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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:** March 25, 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.*:

### Emergency Rules

- (1) Title 210. State Department of Education  
Chapter 10. School Administration and Instructional Services  
Subchapter 13. Student Assessment  
**210:10-13-23. Emergency exemptions from assessments required by the Oklahoma School Testing Program [AMENDED]**

The following language is proposed for addition to the rule governing emergency medical exemptions from Oklahoma School Testing Program (OSTP) assessments:

“In the event of an emergency declared by a federal or state government entity that impacts the operation of public schools in Oklahoma, or upon an action taken by the State Board of Education declaring such an emergency, the State Department of Education shall be authorized to approve emergency medical exemptions from OSTP assessment requirements for all students whose ability to test is compromised by the emergency conditions. If a state of emergency suspends, interrupts, or otherwise substantially affects public school operations during the state testing window, the State Department of Education shall be authorized to approve general medical exemptions from OSTP assessments for all affected students.”

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

The following language is proposed for addition to the rule governing calculation of the chronic absenteeism indicator for the school accountability system:

“In the event of an emergency declared by a federal or state government entity that impacts the operation of public schools in Oklahoma, or upon an action taken by the State Board of Education declaring such an emergency, the Oklahoma school accountability system shall make any appropriate accommodations authorized under federal law to mitigate the effects of the emergency on school accountability determinations for the affected school year(s). Student absences related to a state of emergency shall not be included in the calculation of the chronic absenteeism indicator. If there is any period of time during a state of emergency when public school operations are suspended, interrupted, or otherwise affected by the emergency conditions, the affected dates shall be excluded from the calculation of the chronic absenteeism indicator.”

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

Provisions are being added to the rule addressing the validity period of teaching certificates, to provide that the State Board of Education is authorized to issue a 1-year emergency teaching certificate to an eligible individual up to three (3) times, upon a showing by the employing school district that the individual’s teaching has been effective and the district has been unable to hire a standard certified teacher.

### **Regular Permanent Rules**

- (4) Title 210. State Department of Education  
Chapter 10. School Administration and Instructional Services  
Subchapter 1. General Provisions  
**210:10-1-16. Oklahoma Academic Scholar Recognition [AMENDED]**

New provisions are proposed amending the Oklahoma Academic Scholar Recognition rule, to provide for a "Seal of Biliteracy" to be made available for inclusion on the transcript and diploma of a student who meets appropriate eligibility criteria for competence in English and another language.

- (5) Title 210. State Department of Education  
Chapter 15. Curriculum and Instruction  
Subchapter 13. Special Education  
**210:15-13-9. Guidelines for minimizing seclusion and restraint of students  
[NEW]**

This proposed new rule codifies state-level guidance for minimizing the use of seclusion and restraint on students, particularly students with disabilities who are identified as needing special education services under the *Individuals with Disabilities Education Act* (IDEA). The rule gives definitions for terms, including seclusion (the involuntary confinement of a student alone in an area they are physically prevented from leaving) and

different types of restraint. Based on current best practices, case law, and federal guidance, guidelines are outlined for reducing the use of such measures on students and for tracking incidents of restraint and seclusion in Oklahoma schools. The rule also prohibits the application of corporal punishment to students with disabilities entitled to special education services under the *Individuals with Disabilities Education Act* (IDEA).

- (6) Title 210. State Department of Education
  - Chapter 15. Curriculum and Instruction
    - Subchapter 27. Reading Sufficiency Act
      - 210:15-27-1. Reading Sufficiency Plans and Summer Academy Reading Programs [AMENDED]**
      - 210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act [AMENDED]**
      - 210:15-27-3. Standards for mid-year promotion of retained third graders [AMENDED]**
      - 210:15-27-4. Program of reading instruction [AMENDED]**

The rules addressing the Reading Sufficiency Act (RSA) are being updated to reflect changes to the RSA statutes and other relevant education laws. Updates include amended terminology to reflect language changes in the school accountability system, and codification of the due dates for schools' required data submissions to ensure timely distribution of RSA funds.

- (7) Title 210. State Department of Education
  - Chapter 40. Grants and Programs-In-Aid
    - Subchapter 87. Charter Schools
      - 210:40-87-7. Charter school contracts [AMENDED]**

New provisions are being added to the rule addressing charter school contracts that outline the contracting requirements for charter schools sponsored by the State Board of Education. The contracting requirements incorporated into the rule for charter schools sponsored by the State Board of Education substantially align with the contracting provisions required for charter school contracts between the Statewide Virtual Charter School Board and its sponsored schools.

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

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

(a) **Purpose.** Any public school district or public charter school may request an exemption from the administration of one or more statewide criterion-referenced tests and/or end-of-instruction exams administered pursuant to the provisions of the Oklahoma School Testing Program Act at 70 O.S. § 1210.508 et seq., for any of its enrolled students who are unable to participate in the assessment or a make-up assessment at any time during the testing window due to a documented significant medical emergency. The procedures set forth in (d) of this Section shall govern submission, processing, and evaluation of all requests for emergency exemptions submitted to the State Department of Education.

(b) **Application.** The provisions of this Section are not applicable to assessment determinations made by local school district staff, school administrators, or teachers pursuant to federal guidelines and state administrative rules. The requirements of this Section shall not interfere with the processes and procedures utilized by local school districts and charter schools to refrain from testing up to five percent (5%) of enrolled students. Such decisions shall continue to be made in accordance with local district policies and without review or approval of the State Department of Education.

(c) **Definitions.** The following words and terms, when used in this Section, shall have the following meanings:

(1) **"Immediate family member"** shall mean a parent, legal guardian, sibling, or child of the student for whom the exemption is requested.

(2) **"Significant medical emergency"** shall mean the debilitating onset of a severe or life-threatening physical or mental illness, infection, injury, disease and/or emotional trauma that meets all of the following criteria:

(A) The condition arises from an accident, disaster, crisis, or other exigent circumstances beyond the control of the student, the parents/legal guardians of the student, and the student's school or school district;

(B) The condition affects the student so severely as to incapacitate the student from participation in the assessment and corresponding make-up assessment at any time during the testing window;

(C) The condition affects the student so severely as to prevent the enrolled student from receiving instruction at school, at home, or through internet or online instruction;

(D) The student's incapacity to participate cannot be remedied with state-approved accommodations provided to the student by the school district as necessary to ensure equitable access to the assessment during the testing window; and

(E) The school or school district has been provided with written documentation of the condition that is verified in writing by a physician licensed to practice in the State of Oklahoma, or licensed in another jurisdiction and certified by an American Board of Medical Specialties (ABMS) Member Board or an American Board of Physician Specialties (ABPS) Member Board. A copy of the documentation verifying the student's condition shall be filed in the student's educational record.

(F) The term "significant medical emergency" shall not include:



- (i) Short term, or minor illnesses or injuries;
  - (ii) Pregnancy (unless complications of a pregnancy otherwise meet the definition of a "significant medical emergency" herein);
  - (iii) Placement of the student in a juvenile detention or correctional facility; or
  - (iv) Refusal of a student or parent to participate in the assessment.
  - (v) The occurrence of one of the conditions listed in (F) shall not disqualify a student who is eligible for an emergency medical exemption on a different basis.
- (G) Examples of situations that could be considered a "significant medical emergency" may include, but shall not be limited to conditions in which:

- (i) The student is in the final stages of a terminal disease or degenerative illness, or the student has been placed in hospice care;
- (ii) The student has been admitted to a hospital, infirmary, or other health care or treatment facility for the duration of the testing window that prohibits the student's secure access to the examination;
- (iii) The student is comatose for the duration of the testing window;
- (iv) The student has a serious chronic medical condition that will be worsened or intensified by external circumstances, and the student's physician determines that participation in the assessment could result in a significant medical emergency;
- (v) The student has sustained serious mental or physical injury as a result of an accident, unintentional injury, or other catastrophic event such as:

- (I) A transportation accident;
- (II) A natural disaster or other event resulting in a declared state of emergency;
- (III) An act of violence, including but not limited to: acts of physical assault, rape, kidnapping, homicide, torture, or terrorism;
- (IV) Drowning;
- (V) Poisoning, fall, or traumatic brain injury;
- (VI) Fire or explosion in the student's home when the student was present;
- (VII) Death or life-threatening injuries to, or significant medical emergency of, an immediate family member resulting from one of the examples in subparagraph (G).

(d) **Procedure.** Requests for emergency exemptions shall be submitted and evaluated in accordance with the following provisions:

- (1) All requests for emergency exemptions shall be electronically submitted by the school district or charter school through the State Department of Education testing application no later than 5:00 p.m. of the last day of the testing window.
- (2) The request for emergency exemption shall include all of the following information:
  - (A) A brief description of the significant medical emergency for which the exemption is requested;
  - (B) A brief explanation of why the emergency prevents the student's participation in the assessment;
  - (C) The date of the onset of the emergency;
  - (D) The expected or estimated duration/recovery period of the significant medical emergency;
  - (E) The number of days of instruction the student has missed as a result of the emergency and the number of any additional days of instruction the student is estimated or anticipated to miss after the date of submission of the exemption; and

(F) A copy of the written documentation provided by the student's physician pursuant to (c)(2)(E) of this Section.

(3) The request shall be supplemented by copies of any documentation subsequently requested by the State Department of Education necessary to document the information required by this paragraph and the definitions of "significant medical emergency" and "immediate family member" set forth in (c) of this Section.

(4) If a complete request for an emergency exemption is received during the applicable testing window, the State Department of Education will issue an approval or denial of the request and notify the school district or charter school of the determination within five (5) business days. The school district or charter school will receive notification through the Department's electronic testing application system. Incomplete requests will not be processed until all documentation required by (c)(2) of this Section has been submitted to the State Department of Education.

(5) Requests for emergency exemptions submitted to the State Department of Education that fall outside of the provisions of 70 O.S. § 1210.508-2 and this Section may be referred to the appropriate agency and/or division within the Department and administratively closed. If the request for an emergency exemption is received during the applicable testing window, the Department will notify the school district or charter school through the electronic testing application system within five (5) business days that the request falls outside of the provisions of this Section.

(e) **Exemptions for students with disabilities.** All students receiving special education services and/or state-approved assessment accommodations must have a written IEP and/or Section 504 plan that documents how the student will participate in assessments administered pursuant to the OSTP. The existence of an IEP and/or a Section 504 plan, or the homebound status of the student, shall not be a basis for granting an exemption pursuant to this section. To qualify for an exemption, a homebound student or a student on an IEP or Section 504 plan must experience a significant medical emergency as defined in (c)(2)(A) through (c)(2)(E).

(f) **Federal and state reporting.** Any student who has received an exemption from one or more examinations in accordance with the provisions of this Section shall not be included in the calculation of the participation rate of the school and/or school district in the assessments mandated by federal and state law.

(g) **Duration.** Any request for an exemption from the administration of one or more statewide criterion-referenced tests and/or end-of-instruction tests granted pursuant to the procedures set forth in this Section shall be valid only for the current testing window in which the request was submitted.

(h) **Appeal of a denial of a medical exemption.** A request for a medical exemption that has been denied by the State Department of Education for failure to meet the criteria for "significant medical emergency" outlined in (c)(2) of this Section may be appealed to the State Board of Education in accordance with the following procedures:

(1) **Petition for appeal.** The school district or charter school in which the student is enrolled may appeal the Department's denial of a medical exemption to the State Board of Education. The parent or legal guardian of a student, an individual who has been issued letters of guardianship of the person of a student pursuant to the Oklahoma Guardianship and Conservatorship Act, or an adult who has assumed permanent care and custody of a student in accordance with local district policies and applicable state law must grant permission to the school district or charter school to file a petition for appeal to the State Board of

Education. Parental consent shall be provided in writing and shall be documented by the requesting school district or charter school.

(2) **Filing requirements.** A petition for appeal must comply with the following requirements:

(A) **Time of filing.** The petition for appeal must be submitted in writing to the Secretary of the State Board of Education within ten (10) business days after the date the school district receives notice of the Department's denial of the medical exemption.

(B) **Method of filing.** Petitions for appeal may be submitted to the Secretary of the State Board of Education in person or by mail. A petition submitted by mail will be accepted as timely if the mailing envelope contains a postmark dated on or before the date of the filing deadline.

(C) **Verification of a petition for appeal.** The petition for appeal must be signed by the school Superintendent or the school Superintendent's designee, or charter school administrator or designee, for the purpose of verifying that, to the best of the individual's knowledge, the information submitted in the appeal is accurate and correct.

(D) **Acceptance of a petition for filing.** Upon receipt of the petition for appeal, the Secretary of the Board of Education shall file the petition and obtain copies of all records and information submitted by the school district or charter school to the State Department of Education pursuant to (c) of this Section. Copies of agency records and additional documentation submitted in the petition for appeal shall be provided to members of the State Board of Education for consideration. Only timely filed petitions for appeal shall be brought to the State Board of Education for consideration. The Board shall take action on the petition no later than twenty (20) calendar days after the date of the receipt of a timely filed petition.

(3) **Review of petitions.** Because the privacy of individual student data is protected by the Family Educational Rights and Privacy Act (FERPA) and Oklahoma's Student Data Accessibility, Transparency, and Accountability Act, the State Board of Education shall review petitions for appeal in executive session as authorized by 25 O.S. § 307 (A)(7). The State Board of Education shall evaluate each petition for appeal based on the following criteria to determine whether a "significant medical emergency" exists as contended by the appealing school district or charter school:

(A) The applicability of the criteria outlined in (c)(2) of this section related to the determination of a "significant medical emergency";

(B) The severity of the exigent circumstances giving rise to the student's condition;

(C) The extent of the student's incapacitation;

(D) The projected efficacy of allowable testing accommodations; or

(E) The existence of newly discovered documentation or newly available information that significantly and substantively reflects on the student's mental and/or physical state of being.

(4) **Actions on a petition for appeal.** After review of the petition for appeal in accordance with (h)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the information provided in the written appeal.

(A) The Board shall consider each petition for appeal on an individual basis and shall issue an approval or denial of the request for an emergency exemption.

(B) The Secretary of the Board shall notify the school district or charter school and the State Department of Education in writing of the Board's determination.

(C) The State Department of Education shall document each determination in the testing application to maintain an accurate agency record of each request for an emergency exemption.

(D) Requests for student medical exemptions granted by the State Board of Education will be processed pursuant to (f) and (g) of this Section. Students denied medical exemptions by the State Board of Education will be included in the calculation of the participation rate of the school and/or school district in the assessments mandated by federal and state law.

**(i) Effect of public health emergencies or other declared emergencies.** In the event of an emergency declared by a federal or state government entity that impacts the operation of public schools in Oklahoma, or upon an action taken by the State Board of Education declaring such an emergency, the State Department of Education shall be authorized to approve emergency medical exemptions from OSTP assessment requirements for all students whose ability to test is compromised by the emergency conditions. If a state of emergency suspends, interrupts, or otherwise substantially affects public school operations during the state testing window, the State Department of Education shall be authorized to approve general medical exemptions from OSTP assessment requirements for all affected students.

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

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

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

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

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

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

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

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



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

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

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

(h) Effect of public health emergencies or other declared emergencies. In the event of an emergency declared by a federal or state government entity that impacts the operation of public schools in Oklahoma, or upon an action taken by the State Board of Education declaring such an emergency, the Oklahoma school accountability system shall make any appropriate accommodations authorized under federal law to mitigate the effects of the emergency on school accountability determinations for the affected school year(s). Student absences related to a state of emergency shall not be included in the calculation of the chronic absenteeism indicator. If there is any period of time during a state of emergency when public school operations are suspended, interrupted, or otherwise affected by the emergency conditions, the affected dates shall be excluded from the calculation of the chronic absenteeism indicator.



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

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

- (a) Standard certificates normally have a validity period of five (5) years. The standard certificate will expire five (5) years from the nearest thirtieth day of June either preceding or following the effective date of the certificate.
- (b) Provisional certificates, vocational and/or nonvocational, will have a validity period established by the State Department of Education.
- (c) Emergency certificates normally have a validity period of one (1) school year. The certificate will expire the thirtieth day of June of the school year for which it was issued. The validity period for an emergency certificate may be extended for one (1) additional school year at the request of the superintendent of the employing district, subject to the approval of the State Board of Education. At the request of the superintendent of the employing district, an emergency certificate may be renewed by the State Board of Education for one (1) additional year for an individual who has been employed by a school district for two (2) years, provided the following criteria are met:

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

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



## **STATUTORY AUTHORITY FOR EMERGENCY RULE PROMULGATION**

### **Oklahoma Statutes**

#### **Title 75. Statutes and Reports**

#### **Chapter 8 - Administrative Procedures Act**

#### **Section 253 - Emergency Rules**

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A. 1. If an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated pursuant to the provisions of this section, if the rule is first approved by the Governor. The Governor shall not approve the adoption, amendment, revision or revocation of a rule as an emergency measure unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of the following:

- a. protect the public health, safety or welfare,
- b. comply with deadlines in amendments to an agency's governing law or federal programs,
- c. avoid violation of federal law or regulation or other state law,
- d. avoid imminent reduction to the agency's budget, or
- e. avoid serious prejudice to the public interest.

As used in this subsection, "substantial evidence" shall mean credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

2. In determining whether a rule is necessary as an emergency measure, the Governor shall consider whether the emergency situation was created due to the agency's delay or inaction and could have been averted by timely compliance with the provisions of this chapter.

B. An emergency rule adopted by an agency shall:

- 1. Be prepared in the format required by Section 251 of this title;
- 2. a. Include an impact statement which meets the requirements set forth in subparagraph b of this paragraph unless the Governor waives the requirement in writing upon a finding that the rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest.
  - b. The rule impact statement shall include, but not be limited to:
    - (1) a brief description of the proposed rule,
    - (2) a description of the persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,
    - (3) a description of the classes of persons who will benefit from the proposed rule,
    - (4) a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
    - (5) the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,
    - (6) a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,

(7) an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,

(8) a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

(9) a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and

(10) the date the rule impact statement was prepared and if modified, the date modified.

c. The rule impact statement shall be prepared on or before the date the emergency rule is adopted;

3. Be transmitted pursuant to Section 464 of Title 74 of the Oklahoma Statutes to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, along with the information required by this subsection within ten (10) days after the rule is adopted; and

4. Not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

C. 1. Within forty-five (45) calendar days of receipt of a proposed emergency rule filed with the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, the Governor shall review the demonstration of emergency pursuant to subsection A of this section, and shall separately review the rule in accordance with the standards prescribed in paragraph 3 of this subsection.

2. Prior to approval of emergency rules, the Governor shall submit the emergency rule to the Secretary of State for review of proper formatting.

3. If the Governor determines the agency has established the rule is necessary as an emergency measure pursuant to subsection A of this section, the Governor shall approve the proposed emergency rule if the rule is:

a. clear, concise and understandable,

b. within the power of the agency to make and within the enacted legislative standards, and

c. made in compliance with the requirements of the Administrative Procedures Act.

