



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

MEMORANDUM

TO: The Honorable Members of the State Board of Education
FROM: Joy Hofmeister
DATE: June 25, 2020
SUBJECT: Administrative Rule Promulgation

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

- (1) Title 210. State Department of Education
Chapter 35. Standards for Accreditation of Elementary, Middle Level,
Secondary, and Career and Technology Schools
Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career
and Technology Schools
Part 7. Standard IV: Curriculum, Instruction, Assessment, and Climate
210:35-3-67. Instruction [AMENDED]
Subchapter 21. Alternative Instructional Delivery Systems
210:35-21-2. Alternative instructional delivery systems [AMENDED]

This is an emergency update to two administrative rules in the Oklahoma school accreditation standards, clarifying requirements for virtual education provided by a public school (other than a full-time virtual charter school). These provisions are being added through emergency rulemaking because virtual education options have become a particularly urgent issue for public schools in recent months, due to ongoing effects of the COVID-19 pandemic. Two different concepts are addressed by this rule amendment:

(1) **"virtual (internet-based) instruction"** that a public school offers on a full-time and/or part-time as part of its routine education program, defined as "the use of the internet or other such digital information transmission systems as the primary medium of instruction"; and

(2) **"distance learning plans"**, which may or may not include virtual instruction, that a public school implements when students cannot attend school on site (such as during the COVID-19 public health closures). "Distance learning plan" is defined as "a plan implemented under a public school district or charter school's distance learning policy...describing any means by which instruction will be delivered to students outside a traditional school setting."

Virtual Education

One key clarification made by the rule update provides that **an Oklahoma school district may offer full-time or part-time virtual education to any enrolled student**, whether a district resident or a student who has enrolled in the district under any applicable transfer provisions. 210:35-3-67(q) outlines four requirements that apply to any full-time or part-time virtual instruction offered by a public school as part of its routine education program:

- Equitable access
- Alignment with standards
- Attendance policy
- Student orientation

New content in 210:35-3-67(q) also clarifies that a public school district or charter school may provide such full-time or part-time virtual instruction either directly, or by means of an authorized contract with a provider of education services (e.g., an online course provider), provided the same requirements apply.

Distance Learning Plans

The new content addressing distance learning policies is based on the guidance provided to Oklahoma public schools during the COVID-19 state of emergency. Virtual education is addressed as one method schools can use to deliver instruction to students during a time period when traditional onsite instruction cannot be provided, whether due to an extended closure such as the spring 2020 pandemic situation, or a short-term closure such as a local weather emergency. A school district's academic calendar may build in one or more emergency closure "makeup days" to be delivered through the distance learning plan, in the same manner as a school's academic calendar may build in additional standard school days to be held as makeup days in case of emergency weather closures.

210:35-21-2(c)(1) details the following requirements for distance learning plans:

- Equitable access
- Alignment with standards
- Attendance policy

While a school district may offer virtual instruction as *one* of its methods for implementing the distance learning plan, a public school may not provide distance learning *solely* through virtual instruction unless every student is ensured free use of any internet access and device(s) necessary to engage with the instruction. For virtual instruction incorporated into a distance learning plan, the virtual attendance provisions of 210:35-3-67(q) apply.

Finally, at 210:35-21-2(c)(1)(C), the update addresses requirements that apply if a school district or charter school adopts a distance learning policy that allows for the possibility of "predesignated distance learning days" on which a distance learning plan would be implemented to deliver a pre-scheduled day of instruction on a *non-emergency* basis.

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE
LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS
SUBCHAPTER 3. STANDARDS FOR ELEMENTARY, MIDDLE LEVEL,
SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS
PART 7. STANDARD IV: CURRICULUM, INSTRUCTION, ASSESSMENT,
AND CLIMATE

