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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 8, 2018
SUBJECT: Emergency Administrative Rule Promulgation

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

Emergency Rule Adoption

- (1) Title 210. State Department of Education
 - Chapter 10. School Administration and Instructional Services
 - Subchapter 13. Student Assessment
 - 210:10-13-24. Medical exemptions from chronic absenteeism [NEW]**

The State Board of Education and the Oklahoma Legislature have approved a new public school accountability system in compliance with the *Every Student Succeeds Act* (ESSA), which includes chronic absenteeism as one of the indicators used in calculating the school report cards required under 70 O.S. § 1210.545. House Bill 1693 (2017) directs the State Board of Education to "promulgate rules regarding the school site report card that grant a medical exemption from the eighteen-day chronic absenteeism provision." The proposed rule establishes guidelines for this medical exemption.

The proposed medical exemption would be available to apply to the qualifying absences of students who meet the rule's criteria for a "significant medical condition". The exemption is not for all medically excused absences, but only for those related to a condition that seriously incapacitates a student for an extended time, or absences necessary to receive treatment for a chronic condition (e.g., chemotherapy, dialysis, or similar recurring treatment needs). The exemption would also be available for absences related to a death in the student's immediate family, or certain other catastrophic events like a serious assault on the student. Schools applying for an exemption under these provisions will be required to submit an application that includes medical documentation of the condition, and the applications will be reviewed by a committee of OSDE personnel in the same manner as applications for emergency medical exemptions from Oklahoma School Testing Program assessments.

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

210:10-13-24. Medical exemptions from chronic absenteeism

(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) Purpose of the medical exemption from chronic absenteeism. The State Board of Education is directed in 70 O.S. § 1210.545 to promulgate rules providing for a medical exemption from the chronic absenteeism indicator. A public school district or charter school may request an exemption from inclusion in the school's chronic absenteeism indicator calculations for the related absences of a student who meets the criteria established in this Section for a significant medical condition.

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

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

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

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

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

(C) The school or school district has been provided with written documentation of the condition that is verified in writing by a physician licensed to practice in the State of Oklahoma, or by a physician licensed in another state if the student has received related treatment out of state. A copy of the documentation verifying the student's condition shall be filed in the student's educational record.

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

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

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

- (iii) Pregnancy, unless complications of the pregnancy otherwise meet this Section's criteria for a significant medical condition; or
- (iv) Refusal of a parent/guardian to permit the student to attend school or receive homebound services due to the illness, injury, or trauma.
- (v) The occurrence of one of the conditions listed in (D) shall not disqualify a student who is eligible for a medical exemption on a different basis.
- (E) Examples of conditions that could be considered "significant medical conditions" for the purposes of this Section may include, but are not limited to:
 - (i) The student is in the final stages of a terminal disease or degenerative illness, or the student has been placed in hospice care;
 - (ii) The student is comatose;
 - (iii) The student has a serious chronic medical condition (a condition lasting three months or more), and is absent for the purpose of receiving condition-related treatment such as chemotherapy or dialysis;
 - (iv) The death or life-threatening injury of an immediate family member of the student (student's parent/guardian, sibling, or child); or
 - (v) The student has sustained serious mental or physical injury as a result of a catastrophic event such as:
 - (I) A natural disaster or other event resulting in a declared state of emergency;
 - (II) An act of violence, including but not limited to: acts of physical assault, sexual assault, kidnapping, homicide, torture, or terrorism;
 - (III) Drowning;
 - (IV) Poisoning, fall, or traumatic brain injury; or
 - (V) Fire or explosion in the student's home when the student was present.
- (d) **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 addressed 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.
- (e) **Effect of exempt absence.** 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.
- (f) **Applications for exemption of one or more student absences.** A school district's application for a significant medical condition exemption for one or more student absences must include all supporting documentation, including physician verification and documentation of each date for which an exemption is requested, and must be submitted in the time, place, and manner designated by the State Department of Education.
- (g) **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 condition" 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 (f) 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 at the next regularly scheduled State Board of Education meeting, unless the petition is received ten (10) or fewer calendar days prior to the next regularly scheduled meeting. A petition received ten (10) or fewer calendar days prior to the next regularly scheduled meeting of the Board will be considered at the following month's regularly scheduled meeting.