D. 1. Within the forty-five-calendar-day period set forth in paragraph 1 of subsection C of this section, the Governor may approve the emergency rule or disapprove the emergency rule. Failure of the Governor to approve an emergency rule within the specified period shall constitute disapproval of the emergency rule.

2. If the Governor disapproves the adopted emergency rule, the Governor shall return the entire document to the agency with reasons for the disapproval. If the agency elects to modify the rule, the agency shall adopt the modifications, and shall file the modified rule in accordance with the requirements of subsection B of this section.

3. Upon disapproval of an emergency rule, the Governor shall, within fifteen (15) days, make written notification to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules.

E. 1. Upon approval of an emergency rule, the Governor shall immediately make written notification to the agency, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules. Upon receipt of the notice of the approval, the agency shall file with the Office of Administrative Rules as many copies of the notice of approval and the emergency rule as required by the Secretary.

2. Emergency rules shall be subject to legislative review pursuant to Section 308 of this title.

3. The emergency rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following the approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

F. 1. Upon approval by the Governor, an emergency rule shall be considered promulgated and shall be in force immediately, or on such later date as specified therein. An emergency rule shall only be applied prospectively from its effective date.

2. The emergency rule shall remain in full force and effect through the first day of the next succeeding regular session of the Legislature following promulgation of such emergency rule until September 14 following such session, unless it is made ineffective pursuant to subsection H of this section.

G. No agency shall adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, unless specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law.

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title. If an emergency rule is superseded by another emergency rule prior to the enactment of a permanent rule, the latter emergency rule shall retain the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature.

2. Any promulgated emergency rule shall be made ineffective if:

a. disapproved by the Legislature,

b. superseded by the promulgation of permanent rules,

c. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of this title, or

d. an earlier expiration date is specified by the agency in the rules.

3. a. Emergency rules in effect on the first day of the session shall be null and void on September 15 following sine die adjournment of the Legislature unless otherwise specifically provided by the Legislature.

b. Unless otherwise authorized by the Legislature, an agency shall not adopt any emergency rule, which has become null and void pursuant to subparagraph a of this paragraph, as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void pursuant to subparagraph a of this paragraph.

I. Emergency rules shall not become effective unless approved by the Governor pursuant to the provisions of this section.

J. 1. The requirements of Section 303 of this title relating to notice and hearing shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an abbreviated notice and hearing process determined to be necessary by an agency.

2. The rule report required pursuant to Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of such agency.

3. The statement of submission required by Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section.

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore

of the Senate in accordance with the requirements set forth in Section 464 of Title 74 and to the Office of Administrative Rules as required by the Secretary. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

L. Upon completing the requirements of this section, an agency may promulgate a proposed emergency rule. No emergency rule is valid unless promulgated in substantial compliance with the provisions of this section.

M. Emergency rules adopted by an agency or approved by the Governor shall be subject to review pursuant to the provisions of Section 306 of this title.

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

**210:10-1-16. Oklahoma Academic Scholar Recognition and other student recognitions**

(a) **Purpose.** The rules of this subchapter have been adopted for the purpose of providing requirements for recognition as an Oklahoma Academic Scholar and other recognitions of student achievement. The purpose of the program is to recognize those secondary students within the State of Oklahoma who exceed the basic graduation requirements and who, through diligence, achieve academic ratings above those of their peers.

(b) **Requirements for recognition as an Oklahoma Academic Scholar.** Students who meet all the requirements listed below shall be recognized by the local school district and the State Board of Education as an Oklahoma Academic Scholar.

- (1) Accumulate over grades 9, 10, 11 and the first semester of grade 12, a minimum grade point average of 3.7 on a 4.0 scale or be in the top 10% of their graduation class.
- (2) Complete (or will complete) the curricular requirements for a standard diploma.
- (3) Score at least a composite of 27 on the American College Test (ACT) or a 1220 combined score on the Scholastic Assessment Test (SAT). The ACT or SAT must have been taken on a national test date or state-administered test date before the date of graduation. For students with documented disabilities requiring testing accommodations not available on a national or state administration date, a qualifying score on the ACT or SAT may be demonstrated using alternate administration dates.

(c) **Requirements for the Seal of Biliteracy.** Students who meet the requirements listed below for both English and another language shall be recognized by the local school district and the State Board of Education with a Seal of Biliteracy in English and another language, which shall be noted on the student's transcript upon completion of the eligibility requirements and noted on the student's diploma upon graduation. The Seal of Biliteracy shall be available in two levels of distinction, Gold and Platinum, based on the following eligibility requirements:

(1) **Proficiency in English.** The student must score at least the level indicated on one or more of the assessments below:

(A) **ACT.** A score on the English Language Arts section of at least 18 for Gold level recognition or at least 21 for Platinum level recognition.

(B) **SAT.** A score on the Evidence-Based Reading and Writing (formerly verbal) section of at least 570 for Gold level recognition or at least 650 for Platinum level recognition.

(C) **PSAT**

(i) **10<sup>th</sup> grade.** For a PSAT taken when the student is in 10<sup>th</sup> grade, a score on the Evidence-Based Reading and Writing section of at least 470 for Gold level recognition or at least 600 for Platinum level recognition.

(ii) **11<sup>th</sup> grade.** For a PSAT taken when the student is in 11<sup>th</sup> grade, a score on the Evidence-Based Reading and Writing section of at least 570 for Gold level recognition or at least 620 for Platinum level recognition.

(D) **International Baccalaureate (IB).** A score of at least a 3 for Gold level recognition or at least a 4 for Platinum level recognition on the International Baccalaureate Test of English.

(E) **Advanced Placement (AP).** A score of at least a 3 for Gold level recognition on the Advanced Placement Test of English Language or Advanced Placement Test of English

Literature, or a score of at least a 4 for Platinum level recognition on the Advanced Placement Test of English Language or Advanced Placement Test of English Literature.  
**(F) WIDA ACCESS.** A score of at least 4.5 through 5.7 on the WIDA ACCESS test for Gold level recognition, or a score of at least 5.8 on the WIDA ACCESS test for Platinum level recognition.

**(2) Proficiency in a language other than English.** In addition to achieving a qualifying score in English on one of the assessments listed in (c)(1) above, the student must score at least the level indicated in a language other than English on one or more of the proficiency measures listed below:

**(A) AAPPL or ALIRA.** A score of at least Intermediate-Mid (I-4) on the Assessment of Performance of Progress toward Proficiency in Languages (AAPPL) or ACTFL Latin Interpretive Reading Assessment (ALIRA) for Gold level recognition, or a score of at least Advanced-Low (A-1) on the AAPPL or ALIRA for Platinum level recognition.

**(B) STAMP.** A score of at least 5 on the Standards Based Measurement of Proficiency (STAMP) for Gold level recognition, or a score of at least 7 on the STAMP for Platinum level recognition.

**(C) OPI/OPIc and WPT.** A score of at least Intermediate-Mid for Gold level recognition, or at least Advanced-Low for Platinum level recognition, on either the Oral Proficiency Interview (OPI) or the Oral Proficiency Interview – Computer (OPIc), and the Written Proficiency Test (WPT). (A qualifying score is required on either the OPI or OPIc, in addition to a qualifying score on the WPT.)

**(D) Advanced Placement (AP).** A score of at least a 3 for Gold level recognition, or at least a 4 for Platinum level recognition, on the Language and Culture Advanced Placement (AP) test for the target language.

**(E) SLPI.** A score of at least Intermediate for Gold level recognition, or at least Advanced for Platinum level recognition, on the Sign Language Proficiency Interview (SLPI).

**(F) Native American languages.** The State Department of Education (OSDE) will consult with each tribal nation as appropriate to identify an appropriate measure of proficiency.

**(G) Languages for which there is no standard assessment.** If a request for a Seal of Biliteracy is received regarding a language for which there is no standard assessment but which is not a Native American language, the OSDE will work with relevant linguistic and/or cultural entities to identify an appropriate measure of proficiency.

## **RULE IMPACT STATEMENT 210:10-16-1**

### **"Oklahoma Academic Scholar Recognition" [AMENDED]**

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

New provisions are proposed amending the Oklahoma Academic Scholar Recognition rule, to provide for a "Seal of Biliteracy" to be made available for inclusion on the transcript and diploma of a student who meets appropriate eligibility criteria for competence in English and another language.

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

The rule change will affect public high schools and their students who achieve competency in English and another language.

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

The rule change will benefit public high school students who are eligible for the Seal of Biliteracy, and will also benefit their schools in demonstrating that opportunities to achieve biliteracy are available.

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:** February 10, 2020

## **STATUTORY AUTHORITY FOR 210:10-1-16**

### **Oklahoma Statutes**

#### **Title 70. Schools**

##### **Chapter 1 - School Code of 1971**

##### **Article XI - Curriculum**

##### **Section 11-103.2 - Development and Implementation of Program Recognizing Academic Scholars**

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The State Board of Education shall have authority to develop and implement a program for the purpose of recognizing academic scholars in the secondary schools of the state. The State Board of Education shall determine the requirements which are necessary for a student to attain academic scholar status. The requirements shall include but not be limited to the minimum graduation requirements set by the State Board of Education. Recognition for academic scholar status shall be indicated upon the diploma of those students who qualify for such status and in such other manner as the Board may determine. The State Board of Education shall be authorized to promulgate rules and regulations in order to implement the provisions of this section.

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 15. CURRICULUM AND INSTRUCTION  
SUBCHAPTER 13. SPECIAL EDUCATION**

**210:15-13-9. Guidelines for minimizing seclusion and restraint of students**

**(a) Definitions.** The following terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

**“Behavioral intervention plan (BIP)”** means a plan that is based on the results of a functional behavior assessment (FBA) and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.

**“Chemical restraint”** means a drug or medication used on a student to control behavior or restrict freedom of movement, when such substance is not administered as prescribed to the student by a licensed physician or other qualified health professional acting under the scope of their professional authority.

**“Corporal punishment”** means, as defined in 70 O.S. § 13-116, the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline.

**“Functional Behavioral Assessment (FBA)”** means a process that uses direct and indirect data collection to determine why a student engages in behaviors that impede learning, and how the student’s behavior relates to the environment. The FBA includes, but is not limited to: the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior, and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.

**“Mechanical restraint”** means the use of any device or equipment to restrict a student’s freedom of movement. This term does not include motor vehicle safety restraints or devices utilized by a student, or appropriately trained school personnel, which are used as prescribed by a medical or related services professional for specific approved purposes such as: mechanical supports used to achieve proper body position or allow greater freedom of mobility, restraints for medical immobilization, or orthopedically prescribed devices.

**“Physical escort”** means a temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of directing a student to move to a safe location if they are in distress or acting out.

**“Physical restraint”** means a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. Physical restraint does not include an appropriately applied temporary physical escort.

**“Prone restraint”** means a prohibited type of physical restraint that positions a student face down on their stomach, potentially restricting the student’s ability to breathe freely.

**“Seclusion”** means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include short-term monitored separation in a monitored and non-locked timeout setting.

**“Seclusion room”** means a room or other confined area in which a student is involuntarily placed in isolation from other persons and from which the student is physically prevented from leaving.

“Timeout” means a technique that is part of an approved behavior management program and involves the monitored separation of the student in a non-locked setting for the purpose of calming.

(b) **Student seclusion.** Seclusion should never be used for the purposes of discipline, punishment, forcing compliance, or as a convenience to staff. Seclusion may only be used under emergency circumstances as outlined below.

(1) **Circumstances under which seclusion of a student is authorized.** A student may be placed in seclusion only if:

(A) The student’s actions pose an imminent danger of serious physical harm to the student or other individuals, and not merely a threat to property;

(B) Positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;

(C) School personnel are present who have completed appropriate training that addresses conflict de-escalation, the crisis cycle and associated interventions, appropriate use of seclusion rooms, and possible effects of seclusion; and

(D) The seclusion only lasts as long as necessary to resolve the threat of danger or harm.

(2) **Conditions required during an authorized use of seclusion.** If a student is placed in seclusion during an emergency situation that meets the criteria of (b)(1) above, the following precautions must be exercised throughout the time the student is in seclusion:

(A) The student must be continuously monitored visually and aurally by an appropriately trained school employee;

(B) The student must be allowed to go to the restroom upon request;

(C) The student must be permitted to drink water upon request; and

(D) Immediate action must be taken if the student displays any signs of medical distress.

(3) **Requirements for seclusion rooms.** A room or area where a student is placed in seclusion must meet the following criteria:

(A) Continuous visual and aural monitoring of a secluded student is possible;

(B) There must be adequate space for the student to sit or lie down;

(C) There must be adequate lighting;

(D) The room must be equipped with heating, cooling, and ventilation systems comparable to such systems in the rest of the building where the seclusion room or area is located;

(E) The room or area used for seclusion must be free of any objects that pose a potential risk of harm to a student with disabilities or a student in distress; and

(F) If equipped with a door that locks, the lock must automatically disengage in case of an emergency such as a fire or severe weather.

(c) **Student restraint.** Chemical restraint and/or mechanical restraint of a student is prohibited in Oklahoma public schools. Physical restraint of a student should never be used for the purposes of discipline, punishment, forcing compliance, or as a convenience to staff. In cases where a student has a history of dangerous behavior for which physical restraint was used or considered, the school should have a plan in place for teaching and supporting more appropriate behavior and determining positive methods to prevent behavioral escalations that have previously resulted in the use or consideration of restraint. Physical restraint may only be used under emergency circumstances as outlined below.

(1) **Circumstances under which physical restraint of a student is authorized.** A student may be physically restrained only if:

(A) The student's actions pose an imminent danger of serious physical harm to the student or other individuals, and not merely a threat to property;

(B) Positive behavior intervention strategies and less restrictive measures appropriate to the behavior exhibited by the student are currently being implemented, but have not effectively de-escalated the threat of danger or harm;

(C) The physical restraint is applied by school personnel who have completed appropriate training that addresses conflict de-escalation, the crisis cycle and associated interventions, CPR and First Aid (including certifications), possible effects of physical restraint, and monitoring the wellbeing of a restrained student; and

(D) The physical restraint lasts only as long as necessary to resolve the threat of danger or harm.

(2) **Conditions required during an authorized use of physical restraint.** If a student is placed in physical restraint during an emergency situation that meets the criteria of (c)(1) above, the following precautions must be exercised throughout the time the student is restrained:

(A) Under no circumstances may a student be restrained using a prone (facedown) restraint, any restraint that prevents the student from breathing or speaking, or any maneuver that places pressure or weight on the chest, sternum, lungs, diaphragm, neck, throat, or back;

(B) The degree of restriction of the student's freedom of movement may not exceed what is necessary to protect the student or other individuals from the threat of serious physical harm; and

(C) The restraint of the student is continuously witnessed by at least one school employee who is not involved in the physical restraint.

(d) **Corporal punishment of students with disabilities not authorized.** For all students, the State Department of Education strongly encourages Oklahoma schools to implement disciplinary policies and practices that use evidence based, developmentally appropriate methods informed by an awareness that many students have endured Adverse Childhood Experiences (ACEs) and related trauma. As applied to students with disabilities entitled to special education services under the *Individuals with Disabilities Education Act* (IDEA), the use of corporal punishment by employees or agents of an Oklahoma public school is prohibited beginning in the 2020-2021 school year.

(e) **Incident reporting.** Each incident of seclusion, restraint, or corporal punishment of a student with disabilities shall be reported immediately to a school site administrator and documented using the statewide online IEP reporting system. A copy of the documentation shall be placed in the student's file and provided to the student's parent(s) or guardian(s). For each incident of seclusion, restraint, or corporal punishment of a student, the student's parent(s) or guardian(s) shall be notified as soon as possible, and must be notified no later than the school day following the incident or within twenty-four (24) hours of the incident, whichever is first. An IEP meeting may be needed to review or implement a Behavior Intervention Plan (BIP) for the student.

(f) **End-of-year reporting.** At the end of each school year, and no later than June 30<sup>th</sup>, each school district or charter school shall report to the State Department of Education (OSDE) Office of Special Education Services information regarding all incidents of seclusion, restraint, or corporal punishment of a student with disabilities within the district during the school year that

just closed. The end-of-year summary report shall include the total number of each type of incident, as well as the number and type of incidents associated with each student to whom seclusion, physical restraint, or corporal punishment was applied. This information will be used to identify districts in need of additional support, training, and guidance in the areas of conflict de-escalation, crisis intervention, Functional Behavior Assessments, the possible effects of seclusion and restraint, and effective behavior intervention planning.

## PUBLIC COMMENT SUMMARY

### 210:15-13-9. Guidelines for minimizing seclusion and restraint of students [NEW]

Summary of Public Comment	Agency Response
<p>1. "In section (e) below it states that incidents of corporal punishment of a student with disabilities shall be reported. However, in section (d) it states that <b>Corporal punishment of students with disabilities not authorized</b>. This is an inconsistency and should be clarified. In addition, the reporting requirement of "Immediately" could be clarified to state a specific time frame such as by the end of the day.</p> <p>(e) <b>Incident reporting.</b> Each incident of seclusion, restraint, or corporal punishment of a student with disabilities shall be reported immediately to a school site administrator and documented using the statewide online IEP reporting system.</p> <p>It would also be important to state that if these restrictive procedures are being employed the BIP should be modified to incorporate the techniques for implementing the specific restrictive procedure being used. In other words, when you begin to employ these procedures you have, in effect, changed the BIP and it should reflect that. Specifically, under what conditions are the restrictive procedure used and how is it implemented."</p>	<ul style="list-style-type: none"> <li>▪ While corporal punishment of students with disabilities will be prohibited under the proposed rule, the requirement to report any instance of corporal punishment involving a student with a disability is intended to create a mechanism to monitor any such unauthorized use.</li>   <li>▪ While not being incorporated into the rule language directly, the commenter's suggestions highlight details that will be addressed in non-regulatory guidance provided by the OSDE Office of Special Education Services.</li> </ul>
<p>2. <b>"Fiscal Impact.</b> We are concerned that Rule Impact Statement 210:15-13-9 does not identify any anticipated economic impact of this rule on Oklahoma public schools. If the rule takes effect as to all students, instead of students with IDEA disabilities only, we anticipate a significant economic impact that districts will be unprepared to shoulder.</p> <p>The <i>Guidelines for Minimizing the Use of Seclusion and Guidelines for Minimizing the Use of Physical Restraint (Guidelines)</i>, found in the <i>Oklahoma Special Education Handbook</i>, require virtually identical training for staff members who may need to use physical restraint or seclusion with a child identified as having an IDEA disability. Oklahoma school districts and public charter schools have substantially borne the cost of that training after OSDE provided all school districts with an initial round of training in or</p>	<ul style="list-style-type: none"> <li>▪ A Rule Impact Statement (RIS) reports predicted costs that will be directly attributable to a rule change. It is not feasible for the OSDE to model financial predictions regarding the possible need for additional training in each school district based on the current level of training held by each local staff member. As a matter of student safety, school personnel should not currently be implementing restraint or seclusion of students without appropriate training, regardless of the proposed rule.</li>   <li>▪ The guidelines established in the proposed rule are intended to protect student health and safety first and foremost, and will have the additional effect of ensuring school districts are not implementing seclusion and restraint in a manner that may result in injury or liability.</li> </ul>



around 2012. Since that time, Districts have made their own decisions about the type of training that will meet the requirements contained in the *Guidelines*. A number of districts have chosen either The Mandt System (<https://www.mandtsystem.com/>) or Nonviolent Crisis Prevention training from the Crisis Prevention Institute (CPI) (<https://www.crisisprevention.com/>) for their staff members because of the strong crisis prevention components they contain. Both Mandt and CPI are costly and require a substantial staff training time commitment and frequent recertification. But any training program a district selects to comply with the proposed rule will require district money, time and repetition. Before going further, SDE should reconsider and report the likely fiscal impact of expanding this rule to cover substantially more school employees and contractors, including school resource officers. It is simply unbelievable that a rule expanded to cover more than 500,000 additional students will be without additional cost.