210:35-3-67. Instruction

- (a) Special instruction, services, materials, and testing programs shall be available for those students having exceptional needs.
- (b) The overall educational program shall incorporate high expectations and successful experiences for all students.
- (c) Students and parents/guardians shall be informed about the Oklahoma Academic Standards for the core curriculum areas.
- (d) The placement of students in instructional skill groups within classes shall be reviewed frequently and adjustments shall be made in accordance with student needs and Oklahoma Academic Standards performance.
- (e) All instructional/learning materials shall be selected with consideration for the appropriate treatment of racial, ethnic, and cultural groups and the avoidance of stereotyping.
- (f) Appropriate instructional materials and equipment for core curriculum areas shall be provided in the amount and types needed to ensure that all students demonstrate competency in the Oklahoma Academic Standards.
- (g) Students and parents/guardians shall be informed in writing about their rights and responsibilities pertaining to the school curriculum.
- (h) The school shall protect the legal rights of students and parents/guardians as those rights relate to the curriculum.
- (i) Instructional methods shall provide for cooperative group learning in addition to competitive and individualized learning formats.
- (j) Learning activities and assessment procedures shall be congruent with the Oklahoma Academic Standards.
- (k) Learning activities shall be supported by supplementary or alternative instructional services as required by individual student needs.
- (l) Teacher/student interaction shall be utilized in planning of instructional options for learning activities.
- (m) All activities to teach Oklahoma Academic Standards shall provide for the different learning styles of students by including a diversity of appropriate learning opportunities.
- (n) Learning activities shall provide for the use of a variety of instructional materials and equipment.
- (o) Teachers shall use classroom practices which make the most productive use of class time.
- (p) The school's administrators shall enforce procedures and regulations which protect student learning time.
- (q) Each school district may offer, including by means of an authorized contract with a provider of instructional services, full-time or part-time virtual education to students who are residents of the school district or who have been approved for an authorized transfer to attend the district. Whether offered directly by the school district or by means of an authorized contract with an

instructional services provider, virtual education offered by a public school must include the following features:

(1) **Equitable access.** If a public school requires students to engage with instruction or content using the internet or other means of remote connectivity, access to the connectivity and any device(s) necessary to use it must be made available for student use free of charge. If a public school offers optional opportunities for students to participate in virtual instruction, it is not necessary for the school to provide the device or connectivity necessary to access the optional virtual opportunities, provided all eligible students are permitted to participate in optional virtual education opportunities. A public school may set eligibility criteria for student participation in optional virtual education opportunities, provided the criteria are consistent with the equitable principles of public education and the antidiscrimination provisions of 42 U.S.C. § 2000d, Title IX, and other applicable laws. (Examples of permissible eligibility criteria include student grades, attendance, and grade level.)

(2) **Alignment with standards.** Virtual instruction delivered directly by a school district, or by means of an authorized contract with an education services provider, shall be consistent with the Oklahoma Academic Standards that apply to the subject area and/or grade level for which the student is awarded credit.

(3) **Attendance policy.** As a condition of offering full-time or part-time virtual instruction to students, a school district or charter school shall establish clear written policies for the program(s), which must include measurements of attendance for students and staff, awarding of credits for course completion, and participation in extracurricular activities. Separate attendance policies may be appropriate for full-time virtual education and part-time virtual education. Records of student enrollment and attendance in virtual instruction programs shall be maintained through the school district or charter school's authorized student information system, consistent with all requirements of Oklahoma Administrative Code 210:10-1-5. Virtual attendance policies for Oklahoma school districts and charter schools shall include the following provisions:

(A) The first date of membership and attendance for a student participating in a virtual instruction program shall be the date on which the student first completes an instructional activity as defined in 70 O.S. § 3-145.8; and

(B) The defined time period, assignment completion status, or other means used to determine student attendance in the virtual program shall meet or exceed the minimum measures of virtual attendance listed at 70 O.S. § 3-145.8(B).

(4) **Orientation.** Each school district or charter school that offers an authorized virtual instruction program as addressed by this Section shall: provide a student orientation for full-time and part-time virtual students; notify each student who will be participating in a virtual instruction program and their parent/legal guardian of the requirement to participate in virtual the student orientation; and require all students participating in the program to complete the student orientation prior to completing any other instructional activity. Time spent completing the virtual student orientation, or activities completed as part of the orientation, may be counted toward attendance in the virtual program.

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE
LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS
SUBCHAPTER 21. ALTERNATIVE INSTRUCTIONAL DELIVERY SYSTEMS

210:35-21-2. Alternative instructional delivery systems

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

(1) **"Synchronous instruction"** means the instructor and student's primary interactions are in real time. Regular classroom instruction is synchronous instruction, as well as two-way interactive video. Web-based instruction that requires real-time interaction between student(s) and instructor as the primary format of instruction is also synchronous instruction.

