



OKLAHOMA STATE
DEPARTMENT of EDUCATION

To: Ryan Walters, *State Superintendent of Public Instruction*
Honorable Members of the State Board of Education

From: Andy N. Ferguson, *Deputy G.C.*

Date: August 22, 2023

Re: Infinity Generation Preparatory School – Pending Accreditation Recommendation

EXECUTIVE SUMMARY

Infinity Generation Preparatory School (“Infinity”) received a recommendation of “nonaccredited” status from the Accreditation Division for the 2022-2023 School Year. The two reasons given by State Department of Education (SDE) staff are failure to operate a school (more specifically closing the school for an entire semester) and a list of statutory and regulatory requirements that could not be verified due to Infinity’s lack of participation in the annual accreditation process. The school closure is not disputed and should be dispositive in this matter. There are accompanying assertions that the State Board of Education (SBE) must grant accreditation to Infinity and failure to do so violates due process. These assertions are without merit.

BACKGROUND

Accreditation is a requirement for public school districts that is meant to ensure the children of this state have an opportunity to receive an excellent education. SBE is the arbiter of whether a district or school site has met established educational standards. Private school districts do not need accreditation to operate; however, the ability to seek accreditation is authorized by statute and administrative rule. Although not required, there are some benefits associated with accreditation for a private school district. As an example, access to the Lindsey Nichole Henry scholarship, participation in federal programs, or being a qualified private school under the Parental Choice Tax Credit Act can be beneficial for a private school. The decision to seek accreditation is entirely optional for private school districts. Regardless, private school districts *do not* receive state aid, so the financial and legal impact of accreditation on private entities is minor compared to that of public institutions. More specifically, denial of accreditation status, or denial of accreditation renewal, does not preclude a private school district from offering educational services.

Notwithstanding some exceptional performing schools that may qualify for a multi-year exemption, district and school site accreditation occurs annually. Each year the State Department of Education Accreditation Division reviews all districts and school sites to ensure that they meet and maintain established educational standards. This means that there are three scenarios in which a private district or school site may no longer be accredited. *One*, the district decides not to apply for accreditation. *Two*, the district fails to meet established standards. *Three*, the district fails to maintain established standards throughout the year and accreditation is revoked or lost mid-year.

I. Loss of Accreditation vs. Renewal of Accreditation

There is a significant distinction between denial of accreditation *renewal* and loss of accreditation through *revocation*. The former involves the traditional accreditation renewal process while the latter involves revoking accreditation status mid-year. *Compare* 210:35-3-201(a) *with* OAC 210:1-5-5. One thing that must be made crystal clear is that “[s]chool sites are accredited for one year.” OAC 210:35-3-201. Additionally, “schools shall meet the accreditation standards as a condition of continued accreditation.” 70 O.S. § 3-104.4(c). This means that during the annual accreditation process, every district and school site is placed under review. The Accreditation Division reviews an applicant’s performance over the previous year to formulate its status recommendation and presents that to SBE. The application process typically begins in October. Notably, not only must a school “meet all applicable regulations and statutory requirements at the beginning of [the year]”, but it also must maintain that compliance “throughout the school year.” OAC 210:35-3-201(a). Again, although private schools are not required to seek accreditation, they are permitted to seek accreditation.

“The Legislature, recognizing its obligation to the children of this state to ensure their opportunity to receive an excellent education, . . . hereby establishes requirements for compliance with quality standards which the public schools and school districts, . . . must meet.” *See* 70 O.S. § 3-104.3. Accreditation is not guaranteed. “Nothing herein shall be construed as prohibiting the withdrawing or denial of accreditation for failure to meet requirements as elsewhere provided by law.” 70 O.S. § 3-104.3 The law unambiguously states two cases for non-accreditation: withdrawing or denial. *See* 70 O.S. § 3-104.4(D) (“If one or more school sites *fail to receive accreditation* as required pursuant to this section or *subsequently lose accreditation*”) (emphasis supplied).

II. Due Process Assertions

Hearings before the SBE typically follow the due process procedures outlined in the Administrative Procedures Act (APA). Those procedures, however, may be varied when the circumstances require a different format. For example, loss of accreditation matters is expressly considered to be one such circumstance. OAC 210:1-5-1. Additionally, “prior to the loss of a local school district’s accreditation the district and its representative will be given an opportunity to be heard before the State Board of Education.” OAC 210:1-5-5. Along with this hearing, there are specified processes for revoking accreditation mid-year, which may be largely because most public-school districts rely on state aid. During the year, SDE “shall investigate a complaint of failure to provide educational services or failure to comply with accreditation standards.” 70 O.S. § 3-104.4(c). This triggers two 90-day periods that, if the school district or sites fail to move into compliance, “the Board shall withdraw accreditation.” 70 O.S. § 3-104.4(c).

This is not precisely the same situation as annual accreditation. SDE did not investigate a complaint, rather, this is the annual recommendation of whether to renew accreditation based on the performance during the 2022-2023 school year. No formal APA hearing is required because no rights are being removed. The recommendation from the Accreditation Division is merely the culmination of the application, reports, and follow up investigations that districts begin in October. There is no right to obtain a renewed accreditation status. This is roughly a year-long application that has finally come before SBE for a decision.

III. Private School Accreditation

Standards for private schools “must be comparable with the State Board of Education’s standards for public schools in terms of the applicable quality indicators.” OAC 210:35-33-2. Private schools may voluntarily seek accreditation and classification in like manner as public schools if they make an application to SBE. *See* 70 O.S. § 3-104(7). A position contrary to this statute is nonsensical. To posit that SBE lacks the authority to designate a changed accreditation status for a private school (because there is a lack of promulgated standards) would preclude private schools from receiving accreditation in the first instance. Logically, if there are insufficient standards for accreditation on renewal, then there were insufficient standards for the first accreditation. SBE accreditation authority is not just a promulgated rule; it is a Legislative command.¹ “Private and parochial schools may be accredited and classified in like manner as public schools.” 70 O.S. § 3-104(A)(7); OAC 210:35-33-1. The status of accreditation is not a one-way ratchet. Each year the accreditation status of a district and school sites are reviewed anew.

