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Permanent Final Adoptions

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #13-1123]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Student Assessment

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [AMENDED]

AUTHORITY:

70 O.S. § 3-104; 70 O.S. § 1210.523.; State Department of Education

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Superseded rules:

Subchapter 13. Student Assessment

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [AMENDED]

Gubernatorial approval:

June 13, 2013

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Docket number:

13-1114

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The amendments establish an appeals process for students who have been denied a standard diploma by the school district in which the student is or was enrolled for failure to meet demonstrate mastery of state academic content standards required by 70 O.S. § 1210.523.

CONTACT PERSON:

Stephanie Moser Goins, (405) 521-4890

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF AUGUST 31, 2013:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams

(a) **Definitions.** Words and terms in this section shall have the following meaning:

(1) **"Alternate method"** means demonstrating mastery of state ~~curriculum~~academic content standards through an End of Course Project designed and approved by the State Board of Education. An End of Course Project is a project integrating and applying the knowledge and skills gained throughout a course to address a practical, real world challenge.

(2) **"Alternate test"** means a state or national test approved by the Oklahoma State Board of Education for one or more of the subject areas assessed by an end-of-instruction exam, which equals or exceeds the rigor of the end-of-instruction exam.

(3) **"Extenuating Circumstances"** means circumstances which are unexpected, significantly disruptive, beyond a student's control, and which may have ~~reasonably~~materially affected his/her academic performance.

(4) **"Proficient/Satisfactory"** means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) In accordance with 70 O.S. § 1210.523(A)-(E), ~~A-E~~, students may graduate from a public high school with a standard diploma by demonstrating mastery in the state academic content standards for Algebra I; English II; and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History by attaining at least a satisfactory or proficient score on the end-of-instruction exams or in the following way:

(1) Students who do not attain at least a satisfactory or proficient score on any of the required end-of-instruction exams in Algebra I, English II, and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History may be eligible to graduate with a standard diploma by completing at least one of the steps below until a satisfactory or proficient score is attained and meeting all other graduation requirements ~~are met~~:

(A) ~~Step One:~~ Students shall be provided one or more remediation opportunities and will either:

(i) Retake the end-of-instruction exam(s); or

(ii) Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area which may be taken prior to or subsequent to the end-of-instruction exam; or

(iii) Demonstrate mastery of the subject matter through an End of Course Project which includes meeting the level of mastery defined by the rubrics explained in paragraph (b)(2) of this section.

(B) ~~Step Two: Students who do not achieve a satisfactory or proficient score through step one shall continue to receive remediation opportunities and will either:~~

(i) ~~Retake the end-of-instruction exam(s); or~~

(ii) ~~Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area which may be taken prior to or subsequent to the end of instruction exam; or~~

(iii) ~~Demonstrate mastery of the subject matter through an End of Course Project which includes meeting the level of mastery defined by the rubrics explained in (b)(2) of this section.~~

~~(C)B) Students who do not meet the graduation requirements through Step Two may repeat Step Two as necessary. School districts will only provide remediation for students while they are enrolled in public school.~~

~~(D)C) An alternate test may be used to meet the graduation requirements for more than one end-of-instruction exam. A student may take more than one alternate test to meet the graduation requirements.~~

~~(E)D) Remediation opportunities will be outlined in the local school district remediation plan (70 O.S. § 1210.523). School districts shall document a student's failure to participate in remediation including written acknowledgement of the graduation requirements by the student's parent or guardian.~~

~~(F)E) School districts shall document a student's failure to complete test retake opportunities. Documentation shall include including written acknowledgement by the student's parent or guardian of the graduation requirements related to end-of-instruction tests.~~

(2) Demonstration of mastery through an End of Course Project (Alternate Method).

(A) In order to demonstrate mastery and graduate through an alternate method on end of instruction exams, students must complete an End of Course Project for Algebra I, Algebra II, Biology I, English II, English III, Geometry, or United States History. End of Course Projects will be designed by the State Department of Education and approved by the State Board of Education.

(i) End of Course Projects for English II and English III must include a response to literature and a writing sample of comparable rigor to the end-of-instruction exams.

(ii) End of Course Projects for Biology I must include the process standards as assessed through laboratory experiments.

(B) End of Course Projects shall be classified by the State Department of Education and submitted to the State Board of Education for approval in three different categories: Category A, Category B, or Category C. Category A projects shall be offered to all students who choose the Alternate Method. Category B projects shall be offered as an Alternate Method to students as directed by an IEP and/or LIEP, and shall incorporate additional, varied approaches for students to demonstrate mastery of the state academic content standards. Category C projects shall be offered as an

Alternate Method to students with the most significant cognitive disabilities and shall be designed for students who are participating in an OAAP assessment for that subject area in accordance with the student's IEP.