(2) **"Asynchronous instruction"** means instructor and student interaction is not dependent on real time. Asynchronous instruction allows the student to engage in learning activities anywhere at ~~anytime~~any time. For instruction to be considered asynchronous, the primary format of instruction does not depend on real-time interaction of the participants.

~~(3) **"Web-based instruction"** means the use of the World Wide Web as the primary medium of instruction, with a computer serving as the primary tool of instruction. Web-based instruction may be synchronous or asynchronous.~~

(3) **"Distance learning plan"** means a plan implemented under a public school district or charter school's distance learning policy as authorized by subsection (c), describing any means by which instruction will be delivered to students outside a traditional school setting. A distance learning plan must meet all requirements listed in subsection (c) of this Section.

(4) **"Two-way interactive video instruction"** means real-time (synchronous) interaction between student(s) and instructor by means of an electronic medium that provides for both audio (sound) and video (sight) signal. Students and instructors participating in two-way interactive video instruction may both see and hear each other in an approximation of real-time.

(5) **"Virtual instruction"** means the use of the internet or other such digital information transmission systems as the primary medium of instruction. Virtual instruction may be synchronous or asynchronous, or may combine synchronous and asynchronous instruction.

(b) **Alternative Instructional Delivery System.** ~~Internet-based~~Virtual instructional programs offered for instructional purposes and/or high school credit shall be approved by and under the supervision of the ~~local~~ board of education of the school district where the course is offered. The State Board of Education reserves the right to request information and materials sufficient to evaluate the proposed course(s) for the purposes of course code alignment and other authorized purposes.

(c) **Local board policy.** All ~~local~~ school district boards of education in the state of Oklahoma shall adopt policies regarding ~~Internet~~internet-based instructional courses which shall comply with the following guidelines.

(1) Web-based and two-way interactive video instruction shall be viewed as methods by which the public schools within the state can expand their course offerings and access to instructional resources. These ~~new~~ technologies should not be viewed solely as substitutes for direct, face-to-face student and teacher interactions, but as a means of expanding the ability of the local district to bring the world of knowledge to their students. With the exception of a charter school authorized by its sponsor to provide virtual instruction only, a

public school shall offer in-person classroom instructional opportunities in addition to any virtual instructional opportunities offered to students.

(A) Virtual instruction in distance learning plans. During a state of emergency as identified in Oklahoma Administrative Code 210:10-13-23(f) or 210:10-13-25(h) that leads to the temporary emergency closure of school campuses, public schools may implement distance learning plans as approved by the State Board of Education which provide for distance learning that is accessible to all students. Further, a public school district or charter school may adopt a policy providing for the short-term implementation of a distance learning plan due to a localized emergency, such as a weather-related school closure or a localized public health emergency. A school's approved academic calendar may build in one or more emergency closure "makeup days" to be delivered through the distance learning plan, in the same manner as a school district's calendar may build in additional standard school days to be held as makeup days in case of emergency weather closures.

(B) Virtual instruction in home-based education. A public school district or charter school may adopt a distance learning plan policy that provides for virtual or partially virtual instruction to deliver home-based education to a student who is unable to attend school in person for a period of time due to extended medical or other issues, pursuant to Oklahoma Administrative Code 210:10-1-5. If a school district or charter school delivers its home-based education program solely through virtual instruction, any participating student who does not already have access to the necessary connectivity and/or device(s) shall be provided the connectivity and device(s) necessary to access the instruction free of charge.

(C) Predesignated (non-emergency) distance learning days. If a public school adopts a policy that authorizes the scheduling of predesignated school days on which instruction will be delivered through a distance learning plan on a non-emergency or non-"makeup day" basis, the plan must provide for instruction on such days to be delivered to all students in the same manner regardless of their household resources. A public school district or charter school that wishes to have a predesignated distance learning day count toward the minimum school year requirements of 70 O.S. § 1-109 shall provide access for all students to the delivery method chosen by the school for its predesignated distance learning days. For example, a school district that builds into its academic calendar one or more predesignated distance learning days that will involve internet based instruction or activities must ensure that every student is provided free use of both the necessary connectivity and a device enabling access to the connectivity and content. Alternately, if a public school wishes to implement predesignated distance learning days using virtual instruction but has not made connectivity and device access free for student use, the district must offer an onsite opportunity to access the virtual instruction, and make free round-trip transportation available to students from their homes to the virtual access site(s). At least one school site in each grade range must remain open and appropriately staffed to provide instruction to students who use the onsite opportunity to access the predesignated distance learning day content, in addition to any transportation staffing needed to ensure student access to the site(s). A policy that authorizes predesignated distance learning days must include written provisions establishing how attendance will be determined for such days. If a school district or charter school provides virtual instruction for predesignated distance learning days, the attendance provisions shall at a

minimum incorporate the requirements of Oklahoma Administrative Code 210:35-3-67(q)(3).