One portion of the accreditation application process is disclosing the school calendar. This includes the number of days taught, the first and last day of instruction, breaks, and holidays. Any school that fails to maintain its calendar runs the risk of failing to meet its accreditation obligations. Absent an SBE-approved waiver, public schools shall actually be in session for not less than 180 days or 1,080 hours of instruction. 70 O.S. § 1-109(A). Whether strictly applicable to private schools or not, it is an indication that a minimum threshold of educational instruction is required. Infinity indicated in October that the last day of instruction would be May 19, 2023. This did not occur. If Infinity were a public school failing to provide education services for a full school year, the closure would have to be beyond the control of school authorities who also received written concurrence of the same from SBE. 70 O.S. § 1-109(E). This Board has made no such finding.

CONCLUSION

Applicant, essentially, demands a formal due process hearing for each and every accreditation applicant before an initial recommendation is made by SDE. This is not legally required, and it is an unreasonable and unworkable request. The Accreditation Division does not make a final decision regarding accreditation status: it only makes a status recommendation for SBE to consider. Infinity, as a private district with school sites, has elected to apply for accreditation. After SDE review, it was determined that Infinity failed to provide educational services for the spring semester of 2023. Because Infinity failed to function as a school, the Accreditation Division has recommended the status of nonaccredited. If the recommendation is accepted, nothing precludes Infinity from providing educational services. Additionally, nothing precludes Infinity from submitting a new accreditation application for the 2023-2024 school year.

* * *

¹ The statute is not a rule promulgated by the State Board of Education but a legislative command. Therefore, reliance on 2023 A.G. Op. 03 is misplaced.

FY24 ACCREDITATION STATUS RECOMMENDATION

DISTRICT/SCHOOL NAME: Oklahoma Youth Literacy Project
d/b/a Infinity Generation Preparatory Academy

DISTRICT/SCHOOL TYPE: Private School

DISTRICT OFFICE: Infinity Generation Prep School Public Schools
5517 NW 23rd Street
Oklahoma City, OK 73131

SCHOOL SITES: Infinity Generation Prep School Public Schools
PK – 8th grade
No student count available
Infinity Generation Prep High School
9th – 12th grade
No student count available
5517 NW 23rd Street
Oklahoma City, OK 73131

AVERAGE DAILY MEMBERSHIP: No information available

HEAD of SCHOOL: Gina Darby, Director of Operations

FY24 RECOMMENDATION: Accreditation Not Recommended

DISTRICT HISTORY

2023-2024 District Accreditation not Recommended

2022-2023 District Accreditation with Warning

SUMMARY

Infinity Generation Preparatory Academy (IGG) is a small private school located in Oklahoma City. It is not eligible to receive State Foundation and Salary Incentive funding, however, it may be able eligible for other government funding such as federal grants. It is part of the Center for Educational Services, a group of youth-focused organizations founded by Gina Darby, the Director of Operations for IGG, and her husband Milen Darby Sr. Other center organizations include the OKYLP Oklahoma Youth Literacy Program; Impact Athletics, Inc.; and KanCacha Kidz, LLC. In Fall 2022, it reported 24 students in grades Pre-K3 to 9th grade.

IGG has been accredited by the Oklahoma State Board of Education since August 26, 2021. On July 28, 2022, the Oklahoma State Board of Education voted to downgrade the School's accreditation status to "Accredited with Warning." The downgrade resulted from repeated non-compliance with Federal Program requirements. The School's participation in the American Rescue Plan ("ARP") Act of 2021 Emergency

Assistance to Nonpublic Schools program (“EANS”) was terminated because of application information and data certifications were repeatedly non-compliant with federal rules and regulations. As an accredited school for the 2022-2023 school year, IGG remained a Lindsay Nicole Henry Scholarship-approved school.

In early January 2023, IGG suspended serving students. As a result, all IGG students were required to enroll at a new school mid-year. Furthermore, its leadership did not communicate with the school’s assigned Regional Accreditation Officer from mid-February 2023 until June 2023. Required documentation was not submitted to OSDE’s Department of Accreditation to complete the School’s FY23 Annual Compliance Review. As of July 18, 2023, its website and social media show no information related to enrollment or school operations for the upcoming school year.

For the 2023-2024 school year, OSDE Accreditation and Legal Department recommend revoking IGG’s accreditation.

ASSIGNED DEFICIENCIES

514	Not in compliance: Student enrollment in minimum periods of rigorous instruction
590	Not in compliance: Physical Education for full-day KG through 5 th grade
459	Not in Compliance with all requirements of HB 1775
696	No school policy on reasonable restroom/changing area designations and operating in compliance with policy operates
507	Not in compliance with required fire drills
557	Not in compliance with a minimum of four security drills conducted per school year, two of which are due within the first 15 days of each semester. Information must then be posted on https://www.ok.gov/schoolsecurity/
598	Not in compliance with two additional drills performed that are consistent with the risks assessed for the facility
529	Not in compliance with tornado drills

From: James R. (Jim) Johnson <jim@resolutionlegal.com>
Sent: Friday, August 11, 2023 8:52 AM
To: Andy Ferguson; Ryan Walters; Ryan Pieper
Subject: [EXTERNAL] Infinity Generations Prep. School

Andy, Ryan and Ryan:

At the meeting of the Board on July 27th, the Board delayed action against Infinity Generations Prep. School ("Infinity") until the Board meeting on Aug. 24th. I have rearranged my schedule to attend that meeting and I will present my client's case and its response to the allegations during that meeting. The matter for presentation was initiated by Mr. Ferguson's letter to my client and falls squarely under OAC 210:1-5-1(a).

To this end, I have previously identified that Mr. Ferguson's letter to Ms. Darby, on behalf of Infinity, fails completely to meet due process requirements. Nothing therein provides notice of the "deficiencies" alleged by the ODE. Nothing identifies the promulgated rules of the Board on which the ODE relies for the performance of the asserted "audit." Nothing identifies the breadth of the statutory authority for the Board to regulate private schools. While the Board has a few rules on the audit of public schools, those rules, according to express Board rules, are inapplicable to private schools. I can find literally no promulgated rules supporting any form of audit, deficiencies or bases for action on Ms. Darby's accreditation. Certainly, the ODE has failed completely to provide any.

For this reason, I have emailed you several times and have called Mr. Ferguson multiple times seeking, specifically, all of the promulgated rules of the Board which provide the legal basis for action by the ODE against my client. Each of my efforts has resulted in absolutely no response from any of you. In light of the clear lack of promulgated rules which allow the ODE to make any allegations against Ms. Darby's school, one could surmise the lack of response relates closely to an awareness by each of you that the allegations against Ms. Darby's school are unfounded because, to be specific, each of you knows that the Board has not authorized your actions. Oklahoma law could not be clearer- the ODE must have rules promulgated for every action it takes against a member of the public and is strictly prohibited from acting in the absence of promulgated rules. "No agency rule is valid or effective against any person or party, ***or may be invoked by the agency for any purpose***, until it has been promulgated as required in the [APA]." 75 O.S. §308.2(A). [Emphasis added.]