**Corporal Punishment of Students with Disabilities.** The purpose of any agency's rulemaking authority is to facilitate the administration of legislative policy. *Okla. Stat. tit. 75, § 250.2(B)*. SDE's proposed language to prohibit the use of corporal punishment by agents or employees of Oklahoma public schools to students with IDEA disabilities doesn't facilitate the administration of Oklahoma legislative policy, it is contrary to that policy.

In 2017, the Oklahoma Legislature passed House Bill 1623, which took effect on November 1 that year. It provides as follows:

A. School district personnel shall be prohibited from using corporal punishment on students identified with the most significant cognitive disabilities according to criteria established by the State Department of Education unless addressed in an annual individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA).  
 B. A waiver to the provisions of subsection A of this section shall be granted if the parent or legal guardian of a student provides written consent.  
 C. As used in this section, "corporal punishment" means the deliberate infliction of physical pain by hitting, paddling, spanking, slapping or any other physical force used as a means of discipline. *Okla. Stat. tit. 70, § 13-116*. The Legislature clearly intended to continue to permit corporal

▪ The Oklahoma Legislature has explicitly authorized the State Board of Education to prohibit the corporal punishment of all students served on Individualized Education Programs pursuant to the *Individuals with Disabilities Education Act* (IDEA).

Under 70 O.S. § 24-100.4(D):

"Except concerning students on individualized education plans (IEP) pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. No. 101-476, the State Board of Education shall not have authority to prescribe student disciplinary policies for school districts or to proscribe corporal punishment in the public schools."

This is a direct statutory acknowledgement of the State Board of Education's authority to prohibit corporal punishment as applied to all students entitled to services under the IDEA.

The statute the commenter cites, 70 O.S. § 13-116, is indeed a legislative prohibition on the corporal punishment of "students identified with the most

punishment as to all other children with disabilities and to permit its use as to students with the most significant cognitive disabilities as long as their parents provided written consent or their appropriately-developed IEP addressed its use. SDE's attempt to prohibit corporal punishment contradicts legislative policy expressed just two years ago.

CCOSA doesn't approve corporal punishment of children with disabilities and doesn't desire to see it continue. However, we believe it is the Legislature's job to prohibit corporal punishment and that SDE's attempt to do so via rule is adverse to state law."

significant cognitive disabilities according to criteria established by the State Department of Education."

**The action taken by the Legislature in 2017 to prohibit corporal punishment directly by statute as applied to the narrow category of "students with the most significant cognitive disabilities" (or "MSCD") had no effect on the authority held by the State Board of Education to prohibit corporal punishment of all IDEA students in Oklahoma public schools under 70 O.S. § 24-100.4(D). The State Board now exercises that authority.**

## **RULE IMPACT STATEMENT 210:15-13-9**

### **"Guidelines for minimizing seclusion and restraint of students" [NEW]**

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

This proposed new rule codifies state-level guidance for minimizing the use of seclusion and restraint on students, particularly students with disabilities who are identified as needing special education services under the *Individuals with Disabilities Education Act* (IDEA). The rule gives definitions for terms, including seclusion (the involuntary confinement of a student alone in an area they are physically prevented from leaving) and different types of restraint. Based on current best practices, case law, and federal guidance, guidelines are outlined for reducing the use of such measures on students and for tracking incidents of restraint and seclusion in Oklahoma schools. The rule also prohibits the application of corporal punishment to students with disabilities entitled to special education services under the *Individuals with Disabilities Education Act* (IDEA).

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

The rule change will affect public schools and students with disabilities.

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

The rule change will benefit students with disabilities by ensuring seclusion and restraint are used only under authorized conditions, and that appropriate safety precautions are in place any time such a method is used. Schools will also benefit, in that the proper application of the conditions addressed in the rule will ensure that any use of restraint or seclusion in an Oklahoma public school is implemented consistent with the requirements of federal law and best practices.

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:** February 10, 2020

## **STATUTORY AUTHORITY FOR 210:15-13-9**

### **Oklahoma Statutes**

#### **Title 70. Schools**

##### **Chapter 1 - School Code of 1971**

##### **School Safety and Bullying Prevention Act**

##### **Article XXIV - Miscellaneous Provisions**

##### **Section 24-100.4 - Control and Discipline of Child**

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A. Each district board of education shall adopt a policy for the discipline of all children attending public school in that district, and for the investigation of reported incidents of bullying. The policy shall provide options for the discipline of the students and shall define standards of conduct to which students are expected to conform. The policy shall:

1. Specifically address bullying by students at school and by electronic communication, if the communication is specifically directed at students or school personnel and concerns bullying at school;
2. Contain a procedure for reporting an act of bullying to a school official or law enforcement agency, including a provision that permits a person to report an act anonymously. No formal disciplinary action shall be taken solely on the basis of an anonymous report;
3. Contain a requirement that any school employee that has reliable information that would lead a reasonable person to suspect that a person is a target of bullying shall immediately report it to the principal or a designee of the principal;
4. Contain a statement of how the policy is to be publicized including a requirement that:
  - a. an annual written notice of the policy be provided to parents, guardians, staff, volunteers and students, with age-appropriate language for students,
  - b. notice of the policy be posted at various locations within each school site, including but not limited to cafeterias, school bulletin boards, and administration offices,
  - c. the policy be posted on the Internet website for the school district and each school site that has an Internet website, and
  - d. the policy be included in all student and employee handbooks;
5. Require that appropriate school district personnel involved in investigating reports of bullying make a determination regarding whether the conduct is actually occurring;
6. Contain a procedure for providing timely notification to the parents or guardians of a victim of documented and verified bullying and to the parents or guardians of the perpetrator of the documented and verified bullying;
7. Identify by job title the school official responsible for enforcing the policy;
8. Contain procedures for reporting to law enforcement all documented and verified acts of bullying which may constitute criminal activity or reasonably have the potential to endanger school safety;
9. Require annual training for administrators and school employees as developed and provided by the State Department of Education in preventing, identifying, responding to and reporting incidents of bullying;
10. Provide for an educational program as designed and developed by the State Department of Education and in consultation with the Office of Juvenile Affairs for students and parents in preventing, identifying, responding to and reporting incidents of bullying;



**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 15. CURRICULUM AND INSTRUCTION  
SUBCHAPTER 27. READING SUFFICIENCY ACT**

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

**210:15-27-1. District Reading Sufficiency Plans and Summer Academy Reading Programs**

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

**"Individualized Program of Reading Instruction"**, also referred to as **"Academic Progress Plan"** ("APP"), means the program of reading instruction developed pursuant to 70 O.S. § 1210.508C for a student in first, second, or third grade who is not meeting grade level targets in reading, which is designed to enable the student to acquire the appropriate grade level reading skills.

**"READ Initiative"** means the Reading Enhancement and Acceleration Development Initiative that each school district is directed to establish pursuant to 70 O.S. § 1210.508C, which shall be focused on preventing the retention of third grade students, and which comprises statutory components including but not limited to: availability to all kindergarten through third grade students at risk of retention as identified by Reading Sufficiency Act assessments; provision of services during regular school hours; and a reading curriculum that provides skill development in phonemic awareness, phonics, reading fluency, vocabulary, and comprehension.

**(a)(b) District Reading Sufficiency Plans.** Each public school district will develop a district reading sufficiency plan District Reading Sufficiency Plan that includes a plan for each school site. The district and site reading plans shall provide for all students to receive at least ninety (90) minutes of reading instruction ~~over the course of the school day, which may include instruction integrated into other subject areas~~. Each Reading Sufficiency Plan must be updated annually, signed by the school site principal, and electronically submitted to and approved by the Oklahoma State Department of Education (OSDE) Office of Curriculum and Instruction ~~of the State Department of Education~~ no later than August 30 as part of the requirements for receiving accreditation, provided that electronic submission and approval of annual updates to the district plan shall not be required if:

- (1) The last plan submitted by the school district was approved; and
- (2) Expenditures for the district's reading program include only expenses relating to:
  - (A) Individual and small group tutoring;
  - (B) Purchase of and training in the use of screening and assessment measures;
  - (C) Summer school programs; or
  - (D) Saturday school programs.

**(b) Conditions requiring annual submission of Plans.** If any expenditure for the district's reading program is deleted or changed or if any other type of expenditure for the district's reading program is implemented, the school district shall be required to submit the latest annual update for approval. Notwithstanding the provisions of (a)(1) and (2) of this Section, if a district has one or more schools that are not achieving the annual improvement goals as outlined in the Reading Sufficiency Act, or if a district has one or more schools designated as a ~~school in need of improvement~~ a Targeted Support and Improvement (TSI) or Additional Targeted Support and Improvement (ATSI) site, the district shall submit its ~~district reading sufficiency plan~~ District Reading Sufficiency Plan for approval no later than August 30 of the applicable school year.

(c) **Submitting data for the annual report to the Legislature.** Each school district and each school site shall submit to the State Department of Education the information to be used for the annually required Reading Sufficiency Act Annual Reading Report Card report to the Oklahoma Legislature by the submission deadline to be determined by the Office of Instruction of the State Department of Education.

(d) **Reporting the number of students in need of remediation.** Each school district will submit to the State Department of Education OSDE the "Beginning of Year" report indicating the number of students in kindergarten, first, second and third grades found to be in need of remediation in reading based on screening instruments approved by the State Board of Education by October 1 ~~the submission deadline to be determined by the Office of Instruction of the State Department of Education.~~

(e) ~~Pursuant to the Reading Sufficiency Act, each school district which has any schools that are not achieving the required annual reading goal set forth in 70 O.S. § 1210.508B shall submit to the State Department of Education its annual improvement goals necessary to progress from the baseline established September 1, 2005, to achieving the reading goal for all third-grade students set forth at 70 O.S. 1210.508B(D). These improvement goals shall be submitted to the State Board of Education by the submission deadline to be determined by the Office of Instruction of the State Department of Education.~~

(f)(e) **Funding.** Contingent on the availability of appropriated funds designated for the Reading Sufficiency Act, the State Department of Education may allocate funds to public school districts in accordance with the provisions of 70 O.S. § 1210.508D. Superintendents of school districts allocated such funds will sign and submit an assurance statement that their reading program meets the requirements of the Reading Sufficiency Act prior to receipt of funding. In order to be eligible for Reading Sufficiency Act funds, a school district must submit its District Reading Sufficiency Plan to the OSDE by August 30, and must submit its "Beginning of Year" report of the number of students in need of remediation by October 1. A school district that has not submitted either of these documents by the applicable due dates will not be eligible to receive Reading Sufficiency Act funds for the school year in which the submission was not provided to the OSDE by the due date. A district that is unable to meet a submission deadline due to a technical problem in its Student Information System or in a system operated by the OSDE should immediately notify the Office of Curriculum and Instruction of the technical difficulty preventing a timely submission, and may be provided an extension of the applicable due date until the relevant technical issue is resolved. A district that is unable to meet a submission deadline due to circumstances that are beyond the district's control, but not attributable to a technical issue, may file an appeal with the State Board of Education. Such appeals shall be considered by the Board within forty-five (45) days of receipt.

(g)(f) **Authorized expenses for RSA funds.** Reading sufficiency funds allocated pursuant to subsection (f)(e) of this Section must be used for expenses relating to individual and small group tutoring, purchase of and and/or development of instructional training in the use of screening assessment measures, summer academy reading sufficiency plan programs, Saturday school programs, and any other reading program or professional development training contemplated as necessary by the districts to perform the goals of the Reading Sufficiency Act for students in the kindergarten, first, second, and third grades who have been identified by the elementary site as in need of a program of reading instruction. Professional development funded pursuant to this Section shall be consistent with guidance made available on the OSDE website by the Office of Curriculum and Instruction.



~~(h)~~**(g) Summer Academy Reading Programs.** Summer academy reading programs ~~Academy Reading Programs~~ for students, as authorized by 70 O.S. § 1210.508E shall be courses that:

- (1) provide at least four (4) weeks of tutoring a half (1/2) day a minimum of three (3) hours each day for four (4) days;
- (2) incorporate the content of a ~~reading program~~ reading sufficiency plan that meets the criteria set forth in the Reading Sufficiency Act;
- (3) are taught by teachers who have successfully completed a professional development institute or program in reading as prescribed by the statutory provisions of the Reading Sufficiency Act; and
- (4) include only eligible students not reading at grade level based on results from an assessment approved by the State Board of Education.

~~(i)~~**(h) Alternative schedule for Summer Academy Reading Program.** School districts observing a continuous learning calendar may request to implement a ~~summer academy reading program~~ Summer Academy Reading Program on an alternative schedule throughout the extended school year (e.g., during intersession breaks) by submitting a proposed alternative ~~summer academy reading program~~ Summer Academy Reading Program schedule to the State Department of Education OSDE for approval prior to the deadline established by the Office of Curriculum and Instruction of the State Department of Education, provided that any proposed alternative schedule must meet the requirements set forth in (i) of this Section.

~~(j)~~ Superintendents of districts will sign and submit an assurance statement that their reading program(s) meet the requirements of the Reading Sufficiency Act prior to receipt of funding.

~~(k)~~**(i) Promotion upon completion of a Summer Academy Reading Program.** Upon completion of a Summer Academy Reading Program pursuant to 70 O.S. § 1210.508E, a student may demonstrate successful completion of the required competencies for reading necessary for promotion to fourth grade upon the student's completion of either:

- (1) A student portfolio in accordance with the criteria set forth in 210:15-27-2(b)(4); or
- (2) An acceptable level of performance on an alternative reading assessment in accordance with the criteria set forth in 210:15-27-2(b)(3)(A); or
- (3) An acceptable level of performance on one of the screening instruments approved by the State Board of Education.

### **210:15-27-2. Good cause exemptions for promotion under the Reading Sufficiency Act**

(a) ~~Beginning with the 2013-2014 school year, students~~ Students who score at the Unsatisfactory level ~~do not meet grade-level criteria as established by the Office of Educational Quality and Accountability (OEQA) on the Reading reading foundations/processes and vocabulary portions of the third grade criterion-referenced test(s) assessment administered pursuant to 70 O.S. § 1210.508~~ may only be promoted to fourth grade if the student qualifies for a good cause exemption ~~pursuant to~~ authorized by 70 O.S. § 1210.508C. Only the scores from the ~~reading comprehension foundations/processes and vocabulary portions of the third grade criterion-referenced test assessment~~ shall be used to determine the promotion and retention of third grade students pursuant to the Reading Sufficiency Act.

(b) Good cause exemptions shall be limited to the ~~seven (7)~~ statutory exemptions outlined in 70 O.S. § 1210.508C ~~(K)~~ as follows:

- (1) Students with limited English proficiency may be granted a good cause exemption for promotion to the fourth grade ~~pursuant to 70 O.S. § 1210.508C(K)(1)~~. To qualify for this exemption, the student must:

- (A) Be identified as Limited-English Proficient (LEP)/English Language Learner (ELL) on a screening tool approved by the Oklahoma State Department of Education Office of Bilingual/Migrant Education and have ~~a Language Instruction Educational Plan (LIEP)~~an English Language Academic Plan (ELAP) in place prior to the administration of the third grade ~~criterion-referenced test/assessment~~; and
- (B) The student must have had less than two (2) years of instruction in an English Language Learner (ELL) program that meets the definition of a "language instruction educational program" set forth in 20 U.S.C. § 7011.
- (2) Students with disabilities who are assessed with alternate achievement standards (AA-AAS) under the Oklahoma School Testing Program (OSTP) with the Oklahoma Alternative Assessment Program (OAAP) qualify for ~~the~~ a good cause exemption for promotion to fourth grade pursuant to 70 O.S. § 1210.508C(K)(2). To qualify for this exemption, the student must meet all of the following criteria:
- (A) The student must be identified as needing special education services prior to the administration of the third grade ~~criterion-referenced test/assessment~~;
- (B) The student must have an Individualized Education Program (IEP) in place prior to the administration of the third grade ~~criterion-referenced test/assessment~~; and
- (C) The student's IEP must direct that the student is to be assessed with alternate achievement standards through the Oklahoma Alternative Assessment Program (OAAP) based upon the OSDE Criteria Checklist for Assessing Students with Disabilities on State Assessments.
- (3) Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment may be granted a good cause exemption for promotion to the fourth grade ~~pursuant to 70 O.S. § 1210.508C(K)(3).~~ To promote a student using an alternative standardized reading assessment, the following criteria shall apply:
- (A) The student must score an acceptable level of performance on an approved alternative standardized reading assessment. The following are approved alternative standardized reading assessments that may be used to justify a good cause promotion ~~pursuant to 70 O.S. § 1210.508C(K)(3)~~under this exemption. The listed score constitutes an acceptable level of performance, and the student must score at or above the following percentiles:
- (i) Stanford Achievement Test, ~~Tenth Edition~~, (SAT-10) - 45th Percentile
  - (ii) Iowa Test of Basic Skills (ITBS) Complete Battery ~~Form A, C or E, Level 9~~, Reading Comprehension - 45th Percentile
  - (iii) Iowa Test of Basic Skills (ITBS) Core Battery, ~~Form A, C, or E, Level 9~~, Reading Comprehension - 45th Percentile
  - (iv) TerraNova, ~~Third Edition~~ Complete Battery Level 13, Reading - 45th Percentile
- (B) Alternative standardized reading assessments may only be administered following the administration of the Reading foundations/processes and vocabulary portions of the third grade ~~criterion-referenced test(s)/assessment~~. The spring test form of the exam shall be administered.
- (C) An approved alternative standardized reading assessment may be administered at any time prior to the start of the next academic year, if there are at least twenty (20) calendar days between administrations and different test forms are administered.
- (4) Students who can demonstrate evidence through a student portfolio that the student has mastered state standards beyond the retention level and that the student is reading on grade

level or higher may be granted a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(4). To promote a student through the use of a student portfolio, the following criteria shall apply:

(A) The student portfolio shall include evidence demonstrating the student's mastery of the Oklahoma state standards in reading equal to grade level performance on the reading ~~comprehension~~foundations/processes and vocabulary portions of the statewide-third grade ~~criteria-referenced test(s)~~assessment. Such evidence shall be documented through an organized collection of work representing the student's mastery of such standards, including a demonstration of mastery of all of the following essential components of reading:

- (i) Phonemic awareness;
- (ii) Phonics (i.e., The student demonstrates awareness of letter-sound correspondence for consonants, vowels, and consonant digraphs, syllable types, and two to three syllable words);
- (iii) Reading fluency (i.e., The student demonstrates timed letter and word identification, sight words, modeled paragraph reading);
- (iv) Vocabulary (i.e., The student demonstrates ability to determine the meaning of general academic-specific and domain-specific words and phrases in a text relevant to a grade three topic or subject area); and
- (v) Comprehension (i.e., The student demonstrates ability to read and comprehend informational text independently and proficiently).