(D) Distance learning plan requirements. A school district or charter school shall submit a copy of its distance learning plan to the Oklahoma State Department of Education (OSDE) Office of Accreditation within three (3) business days of adoption by the school district board of education or charter school governing board. If an update or revision of the policy is adopted, such amended policy shall also be submitted to the OSDE Office of Accreditation within three (3) business days of adoption. A public school policy authorizing the implementation of a local distance learning plan must include the following considerations:

(i) Equitable access. Participation in the distance learning plan must be accessible to every student regardless of household resources. This means that if a public school requires students to engage with instruction or content using the internet or other means of remote connectivity, access to the connectivity and any device(s) necessary to use it must be provided for student use free of charge. If a school district or charter school cannot provide connectivity and device access for the use of all students due to limitations such as budget and/or geography, but plans to use virtual instruction as part of its distance learning plan as authorized in subsection (c)(1)(A), the distance learning plan must provide for alternate methods to deliver equitably equivalent instruction to all students. Such alternate means could include approaches such as paper packets of instructional materials supplemented by periodic direct contact with teachers, in person or by telephone or other method of communication. Any materials necessary for participating in a public school's distance learning plan must be made available to students free of charge, e.g., packets of paper instructional materials, blank paper for assignment completion, and writing instruments or other supplies as appropriate for the grade level or subject area (e.g., geometric compass, protractor, crayons/colored pencils if required for assignment completion). If a public school's policy for distance learning allows for different instructional delivery methods due to the inability to provide connectivity and device(s) to all students, the policy must address the school's method(s) for making individualized determinations of which students would be able to access virtual instruction and which would not, including equitable plans for serving students who would not have access to virtual instruction.

(ii) Alignment with standards. A local distance learning plan must provide that instruction and content provided through virtual education or other distance learning delivery methods is consistent with the Oklahoma Academic Standards for the subject area and/or grade level in which credit is awarded. Instruction and content provided through distance learning delivery methods other than virtual instruction must be equitably equivalent to the instruction and content provided through virtual instruction.

(iii) Attendance policy. As a condition of adopting an authorized local distance learning plan, a school district or charter school shall establish a clear written attendance policy for students participating in the plan. Attendance policies for distance learning provided through virtual education may be based on total time logged in and engaged, assignments or other instructional activities completed, or a combination of engagement time and assignment completion as defined in the policy, provided such policies must meet or exceed the requirements of Oklahoma Administrative Code 210:35-3-67(q)(3). Attendance policies for distance learning

provided by means other than virtual education may consider factors such as assignment completion and engagement with instructional supports, provided no student shall have a grade lowered or be otherwise penalized for failure to engage with instructional supports the student does not have the resources to access (e.g., telephone service, internet access, transportation).

(2) To ensure equitable access to instruction, in the development of a policy authorizing a distance learning plan as addressed in (c)(1) a school district or charter school shall consult a working group of community stakeholders. Diligent efforts shall be made to include persons of different backgrounds and experiences to provide for the development of a distance learning plan that is accessible to the entire school community. Such a working group should include: school leaders and teachers; parents/guardians and other community members representing different socioeconomic statuses, racial and ethnic identities, and cultural perspectives; representatives of any Native American tribal nation(s) with territory or members served by the district; and other persons or groups identified by the district whose perspectives are appropriate to consider in the development of a distance learning plan.

(2)(3) The local school board district or charter school shall be the entity granting student credit for completion of courses offered by means of ~~Internet-based~~ virtual instruction, including instruction provided by means of an authorized contract with an instructional services provider. The local district school board or charter school governing board will assume all the same responsibility for such course work courses offered by such means as for all other courses offered by the district.