In this matter, the vague allegations of Mr. Ferguson's letter along with the lack of promulgated rules constitutionally necessary for the ODE to make allegations against my client's school are (i) consistent with Brad Clark's equal complete silence when I challenged his assertion against Ms. Darby and her school last fall and, moreover, are (ii) completely consistent with the standard form of vague allegations lacking administrative support historically made by people who act against others based on a racial or sexual animus. That is, for clarity, the nature of your actions against Ms. Darby are consistent with the form of actions taken by people in positions of authority when they act with a motive based on racial or sexual discrimination.

Your complete silence in this matter gives me sufficient reasons to assert that your actions and inactions seek to cover up this form of misconduct on your part. Further, other recent and current actions of the ODE and you suggest a prohibited animus in your actions:

- The ODE and Superintendent have issued diverse statements alleging misconduct of the Tulsa School District not tied to specific promulgated rules of the Board. TPS is the largest school district in Oklahoma and has a Black population rate approximately double that of Oklahoma generally (14% Black in Tulsa compared to 7% in Oklahoma overall). Action against TPS would disproportionately affect Black students in Oklahoma.
- A State Auditor report identified that Mr. Walters oversaw the Covid relief fund known as Stay in School. The Auditor's report identified efforts by Mr. Walters to give preferential treatment to students not in financial need while rejecting students in need. In Oklahoma, Black and Hispanic citizens live in poverty at approximately twice

the rate of white citizens. Adversely affected students relative to the misconduct of that program are likely Black or Hispanic students.

History shows that racism by government and government actors is accomplished when government and government actors are not held to comply with the law. Oklahoma law plainly imposes, specifically on Mr. Walters, a duty to provide “adequate and proper documentation” of the bases of ODE action. 67 O.S. §206(A)(2). The record in this case, as plainly reflected in Mr. Ferguson’s letter to Ms. Darby, shows a broad failure of each of you, in your respective roles herein, to comply with due process mandates of the 14th Amendment of the U.S. Constitution, as protected in part by said Section 206(A)(2). It is further shown by your complete silence in the two weeks since the Board delayed this matter.

Demand is against made for each of you, in your respective role at the ODE, to provide the materials previously requested by me on multiple occasions. While I refer you back to those requests for specifics, in brief demand is made for you to identify every promulgated rule of the Board on which any aspect of any allegation against Infinity is made by the ODE and all facts or assertions of the ODE which the ODE asserts support a finding of a violation of a promulgated rule of the Board which might affect Infinity’s accreditation.

Since the meeting of the Board is set for less than two weeks from now, please provide all of this information by Tuesday, August 15m 2023.

Regards,

Jim Johnson

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July 26, 2023

Oklahoma Board of Education
Attn: Andy Ferguson
2500 North Lincoln Blvd.
Oklahoma City, OK 73105-4599

Re: **Infinity Generation Preparatory School**

To the members of the Oklahoma Board of Education:

This letter concerns proposed Board action set on the agenda of the Board for Thursday, July 27, 2023, as to the accreditation of Infinity Generation Preparatory School ("Infinity"). The letter is submitted to identify and challenge a range of agency improprieties regarding Infinity and efforts by the Department of Education ("ODE") to revoke or cancel that accreditation.

Background Information:

Because nothing provided to Infinity suggests or reflects any attempt by the ODE to present to the Board or Infinity a proper background statement on this matter, the following is provided:

On Sept. 16, 2022, Ryan Pieper, Executive Director of Accreditation ("Pieper"), emailed Gina Darby, one of the owners of Infinity ("Darby"), stating that he had received "some very concerning phone calls" regarding Infinity. See Attachment 1. Pieper did not, in the Sept. 16, 2022, email identify any authority of the ODE to take any form of action based on telephone "allegations." That is, for clarity, Pieper did not identify any promulgated rule of the Board authorizing Pieper to act upon any form of telephone allegations or to demand Darby to provide private information to him. Ms. Darby asked the undersigned to respond to Pieper, and a response was sent on Sept. 27, 2022. (Attachment 1). That response identified that in July 2022, Infinity was placed on the status of "Accreditation with Warning" because of allegations that "mandated reports [were] not submitted in a timely manner" and because Infinity was "not in compliance: SDE Federal Program." A copy of that notice letter ("Warning Letter") is attached as Attachment 2. It is specifically noted that nothing in the Warning Letter identifies a single promulgated rule of the Board authorizing or substantiating the action of the Board in placing Infinity on "warning" status. Likewise, no facts justifying the action were stated.

The undersigned pointed out that, relative to the "warning" status, the sole Board rule as to such status is limited to situations in which "[a] school site fails to meet one of the standards **and the deficiency seriously detracts from the quality of the school's educational program.**" OAC 210:35-3-201(b). [Emphasis added.] Nothing in the Board's determination as to that status identified in any manner how any deficiencies alleged against Infinity could "seriously detract" from the quality of Infinity's program. Specifically:

- An “untimely” report affects only the timing of the submission of information to the Board but not the quality of the program. A “late” report does not meet the standard of OAC 210:35-3-201(b).
- The statement of “non-compliance” as to Infinity relative to a federal program might concern an audit of a related company, Impact Athletic (“Impact”), as to a certain Summer Food Service Program (“SFSP”) under 7 CFR Part 225 and the Board’s single rule on the SFSP: OAC 210:10-3-91. Of course, nothing in the Warning Letter attempts to identify what the issue alleged was. Infinity was left to guess. On the assumption this audit was the basis for Board action, it is identified that from May 2022 through the present, that audit has been on “remand” by an Assistant Attorney General purporting to act as a hearing officer in the audit and its “appeal.” In Sept. 2022, it was not possible for the ODE to assert Impact was not in compliance since the matter was on remand. I note, of course, that pursuant to Oklahoma law (75 O.S. §311) and rules of the Board (OAC 210:1-5-1), only the Board is permitted to enter a “final order” in any appeal under the SFSP. This is a due process mandate under the U.S. Constitution and the Oklahoma Constitution. *Tulsa Classroom Teachers Ass’n. v. State Bd. of Equalization of Okla.*, 1979 OK 136, 601 P.2d 99.