(B) The student portfolio shall include clear evidence that the standards assessed by the reading ~~comprehension~~foundations/processes and vocabulary portions of the statewide third grade ~~criteria-referenced test(s)~~assessment have been met. ~~Clear evidence must include multiple-choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words.~~ Such evidence could consist of:

- (i) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Academic Standards; or
- (ii) Teacher-prepared assessments.

(C) Each standard and objective assessed by the reading ~~comprehension~~foundations/processes and vocabulary portions of the third grade ~~criteria-referenced test(s)~~assessment must include a minimum of four (4) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required.

(D) The student portfolio shall include copies of ~~the any~~ screening, diagnostic, or ~~assessments and benchmark~~/progress monitoring assessments administered pursuant to 70 O.S. § 1210.508C(B) and (C), as well as a copy of the student's Individualized Program of Reading Instruction (also known as "Academic Progress Plan").

(E) The student portfolio shall be signed by the certified classroom teacher responsible for the student's Reading instruction and the principal of the school, attesting that:

- (i) The portfolio is an accurate assessment of the student's reading achievement level;
- (ii) The portfolio includes only work that has been independently produced by the student in the third grade, including programs of reading instruction provided after

regular school hours, on Saturdays, and during the summer following the student's third grade year; and

- (iii) The student possesses required reading skills to be promoted to fourth grade.
- (5) Students with disabilities who participate in the statewide ~~criteria-referenced~~ ~~testassessments~~ and have an IEP may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(5) for promotion to fourth grade. To qualify for this exemption, the student must meet the following criteria:

(A) ~~The student must have been previously retained in pre-kindergarten for academic reasons, kindergarten, first grade, second grade, or third grade; and~~

(B)(A) The student's IEP must:

(i) ~~Identify Reading as an area of education need for the student or identify some type of special education service in the area of Reading~~ reflect that the student has received intensive remediation in reading; and

(ii) ~~Reflect that the student has received intensive remediation for more than two (2) years. Intensive remediation may include any type of program offering intensive reading instruction that is identified as appropriate by the IEP team~~ made adequate progress in reading pursuant to the student's IEP.

- (6) Students who demonstrate a reading deficiency and have been previously retained may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(6) for promotion to fourth grade. To qualify for this exemption, the student must meet the following criteria:

(A) The student must have been previously retained in pre-kindergarten for academic reasons, kindergarten, first grade, second grade, or third grade ~~for a total of two (2) years; and~~

(B) The student must have received intensive reading instruction for two (2) or more years.

- (7) Students who have been granted an exemption for medical emergencies by the State Department of Education may qualify for a good cause exemption pursuant to 70 O.S. § 1210.508C(K)(7). To qualify for this exemption, the student must have been granted a medical emergency exemption pursuant to 70 O.S. § 1210.508-2 and 210:10-13-23, applicable to the testing window during which the reading ~~comprehension foundations/processes~~ and vocabulary portions of the third grade ~~criteria-reference testassessment~~ were administered to the student's class.

- (c) Each student completion of a transitional grade between kindergarten and third grade shall be considered a previous retention for purposes of 70 O.S. § 1210.508C(K). A transitional grade consists of subject area curriculum selected from two consecutive grade levels to provide differentiated instruction needed for a student to master appropriate skills required for promotion.

- (d) Documentation shall be maintained in the student record of any student promoted on the basis of a good cause exemption listed in 70 O.S. § 1210.508C(K). Documentation shall include the student's ~~criteria-referenced testassessment~~ score on the reading foundations/processes and vocabulary portions and any documentation relied upon to grant a good cause exemption ~~or exemption pursuant to (b) of this Section.~~

- (e) Any student promoted on the basis of a good cause exemption listed in 70 O.S. 1210.508C(K) should continue to receive intensive reading instruction and intensive instructional services and supports through the continued implementation of an Academic

~~Progress Plan (APP)~~Individualized Program of Reading Instruction to remedy the reading deficiency.

(f) Each student's ~~APP~~Individualized Program of Reading Instruction~~required under this section~~ shall be documented on a form approved by the OSDE Office of Curriculum and Instruction of the State Department of Education, and shall include, but not be limited to, the following information:

- (1) Identification of assessments used for diagnostic purposes and periodic progress monitoring;
- (2) The results of the assessment(s) used to identify the reading deficiency;
- (3) A list of the developmental reading skill areas targeted for improvement (i.e., phonemic awareness, phonics, reading fluency, vocabulary, or comprehension);
- (4) A description of the supplemental and/or remedial services and supports provided to the student in accordance with the provisions of 70 O.S. § 1210.508C~~(N)~~(2);
- (5) A description of parental involvement strategies; and
- (6) Identification of any collaborative services provided to the ~~child~~student in order to facilitate the ~~APP~~Individualized Program of Reading Instruction (i.e., Title I, IDEA, ELL/Title III).

### **210:15-27-3. Standards for mid-year promotion of retained third graders**

(a) ~~District school~~School district boards of education shall adopt and implement a policy for the mid-year promotion of any student retained in third grade due to a reading deficiency as required by 70 O.S. § 1210.508C. Such mid-year promotions of retained third grade students must occur during the first semester of the academic year, and ~~must~~shall occur prior to November 1 of that academic year.

(b) To be eligible for mid-year promotion, a student must demonstrate by reasonable expectation that ~~he or she~~they:

- (1) ~~Is~~Are a successful and independent reader as demonstrated by reading at or above grade level;
- (2) ~~Has~~Have progressed sufficiently to master appropriate fourth grade reading skills; and
- (3) ~~Has~~Have met any additional requirements, such as satisfactory achievement in other curriculum areas, as determined by the policies of the district school board.

(c) Standards that provide a reasonable expectation that the student has met the requirements of (b) of this Section include demonstrating a level of proficiency required to ~~score above the Unsatisfactory level~~meet grade-level criteria as established by the Office of Educational Quality and Accountability (OEQA) on the Grade 3 third grade criterion-referenced test(s) assessment and mastery of reading skills, consistent with the month of promotion to fourth grade, as presented in the scope and sequence of the school district's core reading program. Evidence of demonstrated mastery shall be shown by the following:

- (1) Successful completion of portfolio elements that meet state criteria in (d) of this Section; or
- (2) Satisfactory performance on a subsequent alternative standardized assessment as specified in (e) of this Section.

(d) To promote a student mid-year using a student portfolio as provided for in (c)(1) of this Section, there must be evidence of the student demonstrating a level of proficiency required to ~~score above the Unsatisfactory level~~meet criteria on the Oklahoma state standards as assessed by the reading comprehension and vocabulary portions of the Grade 3 third grade criterion-



~~referenced test(s) assessment administered pursuant to 70 O.S. § 1210.508, and mastery of the Oklahoma state standards~~ Academic Standards as assessed by the reading ~~comprehension foundations/processes~~ and vocabulary portions of the ~~Grade 4 fourth grade criterion-referenced test(s) assessment~~, as specified in (b) of this Section. The student portfolio must meet the following requirements:

- (1) Consist only of work selected by the certified classroom teacher responsible for the student's Reading instruction;
  - (2) Be an accurate representation of the student's reading achievement level, and only include work that has been independently produced by the student in the classroom of the certified classroom teacher responsible for the student's Reading instruction;
  - (3) Include evidence demonstrating a level of proficiency required to ~~score above the Unsatisfactory level~~ meet criteria on the standards assessed by the reading comprehension and vocabulary portions of the ~~Grade 3 third grade criterion-referenced test(s) assessment~~ by meeting all portfolio requirements set forth in 210:15-27-2(b)(4);
  - (4) Include evidence of beginning mastery of fourth grade state standards that are assessed by the ~~Grade 4 fourth grade reading comprehension foundations/processes~~ and vocabulary portions of the ~~criterion-referenced test(s) assessment~~. ~~Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words.~~ Such evidence could consist of:
    - (A) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or
    - (B) Teacher-prepared assessments;
  - (5) Each standard and objective assessed by the ~~Grade 4 fourth grade reading comprehension foundations/processes~~ and vocabulary portions of the ~~criterion-referenced test(s) assessment~~ must include a minimum of three (3) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required; and
  - (6) Be signed by the certified classroom teacher responsible for the student's reading instruction and the principal of the school, both attesting that the portfolio is an accurate assessment of the student's ability and that the student possesses the required reading skills to be promoted to fourth grade.
- (e) To promote a student mid-year using an alternative standardized assessment as provided for in (c)(2) of this Section, there must be evidence that the student scored at or above grade level on the reading portion of an alternative standardized reading assessment listed in OAC 210:15-27-2(b)(3)(A), as demonstrated by standard scores or percentiles consistent with the month of promotion to the fourth grade. Alternative assessments administered for the purpose of determining a student's eligibility for mid-year promotion must also comply with the requirements of 210:15-27-2(b)(3)(B)-(C) and the school district's policy for mid-year promotion, provided that alternative assessments administered for this purpose may be administered until November 1 of the school year.
- ~~(f) The Academic Progress Plan (APP) for any retained third grade student who has been promoted mid-year to fourth grade must continue to be implemented for the entire academic year.~~
- ~~(g)~~ (f) A mid-year promotion shall only occur upon agreement of the parent or legal guardian of the student, and the principal of the school. Such decision should be made in consultation with the student's third and fourth grade teachers.



(g) The Individualized Program of Reading Instruction for any retained third grade student who has been promoted mid-year to fourth grade shall *be* re-evaluated and modified as appropriate to support success in fourth grade, and shall be implemented for the entire academic year.

**210:15-27-4. ~~Program of reading instruction~~ Individualized Program of Reading Instruction**

(a) **Eligible students.** Each student enrolled in kindergarten, first, second, and third grade in the public schools of Oklahoma shall be assessed at the beginning, middle, and end of each school year using a screening instrument approved by the State Board of Education. Any student found not to be reading at grade level shall be provided ~~a program of reading instruction~~ an Individualized Program of Reading Instruction designed to enable the student to acquire the appropriate grade level reading skills. Diagnostic assessment shall be provided if determined appropriate, and progress monitoring shall continue throughout the year.

(b) **Student Reading Proficiency Team.** For students found not to be reading at the corresponding grade level upon completion of an approved screening instrument, a Student Reading Proficiency Team shall be created. The following guidelines apply to Student Reading Proficiency Teams:

(1) For a student not reading at the corresponding grade level in first grade or second grade as identified by an approved screening instrument, the Student Reading Proficiency Team shall develop an individualized program of reading instruction. The team shall be composed of:

- (A) The student's parent(s) or guardian(s);
- (B) The teacher assigned responsibility for the student's reading instruction in that academic year;
- (C) A teacher assigned responsibility for reading instruction in the student's next grade level; and
- (D) A certified reading specialist, if available.

(2) For a third grade student who is not eligible for automatic promotion and who ~~scores at the unsatisfactory or limited knowledge levels~~ does not meet criteria on the reading foundations/processes and vocabulary portions of the third-grade statewide criterion-referenced test assessment administered pursuant to 70 O.S. § 1210.508, a Probationary Promotion Reading Proficiency Team may evaluate the student for probationary promotion. Upon the unanimous recommendation of the Probationary Promotion Reading Proficiency Team and approval of the school principal and district superintendent, a student recommended for probationary promotion shall be promoted to fourth grade. The Probationary Promotion Reading Proficiency Team shall be composed of:

- (A) The student's parent(s) or guardian(s);
- (B) The teacher assigned responsibility for the student's reading instruction in that academic year;
- (C) A teacher assigned responsibility for reading instruction in the student's next grade level; and
- (D) A certified reading specialist.

(c) **Program requirements.** Each program of reading instruction shall include provisions of the READ Initiative adopted by the school district as provided for in 70 O.S. § 1210.508C. For purposes of the Reading Sufficiency Act, a "program of reading instruction" shall be based upon



a three-tiered Response to Intervention ("RtI") Multi-Tiered Systems of Support (MTSS) model, and shall include:

- (1) For students identified for Tier I intervention, a minimum of ninety (90) minutes of uninterrupted daily scientific research-based reading instruction; **Tier I.** Tier I, or core instruction, is research-based reading instruction for all students that is based on the science of how students learn to read and is aligned with the Oklahoma Academic Standards. Tier I instruction provides all students a minimum of ninety (90) minutes of reading instruction *over the course of the school day. The minimum of ninety (90) minutes of reading instruction may include instruction integrated into other subject areas.*
- (2) For students identified for Tier II intervention, at least an amount of uninterrupted scientific research-based reading instructional time that is: **Tier II.** Tier II intervention is supplemental, direct, research-based instruction based on the cognitive science of how students learn to read, designed to supplement core instruction and address students' reading skill deficits. Tier II intervention is:
  - (A) Based on specific student needs;
  - (B) Reflects the needed intensity and/or frequency as identified on a screening tool, by *a diagnostic an appropriate reading* assessment, and/or progress monitoring instrument; and
  - (C) Is determined by the *classroom* teacher *responsible for grade level Tier I reading instruction*, reading specialist (if available), and building principal.  
*(D) Tier II intervention may take place within the ninety (90) minutes of core reading instruction, provided the student receives all direct instruction, including whole and small group instruction. Tier II intervention cannot supplant a student's access to core instruction or substitute for a core lesson in the general education classroom.*
- (3) For students identified for Tier III intervention, at least forty-five (45) to sixty (60) minutes of additional uninterrupted daily scientific research-based reading instruction in addition to the ninety (90) minutes of uninterrupted daily reading instruction provided under Tier I. **Tier III.** Tier III intervention is supplemental, direct, customized, and intensive research-based instruction based on the cognitive science of how students learn to read, designed to supplement core instruction and address students' reading skill deficits by targeting the area(s) of greatest need. Tier III intervention is:
  - (A) Based on specific student needs;
  - (B) Reflects the needed intensity and/or frequency as identified by a diagnostic assessment; and
  - (C) Is determined by the *classroom* teacher *responsible for grade level Tier I reading instruction*, reading specialist (if available), and building principal.  
*(D) Tier III intervention may take place within the ninety (90) minutes of core reading instruction, provided the student receives all direct instruction, including whole and small group instruction. Tier III intervention cannot supplant a student's access to core instruction or substitute for a core lesson in the general education classroom.*
- (d) **District review of program.** Each district shall conduct a review of the program of reading instruction for all students who score below the proficient level do not meet criteria on the reading comprehension/foundations/processes and vocabulary portions of the third grade statewide criterion-referenced tests/assessment and do not qualify for a good-cause exemption under 70 O.S. § 1210.508C(K). For each student retained under the provisions of the Reading Sufficiency Act, the school district shall require a student portfolio to be completed. The district

review of each retained student's program of reading instruction shall address additional supports and services needed to remediate the identified areas of reading deficiency, which may include but not limited to:

- (1) Small group instruction;
- (2) Reduced teacher-student ratios;
- (3) More frequent progress monitoring;
- (4) Tutoring or mentoring;
- (5) Transition classes containing third and fourth grade students;
- (6) Extended school day, week, or year; and
- (7) ~~Summer reading academies~~ Summer Academy Reading Programs as provided for in 70 O.S. § 1210.508E, if available.

(e) ~~Transition to ACE remediation for students~~ **Students approved for probationary promotion.** For a student who is approved for probationary promotion, the Probationary Promotion Reading Proficiency Team shall continue to review the student's reading performance and repeat the evaluation and recommendation process described in 1210.508C(H)(4) each academic year until the student demonstrates grade-level reading proficiency on an approved screening instrument or transitions to ~~remediation provided under the Achieving Classroom Excellence Act (ACE)~~ another school. If a student who has been approved for probationary promotion transitions to another school before demonstrating grade-level proficiency on an approved screening instrument, a copy of the student's Individualized Program of Reading Instruction shall be provided to the student's subsequent school.

## PUBLIC COMMENT SUMMARY

### 210:15-27. Reading Sufficiency Act updates

Summary of Public Comment	Agency Response
<p>1. "Concerns about changes to program requirements.</p> <ul style="list-style-type: none"> <li>• Tier II - the change to require an additional diagnostic assessment and not allow the use of the screening tool is unnecessary and deprives districts of the right to use the tools already in place that assist with intervention and that have been approved by the State.</li> <li>• Tier III - to allow Tier III intervention to take place within the 90 minutes of core reading instruction may deprive those students of multiple layers of intervention.</li> </ul> <p>Correction Needed: 210:15-27-2. ...have a <b>Language Instruction Educational Plan (LIEP)</b> in place.... The State no longer uses the term Language Instruction Educational Plan (LIEP). Instead it is called an <b>English Language Academic Plan (ELAP)</b>."</p>	<ul style="list-style-type: none"> <li>▪ The language in 210:15-27-4(c) has been adjusted to remove the implication that an additional diagnostic assessment is necessary.</li> <li>▪ The terminology that applies to plans for English Learners has been updated as recommended.</li> </ul>
<p>2. "The way I read page 10 section one on Tier 1, it sounds like the 90 minutes will be integrated in other classroom time and not uninterrupted time learning to read. I'd suggest it saying- working on reading and writing while learning about other content and not <b>during</b> other content area time. On Tier 2, it seems confusing to me that it needs to be identified only by diagnostic assessment AND that a classroom teacher can do this. The things a classroom teacher can do- progress monitoring and screening tools have been struck. Is the intent that only a diagnostic assessment by school psychologist be the way a child is identified? I think progress monitoring and screening should be kept, so that teachers can identify students needing tier 2. The way Tier 3 is written, this appears to take away additional instruction time. If a student is struggling, they need <b>additional</b> and direct instruction based on the science of how students learn to read."</p>	<ul style="list-style-type: none"> <li>▪ A school psychologist's diagnostic assessment was not intended to be required, and the proposed language has been adjusted for clarity.</li> </ul>

3. " I must say I am distressed and deeply disappointed by the huge step back that these rules reflect. The state of Oklahoma has worked very hard to improve reading instruction for students. Districts and teachers have worked very hard to establish procedures and processes aligned to research and these changes make a mockery of our efforts. While I was glad to see multiple references to the "science of how students learn to read," I have three major concerns.