(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 condition" 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 condition";

(B) The extent of the student's incapacitation or need for treatment; or

(C) 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 and that would have resulted in an exemption being granted for one or more absences if the newly discovered information had been available when the request was denied.

(4) **Actions on a petition for appeal.** After review of the petition for appeal in accordance with (g)(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 a medical 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 to maintain an accurate agency record of each request for a medical 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. The absences of students denied medical exemptions by the State Board of Education will be included in the calculation of the chronic absenteeism indicator of the school and/or school district.

RULE IMPACT STATEMENT 210:10-13-24

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

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

The State Board of Education and the Oklahoma Legislature have approved a new public school accountability system in compliance with the *Every Student Succeeds Act* (ESSA), which includes chronic absenteeism as one of the indicators used in calculating the school report cards required under 70 O.S. § 1210.545. House Bill 1693 (2017) directs the State Board of Education to "promulgate rules regarding the school site report card that grant a medical exemption from the eighteen-day chronic absenteeism provision." The proposed rule establishes guidelines for this medical exemption.

The proposed medical exemption would be available to apply to the qualifying absences of students who meet the rule's criteria for a "significant medical condition". The exemption is not for all medically excused absences, but only for those related to a condition that seriously incapacitates a student for an extended time, or absences necessary to receive treatment for a chronic condition (e.g., chemotherapy, dialysis, or similar recurring treatment needs). The exemption would also be available for absences related to a death in the student's immediate family, or certain other catastrophic events like a serious assault on the student. Schools applying for an exemption under these provisions will be required to submit an application that includes medical documentation of the condition, and the applications will be reviewed by a committee of OSDE personnel in the same manner as applications for emergency medical exemptions from Oklahoma School Testing Program assessments.

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 proposed change will affect schools attended by students who meet the criteria for exemption of certain qualifying absences, as exempt absences will not be included in the chronic absenteeism data for the school's accountability calculations.

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

The proposed change will benefit schools attended by students who meet the criteria for exemption of certain qualifying absences, because absences approved for exemption will not be included in the chronic absenteeism data for the school's accountability calculations.

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 8, 2018

STATUTORY AUTHORITY FOR 210:10-13-24

Oklahoma Statutes

Title 70. Schools

Chapter 22 - Testing and Assessment

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

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

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

1. "A" means schools making excellent progress;
2. "B" means schools making above average progress;
3. "C" means schools making satisfactory progress;
4. "D" means schools making less than satisfactory progress; and
5. "F" means schools failing to make adequate progress.

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

1. A school shall not receive a school grade if the number of students tested and included in the school grading system is less than the minimum sample size necessary for statistical reliability and prevention of the unlawful release of personally identifiable student data. The State Board of Education is directed to establish the lowest minimum sample size necessary to meet the requirements of this paragraph; and
2. The academic performance of students who are enrolled full-time in an online program that is offered by a school district or charter school that is not the district of residence or is not located in the district of residence of the student shall be reported separately by the school district or charter school and shall not be included when determining the grade of the school site or charter school.

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

E. The grade of a school shall be based on a multimeasures approach to accountability in accordance with the Elementary and Secondary Education Act of 1965 (ESEA) as reauthorized by P.L. No. 114-95, also known as the Every Student Succeeds Act (ESSA) and any federal regulations that include, but are not limited to, the following indicators:

1. Statewide assessments, including the establishment of student performance bands;
2. Graduation rates for high schools;
3. Statewide academic measures for elementary and middle schools;
4. English language proficiency for English learners; and

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

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

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

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

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

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

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

L. The State Board of Education shall promulgate rules to implement the provisions of this section. The Board shall promulgate rules regarding the school site report card that grant a medical exemption from the eighteen-day chronic absenteeism provision.