I also note that the scant information provided by the Board and Pieper to Infinity violates 67 O.S. §206(A)(2), which mandates that all state records must “contain[] adequate and proper documentation of the...policies, decisions,[and] procedures... of the agency ***designed to furnish information to protect the legal and financial rights of the state and of persons affected by the agency’s activities***[.]” [Emphasis added.] Nothing in any record provided to Darby or Pieper meets the minimum standards of Oklahoma law since nothing identified in any meaningful way the legal bases upon which the Board or Pieper acted.

Regardless, based on the information available, the undersigned requested Pieper to provide all Board rules asserted by the ODE which permitted Pieper to request Infinity’s records.

On Sept. 28, 2022, Brad Clark, the General Counsel of the ODE (“Clark”) advised (still Attachment 1) that the “application” for accreditation requires the submission of certain financial information but then identified only a few Board rules. This assertion was without merit since no rules of the Board promulgated the terms of the accreditation application. Based on constitutional mandates, in order for terms of the application to be enforceable by the Board or ODE, those terms must be promulgated as rules. 75 O.S. §302(A) and (D). Unpromulgated requirements (such as in the application) are, by law, “null, void, and unenforceable.” 75 O.S. §302(E).

Clark identified (i) OAC 210:35-33-1, (ii) OAC 210:35-33-2 and (iii) OAC 210:20-1-5 as the entire promulgated basis for ODE actions.

OAC 210:35-33-1 (Attachment 3) provides only that “[p]rivate and parochial schools may be accredited and classified in like manner as public schools. In addition a private accrediting association may be approved by the State Board of Education and have the authority o accredit schools within their association.” This rule does provide specific, enforceable standards for accreditation and the Board may not interpret it without further promulgation (save to interpret a plain dual reading of a provision). 75 O.S. §302(D).

OAC 210:35-33-2 (Attachment 4) provides that “[n]onpublic schools of the State differ widely in mission, structure, funding, and operation and no prescribed set of standards can be applied to all schools. However,

the standards must be comparable with the State Board of Education's standards for public schools in terms of **applicable quality standards.**" [Emphasis added.] Therein, then, the Board stated that the sole concern of accreditation of a private school is whether the "quality" of the education is sufficient. There is literally no mention of the financing of private schools by the Board.

OAC 210:10-1-5 (Attachment 5) limits the power of the ODE as to financial records to "all records pertaining to Federal programs, **state aid appropriations, and expenditures from the general fund** of the previous year[.]" [Emphasis added.] OAC 210:10-1-5 plainly is limited by its own terms to an ODE interest in **public funds** and not private finances. That is, the ODE, relative to public schools, has an interest in determining if public schools spent public funds lawfully. There is no indication in OAC 210:10-1-5 that the ODE has any enforceable interest (per 75 O.S. §302(A), (D) and (E)) in the finances of a private school.

Oklahoma law prohibits an agency or Board from amending, interpreting or expanding upon promulgated rules of the Board except through further rule promulgation. 75 O.S. §302(D).

The limits of the plain language of the Board rules cited by Clark were pointed out in detail in the undersigned's response to Clark on Sept. 30, 2022. (Attachment 1.) Nothing in any rule of the Board cited by the ODE on behalf of Pieper provides **any** authority for Pieper to demand or request the financial records of a private school. Clark never replied to the response of Sept. 30, 2022. In fact, since September 2022, no one from the Board or ODE, including Pieper, has contacted the undersigned on this matter until, on July 12, 2023, Andy Ferguson, counsel for the ODE ("Ferguson"), contacted Darby directly and not through counsel. (Attachment 6.) Therein, as is typical for the ODE, Ferguson stated no specific basis for the proposed Board action on July 27, 2023. That is, Ferguson stated only that Infinity "did not complete a spring accreditation this year" and had other, undisclosed "deficiencies." Not a single promulgated rule of the Board is cited in Ferguson's letter to provides a lawful basis for the proposed Board action.

"At a minimum, 'due process requires notice and a meaningful opportunity to appear and be heard.'" *Maxwell v. Sprint PCS*, 2016 OK 41, 369, P.3d 1079. That is, before an agency takes official action against an interest of a member of the public, the agency must give sufficient notice to that member of the public which identifies what the agency seeks to do and the legal authority for the agency's action. Then, the agency must provide a real opportunity for the member of the public to appear before the agency. As stated above, nothing in any of the "notices" or "letters" of the ODE or Board has provided any meaningful disclosure the legal authority on which any previous action of the Board or ODE has been based. Clearly, the rules cited by Clark do not allow Pieper to request financial records of any private entity. No rules of the Board, as identified by Clark, identify what constitutes deficiencies. When challenged, the ODE goes silent.

On July 13, 2023, the undersigned advised Ferguson that Darby and the undersigned are each unavailable on July 27 to attend the meeting. Ferguson set a July 20, 2023, deadline to confirm attendance. The undersigned requested possible future dates of Board meetings and likewise requested an opportunity to meet with ODE personnel in the interim to determine the actual basis for the ODE's actions. No response was made by Ferguson by July 20 until the undersigned sent a follow up email on that date requesting a response. Therein, Ferguson, while making no mention of promulgated rules identifying the procedures of the Board supporting his response, stated, "the Executive Director of Accreditation intends to present all of his annual accreditation recommendations to the Board during the regular meeting on July 27th. This includes the recommendation as related to [Infinity]." (Attachment 7.)

Evidently, the convenience of Pieper outweighs due process considerations of Infinity. The lack of cited Board rules supporting Ferguson’s position makes this clear.

Regardless, it is likewise clear from Clark’s response (Attachment 1) and the rules cited by him that the ODE lacks the power to obtain any financial records concerning any non-public funding. No promulgated rules of the Board permit the ODE to demand financial records relative to private schools. None of the identified rules establish standards for deficiencies. Placing those demands solely in an “application” is, by law, unenforceable, and the General Counsel of an agency is charged with this knowledge. 75 O.S. §302(D) and (E). Clark’s failure to respond to the undersigned’s response of Sept. 30, 2022, is consistent with the lack of Board rules. Nothing supported Clark’s or Pieper’s position then or now.