(3)(4) Only students who are regularly enrolled in the school district, either as resident students or transfer students, shall be allowed to enroll in alternative instructional delivery systems courses offered for credit through the local school district.

(4)(5) A district board of education may authorize enrollment on a part-time basis utilizing ~~Internet~~ internet-based courses for students who have ~~dropped out of school or have been suspended from school provided such student was enrolled at any time in a public school in this state during the previous three (3) school years~~ previously been denied a diploma, pursuant to 70 O.S. § 11-103.6(Q).

(5)(6) Students enrolled on a full-time basis shall be authorized to enroll in ~~Internet~~ internet-based courses.

(6)(7) The principal or designee of the local school shall evaluate and ~~approve/disapprove~~ approve or disapprove all students' requests to participate in courses delivered by means of ~~Internet~~ internet-based instruction, provided that all requests eligible pursuant to Oklahoma Administrative Code 210:15-34 are approved as provided therein. Only those enrollments approved by such a process shall be eligible for credit granted by the local school district.

(7)(8) A certified staff member shall be identified by the local ~~each~~ school principal to serve as the building level contact person to assist students enrolling in online courses and serve as a liaison to the online teachers and provider(s).

(8)(9) Students earning credit by means of ~~Internet-based~~ virtual instruction shall participate in all assessments required by the Oklahoma School Testing Program. ~~No student shall be allowed to participate in these assessments at a place other than the school site at which the student is enrolled.~~

(9)(10) Courses offered for credit by means of ~~Internet-based~~ virtual instruction shall be aligned with the ~~Priority Academic Student Skills (PASS)~~ Oklahoma Academic Standards. Districts may also establish additional criteria as a basis for course selection, provided any

additional criteria are consistent with 70 O.S. § 1-111 Oklahoma Administrative Code 210:15-34.

~~(10)~~(11) Oklahoma statute legal provisions limiting the number of students public school teachers may supervise in each period of instruction and the total number of students allowed daily shall apply to synchronous web-based and two-way interactive video courses, provided any associated moratorium or exemption that applies to traditional classroom instruction shall also apply to synchronous instruction. The number of students each instructor may be required to supervise in asynchronous web-based courses shall be established by means of local school board policy.

~~(11)~~(12) Each teacher of two-way interactive video ~~and or web-based~~virtual courses shall be provided inservice training pertaining to the methodology of instructional delivery and the technical aspects of distance learning.

~~(12)~~(13) The issues regarding the monitoring of student progress, graded assignments, and testing in ~~Internet-based~~virtual instruction courses shall be addressed by the local school board policy.

~~(13)~~(14) The security of individual student data and records shall be addressed by the local school board policy. No individual student data obtained through participation in ~~Internet-based~~virtual instruction courses shall be used for any purposes other than those that support the instruction of the individual student. Under all circumstances, the provisions of the Family Educational Rights and Privacy Act (FERPA) apply to student data held or accessed by any public school or its contractors or agents, including any contracted provider of virtual instruction or other distance learning media.

~~(14) District level aggregated data obtained through participation in Internet-based instruction courses shall be addressed by the local school board policy.~~

(15) All federal and state statutes and regulations pertaining to student privacy, the transmission or posting of images or other content on the internet or "World Wide Web", copyright of materials, Federal Communications Commission (FCC) rules pertaining to the public broadcasting of audio and video, and other such issues shall apply to virtual instruction platforms, media, and any associated content~~be addressed by the local school board policy.~~

(16) Prior to the beginning of instruction, cooperating school districts sharing courses by means of two-way interactive video technology shall, by means of contractual agreement, address such issues as the instruction costs, ~~bell~~instruction schedules, school calendars, student behavior, teacher evaluation, textbooks or other course materials, class periods and other such interactive video sessions, student grades and grading policies, teacher load, and instructor employment.

(17) Contractual agreements ~~shall~~may be established between the school district and parent(s), or legal guardian, of students participating in alternative instructional delivery system courses prior to the beginning of instruction. These contracts may address such issues as grading criteria, time allotted for course completion, student attendance, and the responsibility for ~~course costs and equipment~~ necessary to access the course content.

(18) Instructors of ~~Internet-based~~virtual courses shall be:

(A) certified in Oklahoma or another state to teach in the content area of the course offered, or;

(B) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course.