~~(B)C) School districts shall submit completed student End of Course Project(s) to the State Department of Education by April 1, August 1, or November 1 of each year. Projects will be evaluated and returned within 45 business days. Subject to the availability of funds, the State Department of Education may contract with individuals, educational institutions, or companies to evaluate these End of Course Projects. Evaluators shall use rubrics approved by the State Board of Education for determining student mastery of state academic content standards through End of Course Projects. If funds are not available, End of Course Projects will be evaluated at the local school district level according to requirements of the State Board of Education, and school districts shall submit reports of all student End of Course Project(s) either in progress or completed by April 1, August 1, and November 1 of each year.~~

~~(C)D) End of Course Projects must be retained for a minimum of 5 years from completion.~~

~~(3) The Oklahoma State Board of Education has the authority to waive one or more of the requirements in (b)(1) of this section for an individual student if the Board determines that extenuating circumstances justify the waiver for an end of instruction exam.~~

~~(4)3) Students who do not receive instruction in Oklahoma public schools may demonstrate mastery in required subjects by submitting documentation of proficiency on an equivalent state end-of-instruction exam(s) in the state in which instruction was received; attaining at least a satisfactory or proficient score (as defined by the Oklahoma State Board of Education) on the Oklahoma end-of-instruction exam(s); meeting the approved level of proficiency on an alternate test(s); demonstrating mastery through an End of Course Project(s) as described in (b)(1) and (b)(2) of this section.~~

~~(5)4) Students who do not have an opportunity to take required end-of-instruction exams without extending the date of graduation may demonstrate mastery in required subject areas by meeting the approved level of proficiency on an alternate test(s) or an End of Course Project(s).~~

~~(6)5) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) may demonstrate mastery of state academic content standards through a modified proficiency score on the state assessment(s) as established by the IEP Team. Any deviation from the standard conditions, accommodations, or proficiency score on the state assessment(s) must be established on the student's IEP, and shall be recorded on the student's cumulative record.~~

~~(7)6) Each year beginning with the 2011-2012 school year, school districts shall report to the State Department~~

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of Education through the School District Reporting Site, by school site, the number of students issued standard diplomas based on the exceptions and exemptions outlined in these rules, including the categories of exceptions and exemptions granted.

(c) Beginning with students entering the ninth grade in 2008-2009, in order to facilitate the monitoring of student progress toward meeting the graduation requirements of 70 O.S. § 1210.523, districts will maintain an Achieving Classroom Excellence (ACE) Demonstration of Mastery cumulative record for those students who do not attain at least a satisfactory or proficient score on any of the required end-of-instruction exams. All school districts in the state shall use this cumulative record uniform document, or all information required on the uniform document must be contained within the district's student information system. The State Department of Education will provide an electronic version of this cumulative record to the districts. This cumulative record shall accompany the student when transferring to a new district. For each student who meets the graduation requirements, the student's transcript shall read, "The student has met the graduation requirement of demonstrating mastery in the state academic content standards."

(d) **Appeal of denial of a standard diploma.** Any student who has been denied a standard diploma by the school district in which the student is or was enrolled for failing to meet the educational requirements of 70 O. S. § 1210.523 may appeal the denial to the State Board of Education in accordance with the following procedures:

(1) **Who may petition for appeal.** Petitions for appeal of a denial of a student diploma may be filed by the following:

(A) A parent or legal guardian of a student or 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 70 O.S. §1-113(A)(1) may file an appeal with the State Board of Education as a petitioner on behalf of the student if the student is either considered a minor child as of the date of denial of the student's diploma; if the student is considered legally incompetent as of the date of denial of the student's diploma; or both.

(B) A student who is not otherwise considered legally incompetent may file a petition for appeal directly with the State Board of Education as a petitioner if the student has either:

(i) Obtained the legal age of majority set forth under Oklahoma law; or

(ii) Rights of majority have been conferred upon the student by a judicial order recognized by the courts of the State of Oklahoma.

(C) A school, school district, or local school board in which a student is or was enrolled may not name itself as a Petitioner for a student or file a petition on behalf of a student. Any petition for appeal submitted

by a school district as a petitioner on behalf of a student shall be grounds for automatic dismissal of the petition for appeal.

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

(A) **Time of filing.** A notice of appeal must be submitted in writing for filing to the Secretary of the State Board of Education within thirty (30) days after the date the student, parent(s) of the student, or legal guardian of the student receives a written notice of denial of a standard diploma issued by the school district or local board of education. In absence of receipt of a written notice of denial of a standard diploma, a diploma shall be deemed denied if not granted within ninety (90) days of the last day of the last semester of the last school year in which the student attended school.