Critically and substantively, Impact’s audit before the Board has never been made final. Contrary to the “Warning” status invoked in July 2022 by the Board, no lawful or enforceable determination that Impact is not in compliance with a “SDE Federal Program” has ever been made for the reason the Board has, for nearly a year, failed to comply with 75 O.S. §311 and bring Impact’s appeal before the Board – despite multiple demands for agency action. The undersigned has submitted multiple demands for the Board to comply with Oklahoma law as to Impact and will, if requested, resend each of the efforts made by the undersigned to move Impact’s appeal forward after the ODE simply decided to ignore the Assistant A.G.’s remand in May 2022.

It is noted, of course, that, in the interim time in which the Board has ignored its duty to act on Impact’s administrative appeal, the Attorney General has determined that the Board lacks authority to operate the SFSP (or the related CACFP under 7 CFR Part 226). I note that the Board’s sole statutory authority to “operate” the SFSP and the CACFP arises under 70 O.S. §3-104(A)(10) and (11). Further to this, those provisions give the Board authority to seek federal funding for a certain “school lunch program” and neither the SFSP nor the CACFP is a school lunch program. Stated for clarity, no statute permits the Board or ODE to operate either the SFSP or the CACFP.

Regardless, in April 2023, the Attorney General opined, in a manner mandatorily enforceable against the Board and ODE, in A.G. Op. 2023-3 (Attachment 8) that 70 O.S. §3-104 is not a sufficient basis, without specific parameters set in other legislation, for the Board to implement any program identified in Sec. 3-104 through rule promulgation. This, by necessity, includes the SFSP and CACFP, since the ODE has previously identified Sec. 3-104 as the sole basis for their operation. In the absence of lawful authority to operate either program, the Board lacks authority under 75 O.S. §311 to conduct any hearing against a member of the public as to either program or for the Board to enter a final order as to any hearing. According to the mandatory opinion of the Attorney General, such actions of the Board and ODE are “invalid.” (Attachment 8.)

As a direct result, the matter set before the Board on July 27, 2023, is substantively flawed not only because no rules of the Board permit the ODE to seek financial information from a member of the public or to enforce “deficiencies,” but, more fundamentally, the matter extends from multiple violations of the Board and ODE in the operation of a program never authorized by law in Oklahoma.

Argument:

Ferguson's letter of July 12, 2023, to Darby is a record of the ODE. 67 O.S. §203(a). As such, it was required to provide "adequate and proper documentation" of the "policies, decisions, [and] procedures" of the ODE "designed to furnish information to protect the legal and financial rights" of Infinity. Ferguson's letter on behalf of the ODE fails requirement entirely. Ferguson asserted, without stating any facts, the existence of "deficiencies" and the failure to submit a "timely" report. Ferguson asserts that an additional basis for action was the closure of the school for a period of time that resulted in "parents and students unexpectedly having to find other education opportunities."

The vague allegations of Ferguson's letter are not of any surprise. Not a single aspect of Ferguson's letter makes reference to any rule or power of the Board implemented in accordance with Oklahoma law. With limited exceptions not relevant here, the Board is mandated to comply with the Oklahoma Administrative Procedures Act, 75 O.S. §250 et seq. (the "APA"). 75 O.S. §250.4(A)(1). This requires the Board to promulgate rules to implement all policies and procedures of the agency. *Id.* 70 O.S. §3-104. As stated recently in A.G. Op. 2023-3, in order for the Board to promulgate rules, the Legislature must enact specific parameters on the Board's authority to promulgate. Okla. Const. art. V, §1.

A "rule" is "any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency." 75 O.S. §250.3(19). The Board must specifically promulgate "rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions issued by the agency for use by the public[.]" 75 O.S. §302(A)(2). The ODE may not "[a]mend, interpret, implement" or "[e]xpand upon a statute or a rule" except through rule promulgation. 75 O.S. §302(D). Any violation of the letter or spirit of Sec. 302 is "null, void, and unenforceable." 75 O.S. §302(E). "The Legislature defined 'rule' broadly so as to prevent an agency from circumventing the procedural requirements of the APA by using labels such as 'bulletins' or 'guides,' which amount to rules in legal operation and effect." *OSU-AJ Homestead Medical Clinic PLC v. OHCA*, 2018 OK CIV APP 30, ¶14, 416 P.3d 1082, 1087. Thus, the Board is prohibited from establishing rules solely in. for example, an application for school accreditation instead of through promulgation. However, as stated by Clark, the requirements he asserted as to financial records existed only in the ODE accreditation application. Attachment 1. No communication from the ODE at any time has identified authority for the ODE to identify deficiencies.

None of the rules cited by Clark is relevant to any action against Infinity for the plain reason that none can be implemented except in violation of Sec. 302(D) of the APA. None of the rules cited by Clark establishes "deficiencies" or the timing of reports. A plain reading of the financial aspects of OAC 210:10-1-5 makes clear the sole interest the Board has in school finances relates to public funding or tax appropriations. No public financing is relevant to Infinity.

Likewise as to the SFSP, A.G. Op. 2020-13 first identified the limits of 70 O.S. §3-104 as a basis for rule promulgation by the Board. A.G. Op. 2023-3 leaves no doubt that where, as here, Sec. 3-104 is the sole basis for Board rules, that statute cannot be used to enforce any Board rules. Sec. 3-104 is the sole "basis" for the SFSP, although the fact that the SFSP is not a "school lunch program" makes that assertion impossible. The Board is charged with providing due process to members of the public (OAC 210:1-5-1) and must comply with the mandates of 75 O.S. §311. See, 75 O.S. §250.4(B). There can be no final order as to Impact until the Board

accords Impact the required hearing. Until that occurs, the Board cannot act on any allegations against Impact, including any asserted likewise against Infinity.

One part of A.G. Op. 2023-3 is illustrative of the limits on the Board and ODE herein:

Accordingly, relying on the office’s conclusion reached in Attorney General Opinion 2020-13 and the foregoing authorities, any administrative rule promulgated with section 3-104 as the sole authority for the rulemaking action is invalid. It follows then that regulations promulgated in excess of statutory authority are void, cannot be placed into effect, and cannot be enforced. [Citations omitted.] Furthermore, an agency is not authorized to enforce an invalid rule, nor does it ‘elevate administrative rules above statutes,’ merely because a court has yet to officially declare it invalid. [Citations omitted.]

A.G. Op. 2023-3, ¶18.

The plain intent of this statement is that not only are agencies prohibited from enforcing invalid rules, but the agency must have the competence to know the validity or invalidity of its rules. Equally, the agency must know and give effect to the plain limits on its powers. For clarity- the Board has a duty to know when it is not allowed to act and has a responsibility not to so act.

