal provisions in 19 Texas Administrative Code §249.12(c).)</p>



February 18, 2020

State Superintendent Joy Hofmeister and Honorable Members of the State Board of Education:

The Oklahoma State School Boards Association respectfully disagrees with the language proposed to be added in amended rule 210:20-9-96 entitled "Requirements for renewal or reissuance of certificates" and would like to make the following recommendations:

- In lieu of the proposed language, add procedures PRIOR to the denial of a certificate reissuance.
- Provide notice to the employing school district of an intent to deny renewal.
- Provide notice to the employing school district of a denial.

We recommend removing the proposed language and instead adding procedures PRIOR to the denial of reissuance of a certificate. Providing a hearing after a certificate has not been renewed creates legal issues for school districts. The employing school district is not a party to the certificate revocation process and will not have knowledge that they may be inadvertently paying someone who is not legally certified by the State Department of Education. At no point in the process is there language which would notify the school district employer that a certificate has not been renewed. The district should receive notice prior to the hearing as well as after the hearing in order to be able to properly safeguard against payment to an uncertified individual.

In *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985), the United States Supreme Court held that a hearing was required prior to the deprivation of a property right. In the proposed rule, the State Department of Education would not be providing a hearing until after the property right had been lost. We would respectfully request that the rule be rewritten to provide a hearing prior to the decision not to renew a certificate.

Please contact any member of our legal team if you need additional information.

Sincerely,

The OSSBA Legal Team

**Julie L. Miller**  
**Rooney Virgin**  
**Kim Bishop**  
**Brandon Carey**  
**Anthony Childers**  
*OSSBA Legal Department*

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## **STATUTORY AUTHORITY FOR 210:20-9-96**

### **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**

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

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

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

a. the State Department of Education shall not issue a certificate to and shall revoke the certificate of any person who has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term for a crime or an attempt to commit a crime provided for in Section 843.5 of Title 21 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, Sections 741, 843.1, if the offense included sexual abuse or sexual exploitation, 865 et seq., 885, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes or who enters this state and who has been convicted, received a suspended sentence or received a deferred judgment for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws,

b. all funds collected by the State Department of Education for the issuance of certificates to instructional, supervisory and administrative personnel in the public schools of the state shall be deposited in the "Teachers' Certificate Fund" in the State Treasury and may be expended by the State Board of Education to finance the activities of the State Department of Education necessary to administer the program, for consultative services, publication costs, actual and necessary travel expenses as provided in the State Travel Reimbursement Act incurred by persons performing research work, and other expenses found necessary by the State Board of Education for the improvement of the preparation and certification of teachers in Oklahoma. Provided, any unobligated balance in the Teachers' Certificate Fund in excess of Ten Thousand Dollars (\$10,000.00) on June 30 of any fiscal year shall be transferred to the General Revenue Fund of the State of Oklahoma. Until July 1, 1997, the State Board of Education shall have authority for approval of teacher education programs. The State Board of Education shall also have authority for the administration of teacher residency and professional development, subject to the provisions of the Oklahoma Teacher Preparation Act;

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**TITLE 210. STATE DEPARTMENT OF EDUCATION**  
**CHAPTER 20. STAFF**  
**SUBCHAPTER 41. TEACHER AND LEADER EFFECTIVENESS**

**210:20-41-1. Teacher and Leader Effectiveness Evaluation System overview**

(a) **Purpose and application.** To ensure that each Oklahoma student is provided with effective instruction that contributes to student success, each school district board of education shall maintain and annually review a written policy of evaluation for all teachers and leaders, to be based upon the minimum criteria for the Teacher and Leader Effectiveness Evaluation System (TLE) outlined at 70 O.S. § 6-101.16. For purposes of the TLE, "leader" means a principal, assistant principal, or any other school administrator who is responsible for supervising classroom teachers. "Teacher" means a duly certified person who is employed to serve as a counselor, librarian, or classroom teacher, or in any other instructional capacity.

(b) **Five-tier rating system.** Each teacher and leader evaluated under the TLE shall be rated on a five-tier scale. The evaluation framework selected by a school district for teachers shall apply to all teachers of the district in its entirety, and the evaluation framework selected by a school district for administrators shall apply to all administrators of the district in its entirety, with the exception of the district superintendent who is evaluated by the board of education. Regardless of any additional rating terminology used in an evaluation framework implemented by a school district, a teacher's or leader's district evaluation rating shall be expressed as one of the following five ratings:

- (1) Superior;
- (2) Highly effective ~~Effective~~;
- (3) Effective;
- (4) Needs ~~improvement~~ Improvement; or
- (5) Ineffective.