(B) **Method of filing.** Petitions for appeal may be submitted for filing to the Secretary of the State Board of Education in person or by mail. A petition submitted for filing by mail may be accepted for filing 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 petitioner(s) and the school district's Superintendent or the Superintendent's legal 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 shall acknowledge receipt of the request in writing and notify the student and/or parent or legal guardian when the appeal shall be submitted to the State Board of Education for action. All timely filed petitions for appeal shall be brought to the State Board of Education for action. The Board shall take action on the petition no later than forty-five (45) days after the date of receipt of a timely-filed petition.

(3) **Review of petitions.** The State Board of Education shall appoint a committee consisting of employees of the State Department of Education to assign a case number for reference, review the petitions for appeal, and identify the basis for which the standard diploma was denied.

(A) **Factors considered in recommending acceptance or denial of an appeal.** The committee shall make a recommendation of action on the appeal to the State Board of Education based on the following criteria:

(i) Completion and scores of end-of-instruction (EOI) exams;

(ii) Remediation and retests of end-of-instruction (EOI) exams;

(iii) Completion and scores of Alternate tests approved by the State Board of Education;

(iv) Completion of End of Course Projects approved by the State Board of Education;

- (v) Completion or scores of alternative methods approved by the State Board of Education;
 - (vi) The existence of an extenuating circumstance, as defined in section (a) of this rule;
 - (vii) The availability of testing opportunities;
 - (viii) Other methods identified by the student, which demonstrate mastery of state academic content standards, referenced in section (b) of this rule, not to include completion of the course;
 - (ix) The exhaustion of reasonable alternative methods and exemptions and exceptions approved by the State Board of Education, including the existence of extenuating circumstances; and
 - (x) Whether action is appropriate based on the statutory language of 70 O. S. § 1210.523. Petitions for appeal which are untimely filed shall be submitted to the Board with a recommendation for denial based upon untimeliness.
- (B) Deficiencies in petitions for appeal.** The State Board of Education may provide petitioners with an opportunity to remedy deficiencies in an appeal filed in an inaccurate or incomplete manner in accordance with the following procedures:
- (i) Prior to submission to the State Board of Education with a recommendation for denial based upon a deficiency in the petition, the petitioner shall be notified in writing of the deficiency in the appeal and provided five (5) business days from the receipt of written notification to resolve any deficiencies identified in the petition for appeal.
 - (ii) Within five (5) business days from receipt of the written notification of deficiency, Petitioner shall either:
 - (I) Provide the Board with all information and/or documentation necessary to remedy the deficiency; or
 - (II) In the event a petitioner requires additional time to remedy the deficiency, Petitioner may request a stay/continuance of thirty (30) calendar days and provide the Board a signed waiver of the forty-five (45) day deadline in accordance with subparagraph (4)(A) of this section. Failure by a petitioner to complete the steps necessary to timely remedy a deficiency in a petition in accordance with the procedures set forth in (d)(3)(B)(ii) shall result in a recommendation submitted to the State Board of Education for denial based on deficiency.
- (C) Upon completion of review of the petition, the committee shall submit to the Board:**
- (i) A copy of each petition for appeal;
 - (ii) A written explanation of the petition;
 - (iii) Copies of all evidence and/or documentation submitted to the Board by a petitioner in support of the appeal;
 - (iv) Any additional information that may be necessary for the Board to take action;

- (v) A recommendation of either acceptance or denial of the petition.
- (4) Dismissals of petitions for appeal.** At any time after filing, a petition for appeal may be dismissed by the Board prior to final action in accordance with the following procedures:
- (A) Grounds for dismissal of a petition may be based upon a demonstration of evidence of one or more of the following circumstances:
 - (i) The appeal has been rendered moot (e.g., petitioner subsequently meets all ACE requirements during the pendency of the appeal);
 - (ii) Appeal is filed by a party who is not a proper petitioner as set forth by (d)(1) of this section;
 - (iii) The appeal is premature (e.g., petitioner's diploma has not yet been denied);
 - (iv) Denial of diploma was based on factors unrelated to failure to demonstrate mastery of state academic content standards set forth in 70 O.S. § 1210.523 (e.g., denial based upon lack of credit hours necessary to meet graduation requirements set forth in 70 O.S. § 11-103.6);
 - (v) Inaction by Petitioner (e.g., failure to timely respond to requests for additional evidence or information from the State Board) or
 - (vi) Dismissal is requested by the Petitioner.
 - (B) Prior to dismissal, petitioner shall be provided with reasonable notice of intent to dismiss the appeal and opportunity to respond in accordance with the following procedures:
 - (i) The notice of intent to dismiss the appeal shall conform to the requirements of notice set forth in 75 O.S. § 309, and shall include:
 - (I) A statement notifying the Petitioner of the forty-five (45) day time requirement set forth in 70 O. S. § 1210.523;
 - (II) A statement providing the Petitioner with five (5) business days from Petitioner's receipt of notice of intent to dismiss, to respond to the notice of intent to dismiss by either submitting a written opposition to dismissal, or requesting a stay/continuance of the action in accordance with the procedures set forth in (d)(5)(A) of this section; and
 - (III) A statement that Petitioner's failure to respond to the notice of intent to dismiss within five (5) business days from Petitioner's receipt of notice of intent to dismiss the appeal may result in dismissal of the petition by the Board without further action on the appeal.
- (5) Notice of action on petition recommended to the Board.** Following review of the petition for appeal, the Petitioner shall receive written notification as to the recommended action (i.e., acceptance or denial of the petition) that will be presented to the State Board. Written notification of the recommended action must be received by the Petitioner at least five (5) business days prior to the

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meeting of the State Board of Education in which the recommendation will be presented.