In the absence of promulgated rules and a lawful provision of due process to Infinity, the presentation of this matter to the Board violates an array of statutes and the Board’s own rules (to the extent they exist). This matter should be stricken and no action taken until the Board can meet the requirements of the APA.

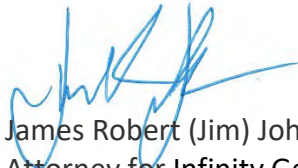
Demands:

1. **Due Process Violation:** Infinity demands that the Board comply with due process requirements of the U.S. Constitution by providing Infinity with meaningful notice of the full basis for its proposed action. To this end, Infinity demands that the Board provide Infinity a specific statement of statutes and promulgated rules of the Board authorizing the proposed action as well as a statement of facts describing asserting misconduct of Infinity which the ODE asserts support the proposed action. Infinity demands the Board reject the setting of a “hearing” solely for the ease and convenience of Pieper, in particular where the notice of Board action lacks meaningful information as to the basis for the Board’s action.
2. **Title 75 O.S. §302 Violation:** To the extent any aspect of the proposed action extends from any alleged violation by Infinity or Impact of the SFSP, Infinity demands the Board comply with the mandatory opinion of the Attorney General in A.G. Op. 2023-3 and determine that the agency lacks lawful authority to operate the SFSP and thereby take administrative action against Infinity or Impact.
3. **Title 75 O.S. §311 Violation:** Infinity, on behalf of Impact, demands the Board comply with 75 O.S. §311 and provide Impact, in the event the Board determines it will not comply with A.G. Op. 2023-3 as written, with a hearing before the Board as required by 75 O.S. §311. This hearing must occur prior to the present proposed action.

Notice is given to the Board that the undersigned is available to speak to the Board via telephone or telephonic meetings (Teams, Zoom, etc) during the Board meeting.

Submitted this 26th day of July 2023.

Signed,



James Robert (Jim) Johnson
Attorney for Infinity Generation Preparatory School

Enclosure(s) as noted

ATTACHMENT 1

From: [James Robert \(Jim\) Johnson](#)
To: [Brad Clark](#)
Cc: [Ryan Pieper](#); [Tony Blasler](#); [Lori Murphy](#); [Stormie Honeysuckle](#)
Subject: RE: Payroll Records
Date: Friday, September 30, 2022 12:32:40 PM
Attachments: [-WR00297.jpg](#)
[image001.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Brad:

Although I hesitate to pursue this matter so robustly via email, the substance of your email from Sept. 28, 2022, requires a full reply.

Pursuant to 67 O.S. Sec. 203(a), a "record" of an agency includes any "document, book, paper, microfilm, computer tape, disk, record, sound recording, film recording, video record or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business[,] the expenditure of public funds, or the administration of public property." A "state record" includes records of state agencies, such as the Department of Education. 67 O.S. Sec. 203(b)(1).

Your email, by law, is a state record.

Every agency record must contain "adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities[.]" 67 O.S. Sec. 206(A)(2). The duty to ensure compliance with this requirement is imposed on the administrator of the agency.

Based on this, it is proper for me to take your email as your full description of what the Department of Education ("ODE") considers to be its authority to require my client to submit certain records to it. That is to say, you have, as is the duty of the ODE, fully presented your position so as to make plain how my client may protect herself.

In your email (below) you identified four (4) bases for "authority" for Ryan Pieper to demand financial records of Ms. Darby's school:

- OAC 210-10-1-5
- OAC 210-35-33-1
- OAC 210-35-33-2
- The ODE "application."

As you are aware, administrative rules are construed according to the same rules of construction and interpretation as statutes. *Estes v. Conocophillips Co.*, 2008 OK 21, 184 P.3d 518. Statutes are given a plain reading and the evident intent is given effect. (Citations omitted.)

On its face, OAC 210-10-1-5 identifies **audits** (as opposed to "applications") performed by the ODE as to (i) financial, (ii) student attendance, (iii) enrollment and other audit bases. Of these, only financial audits under OAC 210-10-1-5(a) are possibly related to the present record request (noting again the distinction between an application and an audit). Schools are required to make available "all records pertaining to Federal programs, state aid appropriations, and expenditures from the general fund of the previous year, making it possible to complete an audit on all funds." The plain intent of this rule is that the ODE has an interest solely in ensuring state and federal funds (that is, public funds) are lawfully spent by a public school. In the event a school district spent funds "through [a] careless manner," the penalty is the possible revocation of the administrator's certificate. OAC 210-10-1-5(b).

Private schools, of course, do not spend public funds. They do not spend money from the general fund. While they may receive grants, those grants are subject to the terms of the grant. Grants are not "appropriations" as conceived by state law and the Oklahoma Constitution. Or by OAC 210-10-1-5.

There is not a single sentence, phrase or word in OAC 210-10-1-5 which can be conceived or considered to relate to the financial affairs of a private school. The state has an interest in the expenditure of state funds. In the context of education, the ODE has a rule which plainly relates solely to **audits** of public funds. The expansion of OAC 210-10-1-5 into any private school is not possible by any reasonable interpretation.

If it is your position that either the Board (70 O.S. Sec. 3-104) or the Superintendent (70 O.S. Sec. 3-107.1) has interpreted OAC 210-10-1-5 to include private schools, such an interpretation must be promulgated. 75 O.S. Sec. 302(D). It is inarguable that a policy and procedure of the ODE to require private entities to submit financial information to the ODE to assessment is not an "agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency." 75 O.S. Sec. 250.3(19). In the plain absence of promulgation of a rule covering this policy, it is "null, void, and unenforceable." 75 O.S. Sec. 302(E). Further, the ODE may not use the policy against my client, or even invoke it, "for any purpose" because it is not promulgated. 75 O.S. Sec. 308.2(A).

Stated to avoid doubt, the assertion that OAC 210-10-1-5 permits the ODE to demand financial records from my client is unreasonable and plainly contrary to the expressed language of the rule.

As to OAC 210-35-33-1, this rule states that private schools "may be accredited and classified in like manner as public schools." One plain difference between public schools and private schools is that private schools do not receive appropriations, such as from the General Fund. Hence, they are not accredited exactly like public schools, in that they have at least one substantive difference. Since no public funds are used to operate a private school, the state has no expressed interest in the funds of the private school.

This is clear from the use of the word "like" and not "as."