(19) Districts shall establish criteria for determining the appropriateness of particular ~~Internet-based~~virtual courses for individual students prior to student enrollment in such courses, which shall be consistent with the provisions of 70 O.S. § 1-111 and Oklahoma Administrative Code 210:15-34.

RULE IMPACT STATEMENT

210:35-3-67. "Instruction" [AMENDED]

210:35-21-2. "Alternative instructional delivery systems" [AMENDED]

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

This is an emergency update to two administrative rules in the Oklahoma school accreditation standards, clarifying requirements for virtual education provided by a public school (other than a full-time virtual charter school). These provisions are being added through emergency rulemaking because virtual education options have become a particularly urgent issue for public schools in recent months, due to ongoing effects of the COVID-19 pandemic. Two different concepts are addressed by this rule amendment:

(1) "virtual (internet-based) instruction" that a public school offers on a full-time and/or part-time as part of its routine education program, defined as "the use of the internet or other such digital information transmission systems as the primary medium of instruction"; and

(2) "distance learning plans", which may or may not include virtual instruction, that a public school implements when students cannot attend school on site (such as during the COVID-19 public health closures). "Distance learning plan" is defined as "a plan implemented under a public school district or charter school's distance learning policy...describing any means by which instruction will be delivered to students outside a traditional school setting."

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 Oklahoma public schools and their students. The amendments primarily affect virtual (internet-based) education, but also address guidelines for other distance learning delivery methods, which potentially impact all public school students in emergency scenarios such as the COVID-19 pandemic.

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

The rule change will benefit Oklahoma school districts and charter schools, as well as their students, by ensuring the requirements for virtual education and other distance learning methods are consistent with the equitable principles of public education and the instructional rigor of the academic standards.

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, in that no new expenditures are required by the rule change. School districts that wish to newly implement virtual education programs may incur additional expenses relating to

equipment and infrastructure, with costs that would vary according to the products and services selected by the district.

- 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:** June 18, 2020

STATUTORY AUTHORITY FOR 210:35-3-67 AND 210:35-21-2

Oklahoma Statutes

Title 70. Schools

Chapter 1 - School Code of 1971

Article III - State Department of Education

Section 3-104.4 - Standards for Accreditation of Public Schools - Assistance - Compliance

- A. The State Board of Education shall adopt standards for the accreditation of the public schools in this state according to the requirements of Section 3-104.3 et seq. of this title, to be effective as set forth in Section 3-104.3 et seq. of this title. The accreditation standards shall incorporate the curricular standards established pursuant to Section 11-103.6 of this title. The accreditation standards shall equal or exceed nationally recognized accreditation standards to the extent that the standards are consistent with an academic results oriented approach to accreditation. The accreditation adopted by the State Board shall encompass accreditation for elementary schools, middle schools, junior high schools, and high schools. The accreditation standards shall be made available for public inspection at the offices of the State Department of Education.
- B. Standards for accreditation adopted by the State Board of Education shall include standards relating to the provision of school counselors to the public school children of this state. The State Board of Education shall require each local school district to provide information regarding the number of counselors serving each school site, the duties of all such counselors including all administrative duties, the number of students served by each counselor, and information regarding the number of counselors employed per elementary school, middle school, junior high school and high school.
- C. Except as otherwise provided, schools shall meet the accreditation standards as a condition of continued accreditation. Nothing herein shall be construed as preventing changes to the adopted standards by the State Board of Education pursuant to the Administrative Procedures Act. The accreditation standards shall provide for warnings, probation or nonaccredited status for schools that fail to meet the standards. The Department shall investigate a complaint of failure to provide educational services or failure to comply with accreditation standards within thirty (30) days of receiving the complaint. If the Department determines that a school has failed to comply with the accreditation standards, the Department shall report the recommended warning, probation or nonaccredited accreditation status to the State Board of Education within ninety (90) days. If a school does not take action to comply with the accreditation standards within ninety (90) days after a report is filed by the Department, the Board shall withdraw accreditation for the school. The State Board accreditation regulations shall provide for warnings and for assistance to schools and school districts whenever there is reason to believe a school is in danger of losing its state accreditation.
- D. If one or more school sites fail to receive accreditation as required pursuant to this section or subsequently lose accreditation, the State Board of Education shall close the school and reassign the students to accredited schools within the district or shall annex the district to one or more other districts in which the students can be educated in accredited schools.
- E. Standards for accreditation adopted by the State Board of Education shall include standards relating to the provision of educational services provided in partial hospitalization programs, day treatment programs, day hospital programs, residential treatment programs and emergency shelter programs for persons between the ages of three (3) and twenty-one (21) years of

age. The accreditation standards shall apply to onsite and offsite educational services provided by public school districts or state-accredited private schools. Each school which is providing or is required to provide educational services for students placed in a program as described in this subsection shall be actively monitored by the State Department of Education. The Department shall determine on an ongoing basis if the educational program and services are in compliance with the accreditation standards.