(A) At any time prior to final action on the appeal, the State Board may grant a stay or continuance of an action on an appeal upon receipt of a motion for continuance by Petitioner and a written waiver by Petitioner of the forty-five (45) day deadline for action upon an appeal set forth at 70 O.S. § 1210.523 and accompanying rules.

(B) Recommendations for denial of a petition for appeal shall be based upon the grounds set forth in paragraph (d)(3) of this section.

(6) **Action on a petition for appeal.** After review of the petition for appeal in accordance with the procedures set forth in (d)(3) of this section, the State Board of Education shall take action on a petition for appeal based on the merits of the written information provided in the appeal.

(A) The Board shall consider a petition for appeal in the form of a "Consent Docket," which shall be considered as one item.

(B) Any member of the Board may request that a petition for appeal be removed from the "Consent Docket" for discussion or to be separately considered. If such a request is made, the matter shall be removed from the docket and presented for individual action by the State Board of Education.

(C) In the event the Board determines that there is insufficient evidence in order to make an effective or proper ruling on the appeal, the State Board of Education may, by a vote of the majority of members, remove a petition for appeal from the "Consent Docket" and set a hearing for further review and consideration in accordance with the procedures set forth at (d)(7) of this section.

(7) **Procedures for hearings on appeal of a petition.** If the Board determines a hearing is necessary, the Secretary of the Board shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act, 75 O.S. § 309 *et seq.* and with the following procedures:

(A) The Board shall provide the Petitioner(s) and all interested parties, if any, with reasonable notice of the hearing and opportunity to appear at the hearing to present explanation of the petition, evidence submitted to the Board, and/or any additional information that Petitioner believes may be necessary for the Board to take action. Any proper party to the appeal shall have the right to designate legal counsel to appear and act for and on behalf of the party represented, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma.

(B) In addition to the contents of the notice required by 75 O.S. § 309, the notice shall also advise Petitioner of:

(i) The forty-five (45) day time requirement set forth in 70 O. S. § 1210.523;

(ii) Petitioner's opportunity to submit a motion and waiver of Petitioner's right to final action of the board along with a waiver of the forty-five (45)

day time requirement in accordance with the procedures set forth in (d)(5)(A) of this section; and

(iii) A statement that Petitioner's failure to respond to the notice of petition and/or appear at the hearing, may result in dismissal of the petition for appeal.

(C) The school district in which the student is or was enrolled shall be named as an "Interested Party" and shall be provided with notice and opportunity to appear and present evidence at the appeal hearing before the State Board of Education.

(D) The determination of the State Board of Education shall be considered a final agency order, shall be issued in writing, and shall conform to the requirements of final agency orders set forth in 75 O.S. § 312.

(e) **Exceptions and Exemptions to Student Requirements to Demonstrate Mastery of State Academic Content Standards.** The State Board of Education may approve the petition for appeal of students and grant a waiver of one or more EOI assessments for students who have provided evidence of the existence of at least one of the following:

(1) Facts documenting events, conditions, or situations which fall within the definition of "extenuating circumstances" set forth in paragraph (a)(3) of this section;

(2) Demonstration of mastery of the state academic content standards referenced in subsection (b) of this rule, by successful completion of a higher level course in the same subject matter and attaining a satisfactory or proficient score in an end-of-instruction exam in that same course.

(f) **Reporting appeal data.** By September 1 of each year, each school district shall report to the State Department of Education all data necessary for the Board to complete the annual report required pursuant to 70 O. S. § 1210.523 by the October 1 deadline. The report provided to the State Department of Education shall include, at a minimum, the total number of students in the school district who filed petitions for appeal of denials of diplomas which occurred in the previous school year, and the total number of those petitions filed which were granted. Data shall include subtotals of number of appeals filed and granted for each school site. Information collected pursuant to state statute shall be made available to the district's Regional Accreditation Officer (RAO) during the accreditation process.

[OAR Docket #13-1123; filed 7-12-13]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY CHAPTER 10. LICENSURE AND REGULATION OF OPTOMETRISTS

[OAR Docket #13-1140A]

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Subchapter 3. Licensing Procedures
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