**1) "at least ninety (90) minutes of reading instruction over the course of the school day, which may include instruction integrated into other subject areas"**

Research supports 90 minutes of uninterrupted reading instruction daily. This has been established and discussed for decades. A shift away from this practice, communicates to teachers, and to other states, that following research really isn't a priority for the state of Oklahoma. We can use the buzz words of science of reading, but really, research doesn't count. Our district will continue to follow research and we will continue to utilize an uninterrupted block because that's what's best for children.

While it is critical for students to experience multiple text structures, as indicated by comprehension research and the Oklahoma Academic Standards, the purpose of the reading block is to provide students the literacy skills that will help them be successful in other content, not the other way around. Content knowledge is critical. Teaching science and social studies is important, but the way this is worded, it sounds as if Oklahoma is deconstructing and de-emphasizing literacy instruction, which is not good for children.

**2) "Tier II intervention may take place within the ninety (90) minutes of core reading instruction, provided the student receives all direct instruction, including whole and small group instruction. Tier II intervention cannot supplant a student's access to core instruction or substitute for a core lesson in the general education classroom."**

There are two major issues with this statement. First of all, if Tier 1 is 90 minutes and Tier II occurs within the 90, obviously it's supplanting core instruction. Secondly, you can't call it intervention if it's during core instruction. Research, and common sense, dictates that if students are below level and

▪ The proposed rule language has been adjusted, and more comprehensive guidelines for best practices will be addressed in the RSA guidance documents that will be provided by the OSDE Office of Curriculum and Instruction.

<p>require intervention, they need <b>additional</b> instructional time which this wording clearly eliminates.</p> <p>3) <b>"Tier III intervention may take place within the ninety (90) minutes of core reading instruction, provided the student receives all direct instruction, including whole and small group instruction. Tier III intervention cannot supplant a student's access to core instruction or substitute for a core lesson in the general education classroom."</b></p> <p>I have the same issues with this statement as I do the previous one, except that this one is more egregious because it takes the student with the greatest need and removes the opportunity for them to get the instruction they need to be successful. A student identified as Tier III who has the the most severe deficits cannot gain all that they need during a 90 minute block of core instruction, that's been deconstructed and doesn't actually take place all at one time and isn't actually focused on literacy. I know this from research and from my own experience as a teacher, reading specialist, instructional coach, and RSA coordinator. All this practice does is perpetuate the Matthew Effect -- the rich will get richer and the poor will get poorer.</p> <p>The change to the funding language is the only major change to this document that I appreciate. As a district who works hard to submit our reports and numbers on time, it's difficult to wait around for funding because some other district didn't do their due diligence to get it submitted. I appreciate the consideration and edits to that section. The programming changes however regarding instruction do not line up with research and are not what's best for children. I am extremely disheartened by these rules. These rules are not meant to support reading instruction, they're meant to gut it. They aren't meant to support learners in need, they're meant to leave them behind. These rules accept mediocrity, rather than striving for excellence. I can only hope and pray that it's not to late for you to make a different decision for Oklahoma's children."</p>	<ul style="list-style-type: none"> <li>▪ As the commenter notes, the proposed language on required submission due dates and RSA funding is intended to ensure funding can be distributed and used for student supports rather than being significantly delayed for all districts by the late submission of one or more schools.</li> <li>▪ While the originally proposed rule language was certainly not intended to "gut" reading instruction, the concerns raised by this commenter and others have resulted in adjustments to the language following public comment.</li> </ul>
<p>4. "Thank you for the opportunity to give comments on the RSA proposed changes. My school was on a plan of improvement 5 years ago. In the past few years we have made many changes to make sure our students are successful. Some of those changes have been non-negotiable. We have had a clear understanding of the RSA law and the stability it</p>	



<p>gives to schools in planning for student learning. We follow it as a guide for our reading. Research proves that it is the best way to help children learn. Here are some of the non-negotiable things that we do.</p> <p>1. 90 min block of reading, uninterrupted. This is a must for us. All children need to be exposed to literacy skills in a Tier I classroom. This is not meant to teach content literacy. Yes, there is a difference. This time is meant to teach literacy so that students can better understand content literacy. If the state takes this out of the plan, we as a school will still continue because research shows it to be best practice. But, how many schools will not and how many schools leaders will not continue the practice because they don't know better? I know a lot of children in the state of Oklahoma will lose in this change of simple wording.</p> <p>2. Tier II intervention Can NOT take place during this 90 min block. That is like saying to an athlete you can learn all you need to by playing in games. You do not need any practice and you do not need to work on a specific skill such as dribbling or catching. These children are behind. Maybe not far and maybe it is possible with 'extra' time invested they can learn more.</p> <p>3. Tier III intervention can NOT take place during the 90 min block. This is the same as with Tier II. You have the same issues but the only difference is that these children are further behind. How can it be possible to get direct instruction on level for all students in the 90 min block including small and whole group and then do Tiered intervention with them. I refer to an athlete again, you are having your first string play the game and no others except for a short practice during halftime if possible. Students who can read will continue on and those who cannot will fall further behind.</p> <p>Today our school is an "A" school with a high population of free/reduced lunches, EL, and Special Ed students. We have also been nominated for the National Blue Ribbon Award. Our teachers, students and parents work hard. When we are asked how we do what we do, I can simply tell you we have NON-Negotiable. RSA without changes is a big one. Please consider not liquidating this program to nothing."</p>	<ul style="list-style-type: none"> <li>▪ The OSDE appreciates the commenter's willingness to share their own instructional experiences, and applauds the progress their district has made in its systemic commitments to helping students reach their potential.</li> </ul>
<p>5. Under (b), "The district and site reading plans shall provide for all students to receive at least ninety (90) minutes of reading instruction over the course of the school day, <b>which may include instruction integrated into other subject areas.</b>" The integration of comprehension</p>	<ul style="list-style-type: none"> <li>▪ The proposed rule language has been adjusted, and more comprehensive guidelines for best practices will be addressed in the RSA guidance documents that will be provided by the OSDE Office of Curriculum and Instruction.</li> </ul>

instruction with other subject areas is commendable and aligned with research on how language comprehension is greatly affected by background knowledge; however, the way this rule is worded leaves this wide open to interpretation by school districts and sites that may not adequately provide time for foundational skill instruction, especially in phonemic awareness, phonics (decoding), spelling, handwriting, and grammar. Research is clear that students in the early grades (PreK-2) need foundational instruction in these core components in order to access the deeper content in texts they will encounter in the upper grades. Without a clear designation of 90 minutes for foundational instruction, it is my worry that many school districts will not spend adequate time on these foundational skills, which may cause many more children to be in need of remedial and special education services, causing an undue financial and human capital burden on special education (not to mention the lasting effects of being diagnosed with a learning disability or exiting school unable to read because of inadequate Tier 1 instruction).

Under (c) it should be clear this data will still be easily accessible to the public. This rule was clear there would be an annual report card, but by changing the language to an Annual Report to the Legislature, will this take away the public access to this data? If so, this rule should be made more clear that the public will have access to this information.

By doing away with the following section: "~~Pursuant to the Reading Sufficiency Act, each school district which has any schools that are not achieving the required annual reading goal set forth in 70 O.S. § 1210.508B shall submit to the State Department of Education its annual improvement goals necessary to progress from the baseline established September 1, 2005, to achieving the reading goal for all third-grade students set forth at 70 O.S. 1210.508B(D). These improvement goals shall be submitted to the State Board of Education by the submission deadline to be determined by the Office of Instruction of the State Department of Education,~~" we are not holding districts and schools accountable to come up with a plan of action, which is separately needed if progress is to be made.

Per section "(g)(f) Authorized expenses for RSA funds"—the rules should make it clear these

- This deleted rule language was based on statutory citations that are no longer accurate following changes in the Reading Sufficiency Act in the time since the rules' adoption.

<p>funds must be spent on only products and services that align with the science of reading. There are many programs that claim to be research-based but instead teach the debunked practices of using predictable text and 3-cueing (or multi-cueing) methods to teach beginning reading. The state of Arkansas recently banned programs that use 3-cueing to teach beginning reading. I urge this board to consider doing the same. We must align ourselves with the large body of reading research instead of outdated and debunked belief systems about how children learn to read. Not doing so stunts the literacy growth of all children and exponentially inhibits the achievement of under-resourced communities and those at-risk for reading difficulties.”</p>	<ul style="list-style-type: none"> <li>While detailed explanations of the features of research-based materials are not necessarily appropriate for inclusion in administrative rules, these are issues that will be addressed in RSA guidance documents provided by the Office of Curriculum and Instruction.</li> </ul>
<p>6. “Continuing to tackle literacy and addressing the needs of each and every child is hard work worth doing. Doing this work requires systematic action and planning at all levels. This hard work happens best when everyone supporting those systems is first and foremost knowledgeable. I have been reading through the proposed changes to the RSA rules and am stunned that it is suggested that Oklahoma is going to move to so far away from what we know about the Science of Reading. Many of these amendments will set us back 10 years. While other states are making significant advances in reading gains, it seems we are willing to shift reading instruction into a free for all. The idea that reading instruction should be spread over the course of the day is simply unfounded. We are charged with providing a quality education to all students and when teaching foundational skills/beginning reading the instruction should be focused and concentrated - not spread across a day especially in K-2. Another content area, such as science, is absolutely necessary to build background knowledge. Providing teachers with quality curriculum to integrate science and social studies is a much more sensible approach rather than the other way around in an elementary setting. Put something in the rules requiring 30 minutes of instruction in science and social studies but do not water down the 90-minute reading block.</p> <p>The district and site reading plans shall provide for all students to receive at least ninety (90) minutes of reading instruction <b>over the course of the school day, which may include instruction integrated into other subject areas.</b></p>	<ul style="list-style-type: none"> <li>The proposed rule language has been adjusted, and more comprehensive guidelines for best practices will be addressed in the RSA guidance documents that will be provided by the OSDE Office of Curriculum and Instruction.</li> </ul>

The comments above apply to suggested changes to Tier 1 also.

Tier II instructional interventions in the RtI definition are outside of Tier 1. We should not supplant Tier 1 instruction. Tier II and Tier III are extremely important for late 2nd grade and 3rd grade children who are falling behind. The purpose of these tiers is to provide targeted and intentional instruction based on student needs as determined by diagnostic screeners. Tier II and Tier III are not served by small group instruction during the reading block.

**D) Tier II intervention may take place within the ninety (90) minutes of core reading instruction, provided the student receives all direct instruction, including whole and small group instruction. Tier II intervention cannot supplant a student's access to core instruction or substitute for a core lesson in the general education classroom.**

Again, I find it shocking that in 2020 we are moving backwards. The purpose of intervention is to provide instruction for children who are behind in skills. How can we begin to address equity issues when we are not meeting the needs of all students? By suggesting Tier II and Tier III intervention can be provided during the 90-minute reading block the new rules have reduced things to 60-minutes and 30-minutes depending on the type of intervention needed. Considering the number of students that are below grade level, how could a teacher possibly close the gap for children during the 90 minute block? We haven't closed the gap for children who are behind as it is, why wouldn't we provide more direction for teachers to be more intentional during intervention time rather than include it during the 90-minute block?

The suggested amendments to rules say **D) Tier III intervention may take place within the ninety (90) minutes of core reading instruction, provided the student receives all direct instruction, including whole and small group instruction. Tier III intervention cannot supplant a student's access to core instruction or substitute for a core lesson in the general education classroom.**

Isn't this supplanting since Tier III requires a different program and different materials from any core reading program?

<p>The increase in funding is definitely a positive for our schools. Our state has been gaining momentum and teachers are feeling appreciated for their work thanks to all you have done to move the needle. Please consider what these changes will mean for children, especially those impacted by trauma, poverty, English Language Learners, and struggling readers altogether. Oklahoma's children deserve the best we have to offer."</p>	<ul style="list-style-type: none"> <li>▪ The OSDE shares the commenter's awareness of and concern for students who have experienced trauma and others with particular learning needs.</li> </ul>
<p>7. "A temporary allocation be given in July for Reading Sufficiency funds based off of previous year's end of year RSA count.</p> <p>Districts would submit their RSA count by October 1 and a mid-year adjustment would be given based upon data submitted prior to October 1 deadline.</p> <p>An earlier allocation would provide schools the opportunity to hire additional staff. These additional staff could provide consistent small group reading instruction before school, during the school day or after school."</p>	<ul style="list-style-type: none"> <li>▪ While a July temporary allocation of RSA funds would not be possible, the Office of Curriculum and Instruction advises that a district may use RSA funds distributed in the previous fiscal year to provide continuity of RSA services until the next distribution of funding.</li> </ul>
<p>8. "I am writing to you this evening to voice my concerns about possible rule changes related to RSA. I am deeply concerned that Oklahoma is considering taking away the 90 minutes of uninterrupted reading requirement. I am concerned that Oklahoma is considering no longer requiring additional time for Tier 2 and Tier 3 students. Research supports both the 90 minute rule and the requirement for additional instruction. If we are required to consider retention for students who are behind, why would we not require (and provide funding for) additional reading intervention? Please consider research and continue the requirement for a 90 minute reading block as well as additional time for our struggling students. Let's give our students quality intervention."</p>	<ul style="list-style-type: none"> <li>▪ The proposed rule language has been adjusted, and more comprehensive guidelines for best practices will be addressed in the RSA guidance documents that will be provided by the OSDE Office of Curriculum and Instruction.</li> </ul>
<p>9. "As a literacy consultant now working across the United States and as a retired Oklahoma educator, I have had the chance to gain a tremendous amount of training and knowledge of effective RTI/MTSS systems in almost every demographically challenged district across our nation.</p> <p>Realizing the desperate need for an effective and high-quality ELA 90 block has led me to know how to help teachers have a knowledge base of</p>	<ul style="list-style-type: none"> <li>▪ The OSDE appreciates the commenter's willingness to share their own experiences in reading instruction.</li> </ul>

incorporating all subjects into this block, including science, math, and social studies.

However, studying data of multiple assessment choices has determined that many times the 70-80 percent of students who should be learning to read, which will ultimately affect the ability to ever competently achieve success in other subject areas, are not meeting that goal.

What if, instead of taking away the time allotted for an uninterrupted 90 minutes reading block, we begin to study the lack of knowledge base of teachers coming into our work force? Why not continue the current movement of LETRS training that is happening across our great state? Why not give this movement a little "time" to effectively take a foot-hold in every classroom? Why not give this movement a chance to show that at least 70% of our students are successful in reading?

Please study the results of the current data every district has been required to submit because of the current RSA law. Why take away, as 3 of the 4 rules' changes are trying to accomplish, the additional intervention time for our most struggling students? Too many of our students, especially our subgroups of ELLs, African Americans, and students with IEPs, are not learning to read. How is a school supposed to meet those needs in an already burdened 90 minute reading block?

Why not use this momentum to drive to deliver a 90 minute reading block that is full of history, geography, science, and math?

In addition, and even more importantly, why not ensure that effective, systematic, and explicit phonics instruction is being delivered to EVERY student in every classroom across the state of Oklahoma? This could achieve the much-needed 70-80% percent of Oklahoma students are learning to read! Wouldn't math, science, social studies, art, and all other subjects make sense to our students?

Consider keeping a 90 ELA block, while ensuring that all subjects are brought into this time. Consider keeping an additional time of high-quality intervention in place that is in addition to the 90 minute reading block.

Without this "extra" time, our dyslexic students, our IEP students, and students who live in poverty may never have the extra time they need



<p>(the extra exposures to learn a task, the time for a small-group intervention time targeted to a specific deficit) to be able to read.</p> <p>An effective and high-quality RTI/MTSS system of support is backed by the current research of the science of reading. Oklahoma cannot take a step back in achieving the goal of 70-80% of students achieving success in reading. Without the additional time currently allotted for our most struggling readers, outside of the 90 minute reading block, our state could ultimately realize the dire consequences a change in this RSA law could represent."</p>	
<p><b>10.</b> "I appreciate that the intensity and/or frequency for Tier II and Tier III will be determined based on results from a diagnostic assessment and not solely on the screener. A diagnostic provides a clearer picture of students' needs.</p> <p>Will there be a list of diagnostic assessments from which schools may choose?</p> <p>It is stated several times that Tier II and III instruction needs to be "research-based instruction based on the cognitive science of how students learn to read." Will schools be provided with a list of research-based curriculum from which they must choose?"</p>	<ul style="list-style-type: none"> <li>▪ While the proposed language in this area has been adjusted for clarity based on multiple other comments, schools are free to use diagnostic assessments for this purpose.</li> <li>▪ These are issues that will be addressed in RSA guidance documents provided by the Office of Curriculum and Instruction, but schools will not be required to use certain materials.</li> </ul>
<p><b>11. "Proposed Rule Regarding Tier 1 Instruction</b>  'The minimum of ninety (90) minutes of reading instruction <u>may include instruction integrated into other subject areas.</u>'  <b>Concern:</b>  If reading instruction can be integrated into other subject areas, expectations should be clearly defined. This wording is unclear and could be interpreted in such a way that leads to less intentional instruction and focus on the <i>English Language Arts Oklahoma Academic Standards</i>. Wording should be changed to clarify the intent of the statement. For example, "academic content from other subject areas can be integrated into reading instruction when a direct emphasis is placed on the <i>English Language Arts Oklahoma Academic Standards</i>."</p> <p><b>Proposed Rule Regarding Tier 2 and 3 Instruction</b>  Tier II and Tier III 'intervention <u>may take place within the ninety (90) minutes of core reading instruction</u>, provided the student receives all direct instruction, including whole and small</p>	<ul style="list-style-type: none"> <li>▪ The proposed rule language has been adjusted, and more comprehensive guidelines for best practices will be addressed in the RSA guidance documents that will be provided by the OSDE Office of Curriculum and Instruction.</li> </ul>

group instruction. **Tier II/III intervention cannot supplant a student's access to core instruction or substitute for a core lesson in the general education classroom.'**

**Concern:**

According to RSA legislation, students "not meeting grade-level targets in reading shall be provided a program of reading instruction" which requires "**sufficient additional in-school instructional time** for the acquisition of phonemic awareness, phonics, reading fluency, vocabulary, and comprehension" (70 O.S. § 1210.508C [OSCN 2020], Reading Sufficiency Act).