Consider: in the event a parent chose to homeschool a child, does the state have an interest in determining whether the parents have a sufficient income to allow one parent to be home enough to teach? According to the ODE website, the answer is no. <https://sde.ok.gov/home-school>. Equally, in the event a private school operated through the use of all volunteer teachers and staff, the ODE would have no interest therein. And this is reflected in the ODE rules you cited.

Your reference to OAC 210-35-33-2 substantiates the statements above. This rule provides that while the "mission, structure, funding, and operation" of non-public schools may vary and that "no prescribed set of standards can be applied to all schools," the ODE may create standards for private schools comparable to public schools "in terms of applicable quality standards." (Of course, that requires rule promulgation, and you do not identify any such standards for private schools as private schools.) On its face, the Board of Education has promulgated a rule specifically disclaiming an interest in knowing or assessing the funding of a private school to the same extent as it does in knowing or assessing the mission of a school. The rule identifies the ODE's sole allowed interest is relative to "applicable quality indicators," which, since no public funds are spent by a private school, negates an interest in funding or finances.

For clarity, a plain reading of OAC 210-35-33-2 reflects the Board of the ODE takes a position directly contrary to the position you take in your email. As such, your assertion in your email is without merit. This rule plainly states the opposite.

Lastly, you assert the ODE accreditation application contains diverse requirements to make representations and to provide information of the nature sought by Ryan Pieper. As a state employee you are obligated to support the Oklahoma Constitution and laws of the state as well as to "faithfully discharge" your duties. 51 O.S. Sec. 36.2(A). As general counsel of an agency, your duty of fidelity, per 51 O.S. Sec. 36.2(A), is to the state over and above the agency. To this end, you have represented the use of policies and procedures in an application which are not promulgated for use by the Board of the ODE. That is, you have not identified a single promulgated rule implementing the provisions of the form of the application. (See, 75 O.S. Sec. 302.) To the contrary, OAC 210-35-33-2 is directly contrary to your assertions and fully supports the position of my client. Moreover, 75 O.S. Sec. 302(E) makes it completely clear, without exception, that violations of either the letter or spirit of Sec. 302 of the APA are "null, void, and unenforceable." It is the plain intent of the APA not to permit agencies to skirt the APA by placing matters constituting rules in anything other than promulgated rules before enforcing them. *OSU-AJ Homestead Medical Clinic PLC v. OHCA*, 2018 OK CIV APP 30, Para 14.

Unless each of the provisions of the application is supported directly by a promulgated rule, such provisions are null, void and unenforceable. Said otherwise, the inclusion of a requirement for information in an application, in which the required information is not permitted specifically by a rule of the Board, cannot be enforced.

In your email, you suggest this may need to go to the Board of Education if we cannot resolve this issue. I think that may be the best option. I note the Board of Education meets next on Nov. 17. I have several issues worth bringing to the Board. Let's discuss placing this and the related issues before the Board at that time.

To the same extent, I am readily available to meet with the Superintendent during October.

Please advise how you would like to proceed in this matter.

Regards,

Jim

From: Brad Clark <Brad.Clark@sde.ok.gov>

Sent: Wednesday, September 28, 2022 10:00 AM

To: James Robert (Jim) Johnson <jim@resolutionlegal.com>

Cc: Ryan Pieper <Ryan.Pieper@sde.ok.gov>; Tony Blasier <Tony.Blasier@sde.ok.gov>; Lori Murphy <Lori.Murphy@sde.ok.gov>; Stormie Honeysuckle <Stormie.Honeysuckle@sde.ok.gov>

Subject: Re: Payroll Records

CAUTION: **External**

Mr. Johnson,

Thank you for your response to Mr. Pieper's e-mail. Though I was not copied on your response, Mr. Pieper forwarded your e-mail to me and I am writing in response. If you will, please include me on all correspondence regarding these matters in the future. Knowing that you are representing Ms. Darby and Infinity Generation Generals (IGG), I will likewise do the same for you.

Oklahoma law authorizes nonpublic schools, such as IGG, to be accredited and classified in like manner as public schools. 70 O.S. 3-104. Historically, accreditation of private schools is done through application directly to the State Board of Education or through a recognized private accreditation association approved by the State Board of Education. In either instance, the standards of accreditation must be comparable with the State Board of Education's standards for public schools. Oklahoma Administrative Code (OAC) 210:35-33-1; 210:35-33-2. Because the adopted standards for public schools require the schools to make available to personnel of the Oklahoma State Department of Education (OSDE) all records pertaining to expenditures of funds, the request for the payroll records to substantiate the employees having been paid for services is an appropriate request. OAC 210:10-1-5.

For an additional reason, the request for payroll records is appropriate. In the [application](#) submitted for requesting accreditation from the State Board of Education, there are numerous assurances and representations relating to employment, personnel policies, and payroll. I attach samples of these representations in the application, but to note a few:

1. Payroll registers and all other required reports will be maintained by IGG;
2. Personnel files will be maintained for each employee;
3. Pay dates and procedures for payment to salaries and support/hourly employees, including:
 - a. Salaries employees, including teachers are paid on a 12-month cycle;
 - b. hourly employees are paid based on hours worked as submitted on recalculated and approved timecards.
4. Employee handbook will outline policies relating to hours work;
5. a progressive salary schedule and compensation will be adopted;
6. state laws relating to written notice to employees about their wages and benefits will be adhered to;
7. Though offers of employment letters are not mandatory, it is a convenient way to comply with state law and will be adhered to, including identifying the starting salary and benefits of employment;
8. New Hire Checklist includes:
 - a. pay rate and pay periods for employment
 - b. paycheck distribution options, including direct deposit, paycheck and pay card
 - c. necessary payroll forms, as applicable
9. Records will be retained for a minimum of 7 years, including those relating to payroll registers and pay records;

As Mr. Pieper identified in his original e-mail, the OSDE has received several complaints from individuals identifying that they were employees of IGG, performed services for the school but were not paid for their work. For the reasons identified above and to ensure that assurances and representations made as a part of accreditation are complied with, the OSDE respectfully requests the records to support all employees having been paid as represented and consistent with their employment at IGG. Responsive information should include payroll records, payroll registers, pay stubs, employment contracts and any other documentation you believe is relevant to supporting or refuting the complaints received by the OSDE. With respect to your question and concern regarding the privacy, the OSDE will keep confidential any personally identifiable information relating to individual employees. Please produce the requested documents no later than 5:00 p.m. on Friday, October 7, 2022.