F. The State Board shall provide assistance to districts in considering the possibility of meeting accreditation requirements through the use of nontraditional means of instruction. The State Board shall also assist districts in forming cooperatives and making arrangements for the use of satellite instruction or other instructional technologies to the extent that use of such instructional means meets accreditation standards.

G. 1. Accreditation shall not be withdrawn from or denied nor shall a penalty be assessed against a school or school district for failing to meet the media materials and equipment standards, media program expenditure standards and media personnel standards as set forth in the accreditation standards adopted by the Board.

2. The provisions of paragraph 1 of this subsection shall cease to be effective during the fiscal year which begins on the July 1 immediately succeeding the legislative session during which the measure appropriating monies to the State Board of Education for the financial support of public schools is enacted as law and such appropriation amount is at least Fifty Million Dollars (\$50,000,000.00) greater than the amount of money appropriated to the State Board of Education for the financial support of public schools for the fiscal year ending June 30, 2019, pursuant to Chapter 146, O.S.L. 2018. Provided, the Fifty Million Dollars (\$50,000,000.00) shall not include any amount of appropriations dedicated for support or certified employee salary increases. Accreditation shall not be withdrawn from or denied nor shall a penalty be assessed against a school or school district for failing to meet the media personnel standards as set forth in accreditation standards adopted by the Board.

H. 1. The State Board shall not assess a financial penalty against any school district which is given a deficiency in accreditation status during any fiscal year as provided for in this subsection.

2. Beginning with the fiscal year which begins July 1, 2021, if the amount of money appropriated to the State Board of Education for the financial support of public schools is at least One Hundred Million Dollars (\$100,000,000.00) greater than the amount of money appropriated to the State Board of Education for the financial support of public schools for the fiscal year ending June 30, 2019, pursuant to Chapter 146, O.S.L. 2018, a financial penalty shall be assessed against any school districts that do not comply with the class size limitations for kindergarten as provided for in Section 18-113.2 of this title and class size limitations for grade one as provided for in subsection A of Section 18-113.1 of this title. Provided, the One Hundred Million Dollars (\$100,000,000.00) shall not include any amount of appropriations dedicated for support or certified employee salary increases.

3. The State Department of Education shall submit a report on statewide classroom sizes to the President Pro Tempore of the Oklahoma State Senate and the Speaker of the Oklahoma House of Representatives no later than January 1, 2022.

I. Except as provided for in subsection J of this section, beginning with the 2019-2020 school year, evaluations of schools to determine whether they meet the accreditation standards set forth in accordance with this section shall occur once every four (4) years on a schedule adopted by the State Board of Education. The Board may interrupt the evaluation schedule

provided in this subsection for reasons including a change in the superintendent of the school district; determination that one or more school district board members have not met the continuing education requirements as defined by this title; determination that the school district falsified information submitted to any public city, county, state or federal official or agency; initiation of an investigation by the Board or a law enforcement agency; or other determination by the Board that standards for accreditation are not being met by the school district. The schedule adopted by the Board shall allow for school districts receiving no deficiencies for two (2) consecutive years to be reviewed for accreditation less than annually. Provided, however, that schools shall be evaluated annually for the purposes of:

1. Local, state and federal funding;
2. Health and safety;
3. Certification requirements for teachers, principals and superintendents;
4. School board governance, including instructional and continuing education requirements for school board members; and
5. Any other requirements under state or federal law.

J. Beginning with the 2019-2020 school year, if a public school receives a deficiency on its accreditation report, the public school shall be evaluated annually to determine if it meets the accreditation standards set forth in accordance with this section. If the public school receives no deficiencies for two (2) consecutive years, the public school shall be subject to the evaluation timeline established in subsection I of this section.