It is of great concern that Tier 2 and Tier 3 instruction may be included in the 90 minutes of Tier 1 instruction required. If 90 minutes of Tier 1 instruction is required for **all** students to be successful, students who are not meeting grade-level targets, should be provided with "**sufficient additional in-school instructional time**" to **ensure that they are provided adequate time for intense intervention.**

If Tier 2 and 3 instruction can be included in the minimum of 90 minutes of core reading instruction required for ALL students, it would **supplant Tier 1 core reading instruction.** This is contradictory to the purpose outlined in the Reading Sufficiency Act."

**12.** "When you know better, you should do better is a good paraphrase of one of my favorite quotes.

Because of the Science of Reading, we know how to effectively teach reading. We know the importance of the "Big 5" skills necessary to become a proficient reader. Across the country, a high quality uninterrupted 90-minute block of reading for Tier I for all students with quality Tier II and III for those students who need extra support and instruction to achieve grade-level reading are agreed upon standards.

Because of my understanding of these needs, there are a few changes to the RSA rules that cause me deep concern.

The first proposed change that concerns me is taking out the language of the "uninterrupted 90-minute reading block". The new language does not give educators who are unfamiliar with the

<p>science of reading the framework of support the 90-minute block provides.</p> <p>The seminal work regarding reading is the National Reading Panel. Although the specific term uninterrupted 90-minute reading block is not stated in the NRP report, this best practice has its roots in the research reviewed for the report.</p> <p>The uninterrupted 90-minute reading block provides teachers and students a dedicated time to focus on reading. Yes, other core subject texts can be used for comprehension, but foundational skills of reading need to be taught in a systematic, explicit manner using texts students can accurately decode themselves. The majority of students do not learn to read well when reading instruction is not delivered in this manner.</p> <p>The other matter that concerns me is the new language concerning Tier II and Tier III. Tier II and Tier III students have the greatest need for support in reading instruction. Tier II and Tier III instruction should remain outside of Tier I instruction time for these students to have the best chance of gaining the necessary reading skills to obtain grade level reading. Students below grade level need more time in instruction to catch up--Not the same or less than on-level students.</p> <p>If the proposed language goes into effect, I am afraid the RSA will become just a RETENTION law. With the proposed language, we will no longer provide students the critical opportunities for intervention they desperately need."</p>	<ul style="list-style-type: none"> <li>▪ The proposed rule language has been adjusted, and more comprehensive guidelines for best practices will be addressed in the RSA guidance documents that will be provided by the OSDE Office of Curriculum and Instruction.</li> </ul>
<p><b>13.</b> <i>The district and site reading plans shall provide for all students to receive at least ninety (90) minutes of reading instruction over the course of the school day, which may include instruction integrated into other subject areas. While integration is our main goal, it is important to keep the ninety minute reading block as uninterrupted to allow for cohesion of the various reading skills taught each day in the reading block. Reading and writing instruction should be integrated. Allowing the block to be interrupted would not allow these to be taught in an integrated manner.</i></p> <p><i>Exemption Number 5: Reflect that the student has made adequate progress in reading pursuant to the student's IEP.</i></p>	<ul style="list-style-type: none"> <li>▪ The proposed rule language has been adjusted, and further detail regarding best practices will be addressed in RSA guidance documents.</li> </ul>

<p>Is it possible to give more clarity in defining what adequate progress looks like? Also, how long should adequate progress be shown? There is a push for testing for 3rd graders to try to get this exemption. What if the student goes on an IEP in March or April of their 3rd grade year? They would not have time to show adequate progress.</p>	<ul style="list-style-type: none"> <li>These issues will be addressed further in RSA guidance documents provided by the Office of Curriculum and Instruction.</li> </ul>
<p><b>14.</b> "Pg 1 Definitions: Renaming the "Academic Progress Plan" to "Individual Program of Reading Instruction" will make it harder for parents seeking help by confusing the terminology.. Schools are not consistently calling plans APP but do know the term when a parent references an APP. This will be another acronym that will lead to confusion and distrust between parents and school.</p> <p>Pg 1 District Reading Sufficiency Plans: "shall provide for all students to receive at least ninety (90) minuets for reading instruction over the course of the school day, which may include instruction integrated into other subject areas". Other subject areas can provide a topic of study but reading instruction in PK-3 needs to be reading instruction. Example, having a week that will focus on clouds can provide stories for read aloud, vocabulary discovery, discussion of nonfiction vs fiction. This provides background knowledge students will need in science class. Using social studies related text is a way of exploring biographies and historical figures. Both of these examples would be a part of the 90 min reading block that is structured to be systematic, cumulative, explicit, and diagnostic in reading practices.</p> <p>Pg 2 Funding: We like that we will hold schools accountable for submitting data. Several schools have expressed concerns on delays of funding caused by a minority of schools not fulfilling their duties on time in providing documents to OSDE..</p> <p>Pg 2 Authorized Fund: We like the added professional development guidance.</p> <p>Pg 5 Portfolio D: "Copies of any screening, diagnostic, or progress monitoring". Can we keep a complete list interventions tried, improved or failed? Many students are yo-yoing in the system. If there is not a good paper trail students may be returned to a program that previously did not work.</p> <p>Pg 6 Previously retained students: Will there be guidance in what is included in "intensive reading instruction for 2 years"? Does tier 2 count? Is tier 3 required?</p> <p>Pg 6 Each student's APP document requirements:</p>	<ul style="list-style-type: none"> <li>This terminology update is being made to align with the language of the Reading Sufficiency Act, and to clarify that the individual student plan referred to is targeted to reading instruction rather than "academic progress" in general.</li> <li>As the commenter notes, the proposed language on required submission due dates and RSA funding is intended to ensure funding can be distributed and used for student supports rather than being significantly delayed for all districts by the late submission of one or more schools.</li> </ul>

Not all schools are listing the required information on their APP plan and following procedures for notifying parents. Please require the schools use a single consistent layout provided by OSDE for documenting the students scores. This will help parents know present levels of student and areas that should be addressed. A single consistent layout will also help families that move between school. Having APP documents loaded to the student/family portal could also help for moving students. If not requiring a single layout, please require all districts to have a blank one listed on their website on a easily found RSA/ Reading page on website with information on how to understand their form. Again please keep APP in lieu of renaming.

Pg 9. g shall "be" re-evaluated  
Missing "be". Also supports should be re-evaluated yearly and continued as need for fifth grade and beyond.

Pg 9 Program of reading instruction  
This is the only area that I do like a name change. Like the addition on Individualized but do wish that the form for reporting maintains the title of Academic Progress Plan, that is the term parents and teachers are becoming familiar with.

Pg 10  
Tier 1. As stated in page one comments, the 90 min of reading instruction needs to remain under reading. Using other subject areas as topics for background knowledge is supported. We do not want the other subject areas to be the focus over reading. Reading fundamentals need to come first.

Tier 2  
Tier 2 with in the 90 min. Will there be additional guidance? Concern is that the tier 2 will not be specific enough for students needs. How can it be whole class and be tier 2. Small groups of tier 1 & 2 may be possible but that would require additional staffing in order for it to be direct instruction and not independent work in small groups. Additional time outside the 90 min standard block will be needed in some quantity.

Tier 3  
Tier 3 needs to be outside the 90 min block. It needs to be based on the "students specific needs" and be "direct" as added in the directions. Tier 3 is hard work and closing the gaps of students is the priority, not maintaining the gap.

Pg 11 Students approved for probationary promotion  
All APP should be uploaded to the family/student portal"

- The proposed language has been corrected.

**15.** "I am a school psychologist and licensed psychologist here in the state of Oklahoma. I have consulted on the implementation of MTSS/PBIS/RIT in rural, suburban, and urban schools here and in Philadelphia, and I am incredibly passionate about the implement of evidence-based assessment and intervention practices in Oklahoma schools. I have a few concerns regarding the proposed changes to RSA law (Chapter 15. Subchapter 27) in terms of how it will actually be implemented in the schools:

1) Consider elaborating/clarifying what is considered a "diagnostic assessment" to be provided. Can it be survey-level assessment on earlier/foundational skills using the same screening tool? Will schools think they need to buy another tool? How are schools being guided on the technical adequacy/reliability of these tools (to the same level of rigor as the screening tools)?

2) Consider clarifying expectations for "adequate progress in reading pursuant to the student's IEP" as this vague wording will open the door to varying expectations of what is considered "adequate" progress. Additionally, we still have a lot of work to do in terms of ensuring that all of our students' IEP goals are actually "SMART" (measurable) goals.

3) Most concerning to me are the changes to the "time requirements" for tiered interventions. The wording essentially opens the door to pushing only differentiated instruction within a core 90 minute reading block instead of the layered supports the law currently mandates. Teachers will not be able to provide all three levels of RTI at a high-quality level within one 90 minute reading block; however, many schools will try! Instead of each student getting the additional intervention support they need as linked to assessment data, students will get less individual time (either by less one on one time or by trying to cram more students in small groups).

While I believe the intention of the changes to the wording is to reduce independent time spent in centers (and designate that time as available to interventions), the unfortunate outcome may be that a teacher ends up reducing total time spent in whole and small-group class instruction. What is to keep a teacher who now is delivering a 30 minute whole group lesson and 20 minutes of differentiated instruction via small groups (plus

- The proposed language has been adjusted, and further guidance will be provided by the Office of Curriculum and Instruction.



<p>students getting additional intervention supports in and outside of the classroom) from adjusting to a 10 minute whole group lesson and then not doing small-group differentiated instruction in order to meet the Tier 2 intervention requirements instead?</p> <p>In K-3, children are learning to read so they can eventually read to learn in later grades. While I understand that many people feel the implementation of RSA has been detrimental to the learning of other subjects at the early elementary level, I believe it will be more detrimental to have students unable to fluently read and comprehend higher-level texts as they progress in their schoolwork!</p> <p><b>At a time when early screening and intervention supports for students at-risk of specific learning disabilities (i.e., dyslexia) are being promoted and advocated for, it seems a mistake to water-down a law designed to support students with reading difficulties who do and do not qualify for special education services."</b></p>	
<p><b>16.</b> "1. Losing all funding attached to a deadline is arbitrary and severe, the funds are for the students and missing a deadline is an adult problem 2. Tier 3 should not be allowed to occur within the 90 minute reading block, students who qualify for Tier 3 require intensive interventions that could not be accommodated within that time"</p>	<ul style="list-style-type: none"> <li>▪ The OSDE acknowledges the commenter's concern about access to funding for student supports being compromised by a school district's delay in administrative duties. However, that is the current scenario that the rule amendment is meant to address, since RSA funding calculations require all districts' data prior to distribution. Without a reporting due date tied to funding, the distribution of RSA funds has often been delayed for all districts—sometimes substantially, to the detriment of student supports—due to a few schools' late submissions.</li> </ul>
<p><b>17.</b> "I have reviewed the proposed rule changes to the Reading Sufficiency Act and have concern that these proposed changes will undermine the intent of the RSA to improve student reading. Essentially, the proposed rule changes decrease the amount of time that schools devote to direct Tier 1 reading instruction. By reducing the requirements for Tier 1 instruction, the number of students identified as at-risk for reading and in need of Tier 2 or Tier 3 interventions will drastically increase. Furthermore, by removing requirements for Tier 2 and Tier 3 interventions, there will be a decreased likelihood that students respond to the interventions, which leads to over identification of students for special education services. Please consider these specific areas and recommendations: <b>Integration of the 90 minute core instruction throughout other subjects.</b> While this may be effective once a child has the basics of reading</p>	<ul style="list-style-type: none"> <li>▪ The OSDE appreciates the commenter's willingness to share their own experiences in reading instruction.</li> <li>▪ The proposed rule language has been adjusted, and further detail regarding best practices will be addressed in RSA guidance documents.</li> </ul>

accomplished to improve reading comprehension, it is not an evidence-based strategy for teaching reading and early literacy skill. Please consider adjusting this language to continue to require direct reading instruction in phonics, phonemic awareness, and reading fluency that is not included with other subjects. The skills of vocabulary development and reading comprehension may be more appropriate for integration into other subject areas.

**Integration of tier 2 and tier 3 into the 90 minute core block.** This proposed change will further dilute the effectiveness of the reading services provided to students. Unfortunately, people have a tendency to choose the least path of resistance. If allowed the option to complete interventions within the core instruction, the interventions will end up replacing core instructional time, not supplementing it as intended. Tiered models of support do not work without a strong dedicated Tier 1 base with layers of interventions. I strongly encourage that this language not be added, and continue with the policy that Tier 2 and Tier 3 services are offered outside of the Tier 1 core instructional time. Please consider that the unintended consequences of the proposed changes is an INCREASE in the number of students needing reading support. In addition to INACCURATELY identifying students as having a learning disability, such as Dyslexia, when their difficulties may have been remediated with appropriate Tier 1 direct instruction and layered Tier 2 interventions."

**18.** "I have a couple of concerns with some of the proposed rules for RSA. First, I am concerned about the funding rule; specifically, districts that do not submit their beginning of year reports by the deadlines will lose RSA funds for the entire school year. This rule is inequitable in that the severity of the penalty varies between districts; larger districts will lose substantially more money than smaller districts. In addition, I do not believe this is in the best interest of students across Oklahoma. Our students will lose access to valuable resources due to an adult compliance issue. Instead, could districts that submit their reports after the deadline lose a percentage of their funds or perhaps receive their funds after January? I believe there is a more appropriate penalty for late reports, but I also don't think all districts should have to wait on those late submissions.

<p>Secondly, I am concerned about the proposed changes to the 90 minute reading block and Tier 3 intervention. Struggling readers need to show <i>accelerated</i> growth in order to catch up with their peers who are reading on grade level, and they need direct, intensive reading intervention in order to fill the gaps in their foundational knowledge. Teachers will not have time to provide direct, differentiated instruction to these students within the 90 minute reading block. If the 45 minutes of additional intervention time is included in the 90 minute reading block, these students will not receive the additional support they need. In my opinion, we will be doing a great disservice to our struggling readers if this rule goes into effect.”</p>	<ul style="list-style-type: none"> <li>While the legal minimum baseline for instructional time is codified in the rules, more detailed explanations of best practices will be addressed in RSA guidance provided by the Office of Curriculum and Instruction.</li> </ul>
<p><b>19.</b> “I am a reading coach originally trained through the Oklahoma State Department of Education and trained by national LETRS trainers as a REAC3H Coach for our state. I am also now a National LETRS trainer and a literacy coach for Oklahoma Tiered Interventions Systems of Support. I’ve trained teachers in more than 50 Oklahoma School Districts, and in 10 other states.</p> <p>Here are a few things I’m always proud to tell teachers and administrators about our work in Oklahoma: Oklahoma screens all our students for reading K-3<sup>rd</sup> grade to identify struggling readers; we provide everyone with 90 minutes of uninterrupted reading instruction, and we ensure that all students get the additional intervention time they need to become proficient readers. These regulations all meet what the body of research tells us is necessary for seeing one full year of growth and the time and supported needed for those students who are below grade level in order to advance beyond on year to catch up.</p> <p>These initiatives and guarantees are part of the cornerstone that led to the success that we achieved in the National Assessment of Education Progress in 2015. In addition in 2012-2014, we also provided coaching and support to any school that wanted to reach all their struggling readers.</p> <p>Changing the 90 minutes of reading instruction that is now uninterrupted and instead allowing it to take place over the course of a day and in other subjects as stipulated in the new regulations would be a move away from what the science of reading tells us is necessary.</p>	<ul style="list-style-type: none"> <li>The OSDE appreciates the commenter’s willingness to share their own experiences in reading instruction.</li> <li>Based on concerns raised by this and other commenters, the rule language has been adjusted. Further details regarding best practices will be addressed in RSA guidance provided by the OSDE Office of Curriculum and Instruction.</li> </ul>

Research involving how much time is necessary for a student to gain a year of growth in reading has been identified as 80-90 minutes of reading instruction, and students who are “behind do not learn faster than students who are ahead. They need more time, and we need to tailor the time to their deficiency.” Providing interventions during the 90 minute reading block will not provide additional time.

In some 3<sup>rd</sup> grade classrooms teachers are teaching by disciplines. One teacher is teaching social studies, another science, another math, and another reading. How will students be ensured that they will receive reading training by an expert who is focused on the reading skills that are necessary to be successful?

There is a need to build knowledge of the world through science and social studies. This knowledge is very necessary to ensure students are able to function and excel in our society, but there are exceptional reading programs that do that. There is a solution to this dilemma. Instead of walking away from the advances that Oklahoma can be very proud of in reading instruction, we should be providing school districts guidance and support in how they can incorporate more knowledge-based reading focused on social studies and science in our reading instruction during the 90 minute reading block.

I would suggest to all those who are trying to make a decision based on the science and the pedagogy that should guide us, to go to our own state website and review the research presentation that is there for all districts to help understand why we are doing what we are doing currently with our time for reading instruction and interventions. Here at this link, you will find a presentation by researchers who studied what was necessary and what worked in order to reach all their readers. <https://sde.ok.gov/sites/ok.gov.sde/files/RSA-AnnualGrowthVsCatchUPGrowth.pdf>

- The proposed rule language now clarifies that Tier II and Tier III intervention “Is determined by *the teacher responsible for grade level Tier I reading instruction*,” updated from “classroom teacher.”

**RULE IMPACT STATEMENT 210:15-27-1 through 210:15-27-4**

**Reading Sufficiency Act subchapter [AMENDED]**

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

The rules addressing the Reading Sufficiency Act (RSA) are being updated to reflect changes to the RSA statutes and other relevant education laws. Updates include definitions and clarified terminology to reflect language changes in the school accountability system, and to eliminate outdated references. District reporting requirements and eligibility for RSA funds are also addressed in the amendment. Finally, adjustments are made to the guidelines for different levels of reading intervention for students identified as having reading skill deficits, to provide greater guidance and flexibility to schools.

**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, charter schools, and students in pre-kindergarten through grade 3 and beyond who are identified as having reading skill deficits.

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

The rule change will benefit school districts, charter schools, and their elementary students, particularly students who need additional support in developing reading skills.

**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 210:15-27**

### **Oklahoma Statutes**

#### **Title 70. Schools**

##### **Chapter 22 - Testing and Assessment**

##### **Reading Sufficiency Act**

##### **Section 1210.508C - Assessments for Reading Skills**

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

2. For those kindergarten children at risk for reading difficulties at the beginning of the year, teachers shall emphasize reading skills as identified in the subject matter standards adopted by the State Board of Education, monitor progress throughout the year and measure mid-year and year-end reading progress.

3. Kindergarten students who are not meeting grade-level targets by mid-year in reading shall be provided a program of reading instruction designed to enable the student to acquire the appropriate grade-level reading skills.

4. Classroom assistants, which may include parents, grandparents, or other volunteers, shall be provided in kindergarten classes to assist with the screening of students if a teacher aide is not already employed to assist in a kindergarten classroom.