(c) **Periodic observations and ~~Annual~~ annual evaluations.** Every teacher and leader shall be evaluated annually, and provided with feedback for the purpose of improving student learning outcomes. Each teacher or leader shall receive a district evaluation rating based on the components of the TLE as set forth in 70 O.S. § 6-101.16(b), and expressed as a rating on the five-tier scale shown in subsection (b). For all district evaluations, student performance, including performance on the statewide criterion-referenced tests if available, shall be discussed with the teacher and may be one of the considerations for the teacher's district evaluation rating. ~~A career teacher as defined in 70 O.S. § 6-101.3 who has received a "Superior" or "Highly effective" rating under the TLE may be evaluated once every three (3) years, but shall participate annually in developing a professional growth goal. A probationary teacher as defined in 70 O.S. § 6-101.3 shall be provided formative feedback from the evaluation process at least two times per school year, once during the fall semester and once during the spring semester.~~

(1) **Career teachers.** A career teacher as defined in 70 O.S. § 6-101.3 shall be observed in their instructional setting once during the first semester of the school year and once during the second semester of the school year. The career teacher shall receive their evaluation during the second semester of the school year. A career teacher who has received "Superior" or "Highly Effective" as their most recent rating under the TLE may be evaluated once every three (3) years, but shall participate every year in developing a professional development goal (known as a "Professional Learning Focus" or "PL Focus").



(2) **Probationary teachers.** A probationary teacher as defined in 70 O.S. § 6-101.3 shall be observed in their instructional setting, and provided with formative feedback, at least once during the first semester of the school year and at least once during the second semester of the school year. The probationary teacher shall receive their evaluation during the second semester of the school year.

(d) **Individualized programs of professional development.** Every school district board of education shall maintain and annually review a written policy of professional development in addition to, or as a component of, its written policy of evaluation. The policy of professional development adopted by a school district shall provide for the development of a focused and individualized program of professional development for the teacher or administrator that is consistent with the qualitative components of the TLE. Each teacher or administrator's individualized program of professional development shall designate a Professional Learning Focus ("PL Focus") topic. Professional development completed pursuant to an individualized program of professional development shall count toward the total number of points a teacher or administrator is required to complete as established by the school district pursuant to 70 O.S. § 6-194, provided that the implementation of individualized programs of professional development does not increase the professional development points requirements. Every school district policy of professional development shall:

(1) Establish an annual professional growth goal for the teacher or administrator that is developed by the teacher or administrator in collaboration with the evaluator. Every teacher or administrator with the exception of the district superintendent will participate in establishing an annual professional growth goal (Professional Learning Focus), including career teachers with a "Superior" or "Highly Effective" rating during the years they are not required to be evaluated.

(2) Be tailored to address a specific area or criteria identified through the qualitative components of the TLE.

(3) Allow the teacher or administrator to actively engage with learning practices that are evidence-based, researched practices that are correlated with increased student achievement.

(4) Be supported by resources that are available and supplied by the school district and the State Department of Education.

(e) **Evaluator training.** Prior to conducting evaluations, every individual designated by a school district board of education to conduct personnel evaluations shall participate in training that addresses the requirements of Oklahoma's Teacher and Leader Effectiveness Evaluation System. Training provided to a school district's evaluators through a vendor which addresses the district's adopted framework, but does not specifically address Oklahoma's TLE components, will not satisfy the TLE training requirement.

(f) **Reporting.** Every school district must transmit data collected for TLE purposes to the State Department of Education through the current information upload system designated by the agency.

(g) **Confidentiality of records.** The State Department of Education shall keep records of annual evaluations received pursuant to TLE confidential. TLE records which in any way identify a current or former public employee shall not be subject to disclosure under the Oklahoma Open Records Act.

### **210:20-41-3. Qualitative components of the Teacher and Leader Effectiveness Evaluation System**

(a) **Qualitative assessment of teachers.** An evidence-based qualitative assessment tool for the assessment of teachers must include observable and measurable characteristics of personnel and classroom practices that are correlated to student performance success. These characteristics shall include, but not be limited to:

- (1) Organizational and classroom management skills;
- (2) Ability to provide effective instruction;
- (3) Focus on continuous improvement and professional growth;
- (4) Interpersonal skills; and
- (5) Leadership skills.

(b) **Qualitative assessment of leaders.** An evidence-based qualitative assessment tool for the assessment of administrators must include observable and measurable characteristics of personnel and site management practices that are correlated to student success. These characteristics shall include, but not be limited to:

- (1) Organizational and school management, including retention and development of effective teachers and dismissal of ineffective teachers;
- (2) Instructional leadership;
- (3) Professional growth and responsibility;
- (4) Interpersonal skills;
- (5) Leadership skills; and
- (6) Stakeholder perceptions.

(c) **TLE Qualitative Report.** A TLE Qualitative Report shall be submitted to the Oklahoma State Department of Education (OSDE) annually by each school. The Qualitative Report shall indicate the evaluation model used to evaluate the teacher or administrator, include the qualitative results of the teacher or administrator's evaluation, and indicate the Professional Learning Focus topic and completion status for each certified educator with the exception of the district superintendent. The Qualitative Report shall list both the certificate number of each educator evaluated and the certificate number of the individual who conducted their evaluation.