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

C. Any student enrolled in first, second or third grade who is assessed and who is not meeting grade-level targets in reading shall be provided a program of reading instruction designed to enable the student to acquire the appropriate grade level reading skills. The program of reading instruction shall include provisions of the READ Initiative adopted by the school district as provided for in subsection P of this section.

Throughout the year progress monitoring shall continue, and diagnostic assessment, if determined appropriate, shall be provided. Year-end reading skills shall be measured to determine reading success.

D. The State Board of Education shall approve screening instruments for use at the beginning and end of the school year, for monitoring of progress, and for measurement of reading skills at the end of the school year as required in subsections A and B of this section; provided, at least one of the screening instruments shall meet the following criteria:

1. Assess for phonemic awareness, phonics, reading fluency, vocabulary and comprehension;
2. Document the validity and reliability of each assessment;
3. Can be used for identifying students who are at risk for reading deficiency and progress monitoring throughout the school year;
4. Can be used to assess students with disabilities and English language learners; and
5. Accompanied by a data management system that provides profiles for students, class, grade level and school building. The profiles shall identify each student's instructional point of need and reading achievement level. The State Board shall also determine other comparable reading assessments for diagnostic purposes to be used for students at risk of reading failure. The State Board shall ensure that

any assessments approved are in alignment with the subject matter standards adopted by the State Board of Education.

E. 1. The program of reading instruction required in subsections A and B of this section shall align with the subject matter standards adopted by the State Board of Education and shall include provisions of the READ Initiative adopted by the school district as provided for in subsection P of this section. A program of reading instruction may include, but is not limited to:

- a. sufficient additional in-school instructional time for the acquisition of phonemic awareness, phonics, reading fluency, vocabulary, and comprehension,
- b. if necessary, tutorial instruction after regular school hours, on Saturdays and during summer; however, such instruction may not be counted toward the one-hundred-eighty-day or one-thousand-eighty-hour school year required in [Section 1-109](#) of this title, and
- c. assessments identified for diagnostic purposes and periodic monitoring to measure the acquisition of reading skills including, but not limited to, phonemic awareness, phonics, reading fluency, vocabulary, and comprehension, as identified in the student's program of reading instruction.

2. A student enrolled in first or second grades who has been assessed as provided for in subsection B of this section and found not to be meeting grade-level targets in reading, shall be entitled to supplemental instructional services and supports in reading until the student is determined by the results of a screening instrument to be meeting grade-level targets in reading. The program of reading instruction for each student shall be developed by a Student Reading Proficiency Team and shall include supplemental instructional services and supports. Each team shall be composed of:

- a. the parent or guardian of the student,
- b. the teacher assigned to the student who had responsibility for reading instruction in that academic year,
- c. a teacher who is responsible for reading instruction and is assigned to teach in the next grade level of the student, and
- d. a certified reading specialist, if one is available.

F. The program of reading instruction shall continue until the student is determined by the results of approved reading assessments to be meeting grade-level targets.

G. 1. Every school district shall adopt, and implement a district reading sufficiency plan which has had input from school administrators, teachers, and parents and if possible a reading specialist, and which shall be submitted electronically to and approved by the State Board of Education. The plan shall be updated annually. School districts shall not be required to electronically submit the annual updates to the Board if the last plan submitted to the Board was approved and expenditures for the program include only expenses relating to individual and small group tutoring, purchase of and training in the use of screening and assessment measures, summer school programs and Saturday school programs. If any expenditure for the program is deleted or changed or any other type of expenditure for the program is implemented, the school district shall be required to submit the latest annual update to the Board for approval. The district reading sufficiency plan shall include a plan for each site which includes an analysis of the data provided by the Oklahoma School Testing Program and other reading assessments utilized as required in this section, and which outlines how each school site will comply with the provisions of the Reading Sufficiency Act.

2. The State Board of Education shall adopt rules for the implementation and evaluation of the provisions of the Reading Sufficiency Act. The evaluation shall include, but not be limited to, an analysis of the data required in subsection S of this section.

H. For any third-grade student found not to be meeting grade-level targets as determined by reading assessments administered pursuant to this section, a new program of reading instruction, including provisions of the READ Initiative adopted by the school district as provided for in subsection P of this



section, shall be developed by a Student Reading Proficiency Team and implemented as specified in subsection E of this section. In addition to other requirements of the Reading Sufficiency Act, the plan may include specialized tutoring.

I. 1. Any first-grade, second-grade or third-grade student who demonstrates end of year proficiency in reading at the third-grade level through a screening instrument which meets the acquisition of reading skills criteria pursuant to subsection B of this section shall not be subject to retention pursuant to this section. After a student has demonstrated proficiency through a screening instrument, the district shall provide notification to the parent or guardian of the student that they have satisfied the requirements of the Reading Sufficiency Act and will not be subject to retention pursuant to this section.

2. If a third-grade student is identified at any point of the academic year as having a significant reading deficiency, which shall be defined as not meeting grade-level targets on a screening instrument which meets the acquisition of reading skills criteria pursuant to subsection B of this section, the district shall immediately begin a student reading portfolio as provided by subsection L of this section and shall provide notice to the parent of the deficiency pursuant to subsection J of this section.

3. If a student has not yet satisfied the proficiency requirements of this section prior to the completion of third grade and still has a significant reading deficiency, as identified based on assessments administered as provided for in subsection B of this section, has not accumulated evidence of third-grade proficiency through a student portfolio as provided in subsection L of this section, or is not subject to a good-cause exemption as provided in subsection L of this section, then the student shall not be eligible for automatic promotion to fourth grade.

4. The minimum criteria for grade-level performance of third-grade students pursuant to the Reading Sufficiency Act shall be that students are able to read and comprehend grade-level text. To determine the promotion and retention of third-grade students pursuant to the Reading Sufficiency Act, the State Board of Education shall use only the scores for the standards for reading foundations/processes and vocabulary portions of the statewide third-grade assessment administered pursuant to [Section 1210.508](#) of this title and shall not use the scores from the other language arts portions of the assessment. The performance levels established by the Commission for Educational Quality and Accountability pursuant to [Section 1210.508](#) of this title shall ensure that students meeting the performance-level criteria are performing at grade level on the reading foundations and vocabulary portions of the statewide third-grade assessment.

5. a. A student not eligible for automatic promotion as provided for under paragraph 3 of this subsection and who does not meet the criteria established by the Commission for Educational Quality and Accountability on the reading portion of the statewide third-grade assessment administered pursuant to [Section 1210.508](#) of this title may be evaluated for probationary promotion by the Student Reading Proficiency Team which was created for the student pursuant to subsection E of this section.

b. The student shall be promoted to the fourth grade if the team members unanimously recommend probationary promotion to the school principal and the school district superintendent and the principal and superintendent approve the recommendation that promotion is the best option for the student. If a student is allowed a probationary promotion, the team shall continue to review the reading performance of the student and repeat the requirements of this paragraph each academic year until the student demonstrates grade-level reading proficiency, as identified through a screening instrument which meets the acquisition of reading skills criteria pursuant to subsection B of this section, for the corresponding grade level in which the student is enrolled or transitions to a locally designed remediation plan after the fifth grade which shall have the goal of ensuring that the student is on track to be college and career ready.

6. Beginning with the 2017-2018 school year, students who do not meet the performance criteria established by the Commission for Educational Quality and Accountability on the reading portion of the statewide third-grade assessment administered pursuant to [Section 1210.508](#) of this title, who are not subject to a good cause exemption as provided in subsection L of this section, and who do not qualify for promotion or probationary promotion as provided in this subsection, shall be retained in the third grade and provided intensive instructional services and supports as provided for in subsection O of this section.



7. Each school district shall annually report to the State Department of Education the number of students promoted to the fourth grade pursuant to this subsection and the number of students promoted to a subsequent grade pursuant to the provisions in paragraph 5 of this subsection. The State Department of Education shall publicly report the aggregate and district-specific number of students promoted on their website and shall provide electronic copies of the report to the Governor, Secretary of Education, President Pro Tempore of the Senate, Speaker of the House of Representatives, and to the respective chairs of the committees with responsibility for common education policy in each legislative chamber.

J. The parent of any student who is found to have a reading deficiency and is not meeting grade-level reading targets and has been provided a program of reading instruction as provided for in subsection B of this section shall be notified in writing of the following:

1. That the student has been identified as having a substantial deficiency in reading;
2. A description of the current services that are provided to the student pursuant to a conjoint measurement model such that a reader and a text are placed on the same scale;
3. A description of the proposed supplemental instructional services and supports that will be provided to the student that are designed to remediate the identified area of reading deficiency;
4. That the student will not be promoted to the fourth grade if the reading deficiency is not remediated by the end of the third grade, unless the student is otherwise promoted as provided for in subsection I of this section or is exempt for good cause as set forth in subsection L of this section;
5. Strategies for parents to use in helping their child succeed in reading proficiency;
6. The grade-level performance scores of the student;
7. That while the results of the statewide assessments administered pursuant to [Section 1210.508](#) of this title are the initial determinant, they are not the sole determiner of promotion and that portfolio reviews and assessments are available; and
8. The specific criteria and policies of the school district for midyear promotion implemented as provided for in paragraph 4 of subsection O of this section.

K. No student may be assigned to a grade level based solely on age or other factors that constitute social promotion.

L. For those students who do not meet the academic requirements for promotion and who are not otherwise promoted as provided for in subsection I of this section, a school district may promote the student for good cause only. Good-cause exemptions for promotion shall be limited to the following:

1. English language learners who have had less than two (2) years of instruction in an English language learner program;
2. Students with disabilities whose individualized education program (IEP), consistent with state law, indicates that the student is to be assessed with alternate achievement standards through the Oklahoma Alternate Assessment Program (OAAP);
3. Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment approved by the State Board of Education;
4. Students who demonstrate, through a student portfolio, that the student is reading on grade level as evidenced by demonstration of mastery of the state standards beyond the retention level;
5. Students with disabilities who participate in the statewide assessments administered pursuant to [Section 1210.508](#) of this title and who have an individualized education program that reflects that the student has received intensive remediation in reading and has made adequate progress in reading pursuant to the student's individualized education program;

6. Students who have received intensive remediation in reading through a program of reading instruction for two (2) or more years but still demonstrate a deficiency in reading and who were previously retained in prekindergarten for academic reasons, kindergarten, first grade, second grade, or third grade; and

7. Students who have been granted an exemption for medical emergencies by the State Department of Education.

M. A student who is otherwise promoted as provided for in subsection I of this section or is promoted for good cause as provided for in subsection L of this section shall be provided intensive reading instruction that includes specialized diagnostic information and specific reading strategies for each student until the student meets grade-level targets in reading. The school district shall assist schools and teachers to implement reading strategies for the promoted students that research has shown to be successful in improving reading among low-performing readers.

N. Requests to exempt students from the retention requirements based on one of the good-cause exemptions as described in subsection L of this section shall be made using the following process:

1. Documentation submitted from the teacher of the student to the school principal that indicates the student meets one of the good-cause exemptions and promotion of the student is appropriate. In order to minimize paperwork requirements, the documentation shall consist only of the alternative assessment results or student portfolio work and the individual education plan (IEP), as applicable;

2. The principal of the school shall review and discuss the documentation with the teacher and, if applicable, the other members of the Student Reading Proficiency Team as described in subsection E of this section. If the principal determines that the student meets one of the good-cause exemptions and should be promoted based on the documentation provided, the principal shall make a recommendation in writing to the school district superintendent; and

3. After review, the school district superintendent shall accept or reject the recommendation of the principal in writing.

O. Each school district shall:

1. Conduct a review of the program of reading instruction for all students who do not meet the performance criteria established by the Commission for Educational Quality and Accountability on the reading portion of the statewide assessment administered pursuant to [Section 1210.508](#) of this title and did not meet the criteria for one of the good-cause exemptions as set forth in subsection L of this section. The review shall address additional supports and services, as described in this subsection, needed to remediate the identified areas of reading deficiency. The school district shall require a student portfolio to be completed for each retained student;

2. Provide to students who have been retained as set forth in subsection I of this section with intensive interventions in reading, intensive instructional services and supports to remediate the identified areas of reading deficiency, including a minimum of ninety (90) minutes of daily, uninterrupted, scientific-research-based reading instruction. Retained students shall be provided other strategies prescribed by the school district, which may include, but are not limited to:

- a. small group instruction,
- b. reduced teacher-student ratios,
- c. more frequent progress monitoring,
- d. tutoring or mentoring,
- e. transition classes containing third- and fourth-grade students,
- f. extended school day, week, or year, and
- g. summer reading academies as provided for in [Section 1210.508E](#) of this title, if available;



3. Provide written notification to the parent or guardian of any student who is to be retained as set forth in subsection I of this section that the student has not met the performance criteria required for promotion and was not otherwise promoted and the reasons the student is not eligible for a good-cause exemption. The notification shall include a description of proposed interventions and intensive instructional supports that will be provided to the student to remediate the identified areas of reading deficiency;

4. Implement a policy for the midyear promotion of a retained student who can demonstrate that the student is a successful and independent reader, is reading at or above grade-level targets, and is ready to be promoted to the fourth grade. Tools that school districts may use in reevaluating any retained student may include screening assessments, alternative assessments, and portfolio reviews, in accordance with rules of the State Board of Education. Retained students may only be promoted midyear prior to November 1 and only upon that the student has met the performance criteria established by the Commission for Educational Quality and Accountability on the reading portion of the statewide third-grade assessment administered pursuant to [Section 1210.508](#) of this title, or upon demonstrating proficiency in reading at the third-grade level through a screening instrument administered pursuant to subsection B of this section, and upon showing progress sufficient to master appropriate fourth-grade-level skills, as determined by the school. A midyear promotion shall be made only upon agreement of the parent or guardian of the student and the school principal;

5. Provide students who are retained with a high-performing teacher who can address the needs of the student, based on student performance data and above-satisfactory performance appraisals; and

6. In addition to required reading enhancement and acceleration strategies, provide students who are retained with at least one of the following instructional options:

a. supplemental tutoring in scientific-research-based reading services in addition to the regular reading block, including tutoring before or after school,

b. a parent-guided "Read at Home" assistance plan, as developed by the State Department of Education, the purpose of which is to encourage regular parent-guided home reading, or

c. a mentor or tutor with specialized reading training.

P. Beginning with the 2011-2012 school year, each school district shall establish a Reading Enhancement and Acceleration Development (READ) Initiative. The focus of the READ Initiative shall be to prevent the retention of third-grade students by offering intensive accelerated reading instruction to third-grade students who failed to meet standards for promotion to fourth grade and to kindergarten through third-grade students who are exhibiting a reading deficiency. The READ Initiative shall:

1. Be provided to all kindergarten through third-grade students at risk of retention as identified by the assessments administered pursuant to the Reading Sufficiency Act. The assessment used shall measure phonemic awareness, phonics, reading fluency, vocabulary, and comprehension;

2. Be provided during regular school hours in addition to the regular reading instruction;

3. Provide a reading curriculum that, at a minimum, meets the following specifications:

a. assists students assessed as exhibiting a reading deficiency in developing the ability to read at grade level,

b. provides skill development in phonemic awareness, phonics, reading fluency, vocabulary, and comprehension,

c. provides a scientific-research-based and reliable assessment,

d. provides initial and ongoing analysis of the reading progress of each student, and

e. is implemented during regular school hours,

4. Establish at each school, where applicable, an Intensive Acceleration Class for retained third-grade students who subsequently do not meet the performance criteria established by the Commission for



Educational Quality and Accountability on the reading portion of the statewide assessment administered pursuant to [Section 1210.508](#) of this title. The focus of the Intensive Acceleration Class shall be to increase the reading level of a child at least two grade levels in one (1) school year. The Intensive Acceleration Class shall:

- a. be provided to any student in the third grade who does not meet the performance criteria established by the Commission for Educational Quality and Accountability on the reading portion of the statewide assessments and who was retained in the third grade the prior year because of not meeting the performance criteria on the reading portion of the statewide assessments,
  - b. have a reduced teacher-student ratio,
  - c. provide uninterrupted reading instruction for the majority of student contact time each day and incorporate opportunities to master the fourth-grade state standards in other core subject areas,
  - d. use a reading program that is scientific-research-based and has proven results in accelerating student reading achievement within the same school year,
  - e. provide intensive language and vocabulary instruction using a scientific-research-based program, including use of a speech-language therapist, and
  - f. include weekly progress monitoring measures to ensure progress is being made,
5. Provide reports to the State Board of Education, upon request, on the specific intensive reading interventions and supports implemented by the school district. The State Superintendent of Public Instruction shall annually prescribe the required components of the reports; and
6. Provide to a student who has been retained in the third grade and has received intensive instructional services but is still not ready for grade promotion, as determined by the school district, the option of being placed in a transitional instructional setting. A transitional setting shall specifically be designed to produce learning gains sufficient to meet fourth-grade performance standards while continuing to remediate the areas of reading deficiency.

Q. 1. Each school district board of education shall annually publish on the school website, and report in writing to the State Board of Education by September 1 of each year, the following information on the prior school year:

- a. the provisions of this section relating to public school student progression and the policies and procedures of the school district on student retention and promotion,
- b. the number and percentage of all students in grade three that did not meet the performance criteria established by the Commission for Educational Quality and Accountability on the reading portion of the statewide assessment administered pursuant to [Section 1210.508](#) of this title,
- c. by grade, the number and percentage of all students retained in grades three through ten,
- d. information on the total number and percentage of students who were promoted for good cause, by each category of good cause as specified above, and
- e. any revisions to the policies of the school district on student retention and promotion from the prior year.

2. The State Department of Education shall establish a uniform format for school districts to report the information required in this subsection. The format shall be developed with input from school districts and shall be provided not later than ninety (90) days prior to the annual due date. The Department shall annually compile the information required, along with state-level summary information, and report the information to the public, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

R. The State Department of Education shall provide technical assistance as needed to aid school districts in administering the provision of the Reading Sufficiency Act.

S. On or before January 31 of each year, the State Department of Education shall issue to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and members of the Senate and House of Representatives Education Committees a Reading Sufficiency Report which shall include, but is not limited to, trend data detailing three (3) years of data, disaggregated by student subgroups to include economically disadvantaged, major racial or ethnic groups, students with disabilities, and English language learners, as appropriate for the following:

1. The number and percentage of students in kindergarten through third grade determined to be at risk for reading difficulties compared to the total number of students enrolled in each grade;
2. The number and percentage of students in kindergarten who continue to be at risk for reading difficulties as determined by the year-end measurement of reading progress;
3. The number and percentage of students in kindergarten through third grade who have successfully completed their program of reading instruction and are reading on grade level as determined by the results of approved reading assessments;
4. The number and percentage of students that meet or do not meet the performance criteria established by the Commission for Educational Quality and Accountability on the reading portion of the statewide third-grade assessment administered pursuant to [Section 1210.508](#) of this title;
5. The number of students tested, the number of students promoted through meeting proficiency on a screening instrument as provided for in subsection I of this section, the number of students promoted through each of the good-cause exemptions as provided for in subsection L of this section and the number of students retained and the number of students promoted through probationary promotion as provided for in subsection I of this section for each elementary site;
6. Data tracking the progression of students promoted through each of the good-cause exemptions as provided for in subsection L of this section and students promoted through probationary promotion or students who are retained in third grade as provided for in subsection I of this section. The data shall include but not be limited to information regarding whether students graduate on time;
7. The amount of funds for reading remediation received by each district;
8. An evaluation and narrative interpretation of the report data analyzing the impact of the Reading Sufficiency Act on students' ability to read at grade level;
9. The type of reading instruction practices and methods currently being used by school districts in the state;
10. Socioeconomic information, access to reading resources outside of school and screening for and identification of learning disabilities for students not reading at the appropriate grade level by third grade;
11. The types of intensive remediation efforts being conducted by school districts to identify best practices for students that are not reading at the appropriate grade level and are not retained under the provisions of this section; and
12. Any recommendations for improvements or amendments to the Reading Sufficiency Act.

The State Department of Education may contract with an independent entity for the reporting and analysis requirements of this subsection.

T. Copies of the results of the assessments administered shall be made a part of the permanent record of each student.

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 40. GRANTS AND PROGRAMS-IN-AID  
SUBCHAPTER 87. CHARTER SCHOOLS**

**210:40-87-7. Charter school contracts**

(a) **Contract requirement.** The sponsor of a charter school must enter into a written contract with the governing body of the charter school. The initial contract for sponsorship shall be for a period of five (5) years. The contract must meet all statutory requirements listed in 70 O.S. § 3-135(A). A charter contract may provide for one or more schools by the same applicant, to the extent approved by the sponsor and consistent with applicable law. An applicant or the governing board of an applicant may hold one or more charter contracts. Each charter school that is part of a charter contract shall be separate and distinct from any other charter school under the same charter contract, and the sponsor shall evaluate each charter school's performance separately.

(b) **Written procedure for consideration, approval, and disapproval.** Sponsors shall establish a written procedure and criteria for accepting, approving, and disapproving charter school applications in accordance with 70 O.S. § 3-134(E). A copy of this procedure and criteria shall be made available on request to charter school applicants, potential applicants, and members of the public.

(c) **Performance provisions.** Each charter contract shall contain performance provisions based on a performance framework that sets forth the academic and operational performance indicators, measures, and metrics that will guide the sponsor's evaluations of the charter school. The sponsor shall not request any metric or data from a charter school that it does not produce or publish for all school sites in the district or under its sponsorship, unless the metric or data is unique to the charter school. To avoid duplication of administrative efforts, the sponsor shall require that data submitted under the performance provisions must be submitted by the charter school in the exact format required for submission of data to the Oklahoma State Department of Education (OSDE). Alternately, a sponsor may allow a charter school to provide permission to OSDE to share data required by the performance framework with the sponsor of the school. The performance framework must include measures that indicate, at a minimum:

- (1) Student academic proficiency;
- (2) Student academic growth;
- (3) Achievement gaps in both proficiency and growth among major student subgroups;
- (4) Student attendance;
- (5) Recurrent enrollment from year to year as determined by the methodology used for public schools in Oklahoma;
- (6) In the case of high schools, graduation rates as determined by the methodology used for public schools in Oklahoma;
- (7) In the case of high schools, postsecondary readiness;
- (8) Financial performance and sustainability; and
- (9) Governing board performance and stewardship, including compliance with all applicable laws, regulations, and terms of the charter contract.

(d) **Copies of all modified contracts to be sent to State Department of Education.** A charter school must provide the OSDE Office of Accreditation with a copy of any modified contract within thirty (30) calendar days of execution. The requirement to send a copy of any modified



charter contract to the OSDE Office of Accreditation applies to any change in terms, not only to changes that could potentially affect state funding.

(e) **Contracts for charter schools sponsored by the State Board of Education.** Contracts for sponsorship between the State Board of Education and the governing body of a charter school sponsored pursuant to a successful appeal authorized under 70 O.S. § 3-132(A)(9) shall include terms that meet all of the following requirements:

(1) The contract shall incorporate the provisions of the charter of the school in accordance with the requirements of 70 O.S. § 3-135, and the charter shall comply with the provisions of 70 O.S. § 3-136.

(2) The contract shall contain terms addressing all of the requirements set forth in 70 O.S. § 3-135.

(3) The contract shall contain terms setting forth measurable goals and objectives for student performance.

(4) The contract shall contain terms specifying standards for fiscal accounting and management that ensure the compliance of the charter school with all applicable provisions of state and federal statutes and regulations pertaining to requests for appropriations and recording and reporting receipt and expenditures of public funds, including, but not limited to:

(A) Terms providing that the charter school shall conduct annual financial audits in accordance with the requirements of the Oklahoma Public School Audit Law;

(B) Terms providing that the charter school shall comply with all State Department of Education deadlines necessary for budgeting, calculation of appropriations and/or disbursements of state aid and/or federal aid;

(C) Terms providing that the charter school shall comply with all deadlines for recording and reporting of state aid revenue and expenditures;

(D) Terms providing that the charter school shall comply with all requirements of the Oklahoma Cost Accounting System (OCAS);

(E) Terms providing that the charter school shall comply with all provisions of the *School District Transparency Act* at 70 O.S. § 5-135.4;

(F) Terms providing that the charter school will provide any and all records of the school including, but not limited to, financial records upon request by the sponsor;

(G) Terms providing that the charter school will provide any and all school records including, but not limited to, financial records from education service providers upon request by the sponsor;

(H) Terms providing that the school is subject to requests for audit by the State Auditor's office;

(I) Terms providing that the charter school shall adopt a viable conflict of interest policy and a code of ethics;

(J) Terms providing that the charter school submit at least three data-driven goals and measurement criteria, including one non-academic goal, and included in the Performance Framework.

(5) The policies and procedures governing administration and operation of the charter school shall be incorporated into the terms of the contract.

(6) The term of the initial contract shall be effective for five (5) years from the first day of operation in accordance with the provisions of 70 O.S. § 3-137.

(7) The term of the contract shall designate at least one contact name and address of record of the governing body of the charter school to which all notices required by the terms of the contract and/or this Section shall be served, including the name, title, mailing address, email address, and phone number of all individual(s) authorized to receive service of notices required by this Section and pursuant to the terms of the contract.

(8) The contract shall contain any other terms necessary to ensure compliance with applicable provisions of state and/or federal law.

## **RULE IMPACT STATEMENT 210:40-87-7**

### **"Charter school contracts" [AMENDED]**

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

New provisions are being added to the rule addressing charter school contracts that outline the contracting requirements for charter schools sponsored by the State Board of Education. The contracting requirements incorporated into the rule for charter schools sponsored by the State Board of Education substantially align with the contracting provisions required for charter school contracts between the Statewide Virtual Charter School Board and its sponsored schools.

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 charter schools that it sponsors pursuant to a successful appeal authorized under 70 O.S. § 3-132(A)(9).

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

The rule change will benefit the State Board of Education and its sponsored charter schools by providing clarity and predictability in the contracting process.

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:** February 10, 2020

## **STATUTORY AUTHORITY FOR 210:40-87-7**

### **Oklahoma Statutes**

#### **Title 70. Schools**

##### **Chapter 1 - School Code of 1971**

##### **Oklahoma Charter Schools Act**

##### **Article III - State Department of Education**

##### **Section 3-137 - Length of Contract - Termination of Contract**

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A. An approved contract for a charter school shall be effective for five (5) years from the first day of operation. A charter contract may be renewed for successive five-year terms of duration, although the sponsor may vary the term based on the performance, demonstrated capacities and particular circumstances of each charter school. A sponsor may grant renewal with specific conditions for necessary improvements to a charter school.

B. Prior to the beginning of the fourth year of operation of a charter school, the sponsor shall issue a charter school performance report and charter renewal application guidance to the school and the charter school board. The performance report shall summarize the performance record to date of the charter school, based on the data required by the Oklahoma Charter Schools Act and the charter contract and taking into consideration the percentage of at-risk students enrolled in the school, and shall provide notice of any weaknesses or concerns perceived by the sponsor concerning the charter school that may jeopardize its position in seeking renewal if not timely rectified. The charter school shall have forty-five (45) days to respond to the performance report and submit any corrections or clarifications for the report.

C. 1. Prior to the beginning of the fifth year of operation, the charter school may apply for renewal of the contract with the sponsor. The renewal application guidance shall, at a minimum, provide an opportunity for the charter school to:

- a. present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal,
- b. describe improvements undertaken or planned for the school, and
- c. detail the plan for the next charter term for the school.

2. The renewal application guidance shall include or refer explicitly to the criteria that will guide the renewal decisions of the sponsor, which shall be based on the performance framework set forth in the charter contract and consistent with the Oklahoma Charter Schools Act.

D. The sponsor may deny the request for renewal if it determines the charter school has failed to complete the obligations of the contract or comply with the provisions of the Oklahoma Charter Schools Act. A sponsor shall give written notice of its intent to deny the request for renewal at least eight (8) months prior to expiration of the contract. In making charter renewal decisions, a sponsor shall:

- 1. Ground decisions on evidence of the performance of the school over the term of the charter contract in accordance with the performance framework set forth in the charter contract and shall take into consideration the percentage of at-risk students enrolled in the school;
- 2. Grant renewal to schools that have achieved the standards, targets and performance expectations as stated in the charter contract and are organizationally and fiscally viable and have been faithful to the terms of the contract and applicable law;
- 3. Ensure that data used in making renewal decisions are available to the school and the public; and
- 4. Provide a public report summarizing the evidence used as the basis for each decision.

E. If a sponsor denies a request for renewal, the governing board of the sponsor may, if requested by the charter school, proceed to binding arbitration as provided for in subsection G of Section 3-134 of this title.

F. A sponsor may terminate a contract during the term of the contract for failure to meet the requirements for student performance contained in the contract, failure to meet the standards of fiscal management, violations of the law or other good cause. The sponsor shall give at least ninety (90) days' written notice to the governing board prior to terminating the contract. The governing board may request, in writing, an informal hearing before the sponsor within fourteen (14) days of receiving notice. The sponsor shall conduct an informal hearing before taking action. If a sponsor decides to terminate a contract, the governing board may, if requested by the charter school, proceed to binding arbitration as provided for in subsection G of Section 3-134 of this title.

G. 1. Beginning in the 2016-2017 school year, the State Board of Education shall identify charter schools in the state that are ranked in the bottom five percent (5%) of all public schools as determined pursuant to Section 1210.545 of this title.

2. At the time of its charter renewal, based on an average of the current year and the two (2) prior operating years, a sponsor may close a charter school site identified as being among the bottom five percent (5%) of public schools in the state. The average of the current year and two (2) prior operating years shall be calculated by using the percentage ranking for each year divided by three, as determined by this subsection.

3. If there is a change to the calculation described in Section 1210.545 of this title that results in a charter school site that was not ranked in the bottom five percent (5%) being ranked in the bottom five percent (5%), then the sponsor shall use the higher of the two rankings to calculate the ranking of the charter school site.

4. In the event that a sponsor fails to close a charter school site consistent with this subsection, the sponsor shall appear before the State Board of Education to provide support for its decision. The State Board of Education may, by majority vote, uphold or overturn the decision of the sponsor. If the decision of the sponsor is overturned by the State Board of Education, the Board may implement one of the following actions:

- a. transfer the sponsorship of the charter school identified in this paragraph to another sponsor,
- b. order the closure of the charter school identified in this paragraph at the end of the current school year, or
- c. order the reduction of any administrative fee collected by the sponsor that is applicable to the charter school identified in this paragraph. The reduction shall become effective at the beginning of the month following the month the hearing of the sponsor is held by the State Board of Education.

5. A charter school that is closed by the State Board of Education pursuant to paragraph 4 of this subsection shall not be granted a charter by any other sponsor.

6. The requirements of this subsection shall not apply to a charter school that has been designated by the State Department of Education as implementing an alternative education program throughout the charter school.

7. In making a school site closure decision, the State Board of Education shall consider the following:

- a. enrollment of students with special challenges such as drug or alcohol addiction, prior withdrawal from school, prior incarceration or other special circumstances,
- b. high mobility of the student population resulting from the specific purpose of the charter school,
- c. annual improvement in the performance of students enrolled in the charter school compared with the performance of students enrolled in the charter school in the immediately preceding school year, and
- d. whether a majority of students attending the charter school under consideration for closure would likely revert to attending public schools with lower academic achievement, as demonstrated pursuant to Section 1210.545 of this title.

8. If the State Board of Education has closed or transferred authorization of at least twenty-five percent (25%) of the charter schools chartered by one sponsor pursuant to paragraph 4 of this subsection, the authority of the sponsor to authorize new charter schools may be suspended by the Board until the Board approves the sponsor to authorize new charter schools. A determination under this paragraph to suspend the authority of a sponsor to authorize new charter schools shall identify the deficiencies that, if corrected, will result in the approval of the sponsor to authorize new charter schools.

H. If a sponsor terminates a contract or the charter school is closed, the closure shall be conducted in accordance with the following protocol:

1. Within two (2) calendar weeks of a final closure determination, the sponsor shall meet with the governing board and leadership of the charter school to establish a transition team composed of school staff, applicant staff and others designated by the applicant that will attend to the closure, including the transfer of students, student records and school funds;

2. The sponsor and transition team shall communicate regularly and effectively with families of students enrolled in the charter school, as well as with school staff and other stakeholders, to keep them apprised of key information regarding the closure of the school and their options and risks;

3. The sponsor and transition team shall ensure that current instruction of students enrolled in the charter school continues per the charter agreement for the remainder of the school year;

4. The sponsor and transition team shall ensure that all necessary and prudent notifications are issued to agencies, employees, insurers, contractors, creditors, debtors and management organizations; and

5. The governing board of the charter school shall continue to meet as necessary to take actions needed to wind down school operations, manage school finances, allocate resources and facilitate all aspects of closure.

I. A sponsor shall develop revocation and nonrenewal processes that are consistent with the Oklahoma Charter Schools Act and that:

1. Provide the charter school with a timely notification of the prospect of revocation or nonrenewal and of the reasons for possible closure;

2. Allow the charter school a reasonable amount of time in which to prepare a response;

3. Provide the charter school with an opportunity to submit documents and give testimony in a public hearing challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose and prior to taking any final nonrenewal or revocation decision related to the school;

4. Allow the charter school access to representation by counsel to call witnesses on its behalf;

5. Permit the recording of the proceedings; and

6. After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter school.

J. If a sponsor revokes or does not renew a charter, the sponsor shall clearly state in a resolution the reasons for the revocation or nonrenewal.

K. 1. Before a sponsor may issue a charter to a charter school governing body that has had its charter terminated or has been informed that its charter will not be renewed by the current sponsor, the sponsor shall request to have the proposal reviewed by the State Board of Education at a hearing. The State Board of Education shall conduct a hearing in which the sponsor shall present information indicating that the proposal of the organizer is substantively different in the areas of deficiency identified by the current sponsor from the current proposal as set forth within the charter with its current sponsor.

2. After the State Board of Education conducts a hearing pursuant to this subsection, the Board shall either approve or deny the proposal.

3. If the proposal is denied, no sponsor may issue a charter to the charter school governing body.

L. If a contract is not renewed, the governing board of the charter school may submit an application to a proposed new sponsor as provided for in Section 3-134 of this title.

M. If a contract is not renewed or is terminated according to this section, a student who attended the charter school may enroll in the resident school district of the student or may apply for a transfer in accordance with Section 8-103 of this title.

11. Establish a procedure for referral of a person who commits an act of bullying to a delinquency prevention and diversion program administered by the Office of Juvenile Affairs;
  12. Address prevention by providing:
    - a. consequences and remedial action for a person who commits an act of bullying,
    - b. consequences and remedial action for a student found to have falsely accused another as a means of retaliation, reprisal or as a means of bullying, and
    - c. a strategy for providing counseling or referral to appropriate services, including guidance, academic intervention, and other protection for students, both targets and perpetrators, and family members affected by bullying, as necessary;
  13. Establish a procedure for:
    - a. the investigation, determination and documentation of all incidents of bullying reported to school officials,
    - b. identifying the principal or a designee of the principal as the person responsible for investigating incidents of bullying,
    - c. reporting the number of incidents of bullying, and
    - d. determining the severity of the incidents and their potential to result in future violence;
  14. Establish a procedure whereby, upon completing an investigation of bullying, a school may recommend that available community mental health care, substance abuse or other counseling options be provided to the student, if appropriate; and
  15. Establish a procedure whereby a school may request the disclosure of any information concerning students who have received mental health, substance abuse, or other care pursuant to paragraph 14 of this subsection that indicates an explicit threat to the safety of students or school personnel, provided the disclosure of the information does not violate the requirements and provisions of the Family Educational Rights and Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, [Section 2503](#) of Title 12 of the Oklahoma Statutes, [Section 1376](#) of Title 59 of the Oklahoma Statutes, or any other state or federal laws regarding the disclosure of confidential information.
- B. In developing the policy, the district board of education shall make an effort to involve the teachers, parents, administrators, school staff, school volunteers, community representatives, local law enforcement agencies and students. The students, teachers, and parents or guardian of every child residing within a school district shall be notified by the district board of education of its adoption of the policy and shall receive a copy upon request. The school district policy shall be implemented in a manner that is ongoing throughout the school year and is integrated with other violence prevention efforts.
- C. The teacher of a child attending a public school shall have the same right as a parent or guardian to control and discipline such child according to district policies during the time the child is in attendance or in transit to or from the school or any other school function authorized by the school district or classroom presided over by the teacher.
- D. Except concerning students on individualized education plans (IEP) pursuant to the Individuals with Disabilities Education Act (IDEA), P.L. No. 101-476, the State Board of Education shall not have authority to prescribe student disciplinary policies for school districts or to proscribe corporal punishment in the public schools. The State Board of Education shall not have authority to require school districts to file student disciplinary action reports more often than once each year and shall not use disciplinary action reports in determining a school district's or school site's eligibility for program assistance including competitive grants.
- E. The board of education of each school district in this state shall have the option of adopting a dress code for students enrolled in the school district. The board of education of a school district shall also have the option of adopting a dress code which includes school uniforms.



F. The board of education of each school district in this state shall have the option of adopting a procedure that requires students to perform campus-site service for violating the district's policy.

G. The State Board of Education shall:

1. Promulgate rules for periodically monitoring school districts for compliance with this section and providing sanctions for noncompliance with this section;
2. Establish and maintain a central repository for the collection of information regarding documented and verified incidents of bullying; and
3. Publish a report annually on the State Department of Education website regarding the number of documented and verified incidents of bullying in the public schools in the state.