## **RULE IMPACT STATEMENT 210:20-41**

### **Teacher and Leader Effectiveness Evaluation System subchapter update [AMENDED]**

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

The Teacher and Leader Effectiveness (TLE) Evaluation System rules are being updated to reflect changes to law since the rules' adoption. Terminology clarifications will be made to reflect current law and practice, including alignment with the current statutory definition of "Teacher". The governing statute also now authorizes career teachers to be evaluated every three (3) years if they receive a district evaluation rating of "Superior" or "Highly Effective", and the rules must be updated accordingly.

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 certified educators subject to the TLE system.

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

The rule change will benefit school districts and educators by ensuring the administrative rules governing the TLE system reflect the current law and provide appropriate guidance.

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 9, 2020



**STATUTORY AUTHORITY FOR 210:20-41-1 AND 210:20-41-3**

**Oklahoma Statutes**

**Title 70. Schools**

**Chapter 1 - School Code of 1971**

**Article VI - Teachers**

**Section 6-101.16 - Oklahoma Teacher and Leader Effectiveness Evaluation System**

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A. By December 15, 2011, the State Board of Education shall adopt a new statewide system of evaluation to be known as the Oklahoma Teacher and Leader Effectiveness Evaluation System (TLE). The Board shall work cooperatively with school districts to incorporate the components of the TLE in all school districts by the 2017-2018 school year as provided for in Section 6-101.10 of this title.

B. The TLE shall include the following components:

1. Annual evaluations that provide feedback to improve student learning and outcomes, except as provided for in subsection C of this section;

2. A five-tier district evaluation rating system as follows:

- a. superior,
- b. highly effective,
- c. effective,
- d. needs improvement, and
- e. ineffective;

3. An evidence-based qualitative assessment tool for the teacher qualitative portion of the TLE that will include observable and measurable characteristics of personnel and classroom practices that are correlated to student performance success, including, but not limited to:

- a. organizational and classroom management skills,
- b. ability to provide effective instruction,
- c. focus on continuous improvement and professional growth,
- d. interpersonal skills, and
- e. leadership skills;

4. An evidence-based qualitative assessment tool for the leader qualitative portion of the TLE that will include observable and measurable characteristics of personnel and site management practices that are correlated to student performance success, including, but not limited to:

- a. organizational and school management, including retention and development of effective teachers and dismissal of ineffective teachers,
- b. instructional leadership,
- c. professional growth and responsibility,
- d. interpersonal skills,
- e. leadership skills, and
- f. stakeholder perceptions;

5. An individualized program of professional development for all teachers and administrators as adopted by the school district board of education as set forth in subsection B of [Section 6-101.10](#) of this title;

6. For districts choosing to use, at their own expense, quantitative measures of teachers and leaders as part of the district evaluation rating, such measures shall include a minimum of one reliable, research-based measure as approved by the State Board of Education pursuant to subsection D of this section; and

7. For all district evaluations, student performance, including performance on the statewide criterion-referenced tests if available, shall be discussed with the teacher and may be one of the considerations for the teacher's district evaluation rating.

C. Career teachers receiving a district evaluation rating of "superior" or "highly effective" under the TLE may be evaluated once every three (3) years.

D. By December 1, 2015, the Teacher and Leader Effectiveness Commission shall recommend to the State Board of Education multiple reliable, research-based measures to provide a quantitative evaluation component for teachers. The State Board of Education shall approve and publish a list of approved measures by February 1, 2016.

E. A school district with an average daily attendance of more than thirty-five thousand (35,000) which has incorporated quantitative components of the TLE into its evaluation system of teachers and administrators prior to the 2015-2016 school year may continue using its evaluation system, as defined by the school district's written policies, notwithstanding the provisions of this section and regardless of the State Board of Education's adoption of quantitative components pursuant to this section.

F. The State Department of Education shall provide to the Oklahoma State Regents for Higher Education and the Oklahoma Commission for Educational Quality and Accountability timely electronic data linked to teachers and leaders derived from the TLE for purposes of providing a basis for the development of accountability and quality improvements of the teacher preparation system. The data shall be provided in a manner and at such times as agreed upon between the Department, the State Regents and the Commission.

G. For purposes of this section, "leader" means a principal, assistant principal or any other school administrator who is responsible for supervising classroom teachers.

H. The State Department of Education shall keep all data collected pursuant to the TLE and records of annual evaluations received pursuant to this section confidential. Records created pursuant to this section which identify, in any way, a current or former public employee shall not be subject to disclosure under the Oklahoma Open Records Act. Nothing in this subsection shall be construed to prohibit disclosure otherwise required by this section; provided, however, any provisions requiring disclosure of TLE records shall be construed narrowly and all individually identifying information shall be removed from such records to the fullest extent possible.