Ultimately, the State Board of Education also has the authority to require accredited schools and individuals within them to produce reports (inclusive of any records) and has the authority over IGG's accreditation (currently at "Accredited with Warning"). The OSDE is hoping we can work together to resolve this without going back to the State Board and, to me, this can be done with a response showing individuals who were employed and/or contracted by IGG were paid for the services performed.

Thank you in advance for your consideration and we look forward to hearing from you. As always, if you have questions or want to further discuss anything, please do not hesitate to call me.

Brad Clark

General Counsel
Oklahoma State Department of Education
2500 North Lincoln Boulevard, 5th Floor
Oklahoma City, Oklahoma 73105
Office: 405-522-3274
Cell: 405-420-4318
Brad.Clark@sde.ok.gov

From: Ryan Pieper <Ryan.Pieper@sde.ok.gov>

Sent: Tuesday, September 27, 2022 11:26 AM

To: Brad Clark <Brad.Clark@sde.ok.gov>

Subject: Fw: Payroll Records

Thank you for all you do,

Ryan Pieper

Executive Director of Accreditation
Oklahoma State Department of Education
2500 North Lincoln Boulevard Suite 210
Oklahoma City, OK 73105-4599
Office Phone: (405) 521-6638
Cell Phone: (405) 365-3692

Fax: (405) 522-1519

<https://sde.ok.gov/accreditation-standards-division>

Oklahoma Education



From: James Robert (Jim) Johnson <jim@resolutionlegal.com>

Sent: Tuesday, September 27, 2022 10:22 AM

To: Ryan Pieper <Ryan.Pieper@sde.ok.gov>

Subject: RE: [EXTERNAL] Re: Payroll Records

Hi Ryan,

I have had a chance to review your email below as well as your letter advising Ms. Darby about the Board of Education placing on the status of "Accreditation with Warning" for 2022-2023.

In the letter from you to Ms. Darby on July 29, 2022, you advised Mr. Darby that Infinity Generation Prep Schools were given the status of "Accreditation with Warning." The listed bases for this were that "mandated reports [were] not submitted in a timely manner" and the school was "not in compliance: SDE Federal Programs."

According to the promulgated rules of the Board of Education, the status of Accredited with Warning is limited to situations in which "[a] school site fails to meet one of more of the standards **and the deficiency seriously detracts from the quality of the school's educational program.**" OAC 210:35-3-201(b). [Emphasis added.] Nothing in your letter or the Board's determination identifies how in any way the asserted deficiencies "seriously detracts from the quality of the school's educational program." To that end, it is unlikely the identified deficiencies could implicate the rule. Specifically:

- The "untimely" filing of a report affects only the timing of submission of information in the possession of the Board about the school, but not in any way the quality of the school's program. There is no logical connection between the timing of the filing of a report and the quality of the school's program.
- Non-compliance with SDE Federal Programs is equally inapplicable to the quality of the school's program. I am aware Ms. Darby is in the middle of an audit as to the school's provision of meals (through a separate entity). Ms. Darby continues to challenge the preliminary findings. Those findings were, at the time of your letter, in remand to the Department of Education. Thus, there has been no final determination of non-compliance. In the absence of an enforceable decision, it is improper for the Board to use an interim allegation as a basis for action. Such an action violates the school's due process rights. Further to this, even if there was a final determination, the Board's rule limits the power of the Board to place a school on "warning" status to actions which seriously detract from the educational program, not a meal program.

I note that, if anything and based on your letter, the school might be subject to the status of "Accredited with Deficiencies," since the actions asserted in your letter cannot actually affect the quality of the school's educational program. That said, any asserted deficiencies must be based on promulgated rules relative to the school.

Since they are not described in your letter of July 29, 2022, please advise all bases upon which the Board of Education determined that the referenced deficiencies seriously affected the school's educational program. Likewise, please reference all promulgated rules of the Board of Education which establish, define or otherwise implement the policies and procedures of the Board of Education by which the Board made its determination. As a basis for this request, please note 67 O.S. Sec. 206(A)(2).

As to you request for records, I have reviewed the accreditation application form for elementary and middle schools available online through the ODE. I have also reviewed the posted accreditation standards on the ODE website. I note that accreditation standards for private school are the same as those for public schools. 70 O.S. Sec. 3-104. The high school application does not seem to be available online.

Nonetheless, nothing in the application concerns payroll or keeping payroll records. The application concerns, for example, the school calendar, school day, schedule, athletics and so forth. No promulgated rules of the Board of Education establish record keeping requirements for private schools. No rules of the Board concern school payroll records at all.

As I assume you are aware, all records provided by members of the public to a state agency become publicly available records. 51 O.S. Sec. 24A.2. Of course, in order to request records from a member of the public, a state agency must have promulgated rules in place specifically authorizing the request. 75 O.S. Sec. 302(A). If Ms. Darby were to provide records (based on promulgated rules of the Board), it would need to be clear whether these records would be public.

In this context, you have identified "some very concerning phone calls" relating "allegations" against the school. These allegations relate to concerns which, if at all, fall under the jurisdiction of the Oklahoma Department of Labor and not the Department of Education. A review of the promulgated rules of the Board identify no rules which allow the Department to investigate or assess the financial condition of a private school. To this end, it appears no promulgated rules of the Board relate specifically to the accreditation of private schools per se.

In order for Ms. Darby to provide you the requested records, please advise:

- Which promulgated rules of the Board of Education specifically authorize you to make this request and
- In the event the records are provided (based on current Board rules), what is the status of those records pursuant to the Open Records Act?

Thank you for your attention to this matter.

Regards,

Jim Johnson

JAMES ROBERT (JIM) JOHNSON

1214 N. Hudson Ave.

Oklahoma City, OK 73103

Phone 405.235.6500 | Fax 405.758.4775

www.ResolutionLegal.com



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From: Ryan Pieper <Ryan.Pieper@sde.ok.gov>

Sent: Monday, September 26, 2022 2:19 PM

To: Gina Darby <info@igokc.org>

Cc: Leslie Janis <Leslie.Janis@sde.ok.gov>; James Robert (Jim) Johnson <jim@resolutionlegal.com>

Subject: Re: [EXTERNAL] Re: Payroll Records

CAUTION: **External**

Mrs. Darby,

I am writing to follow up with you regarding the request for information below:

I received some very concerning phone calls today with allegations that 10 staff members of your school have resigned and did so because they were not paid last year, and at the time of writing this, have still not been compensated for services rendered. Further, I have been advised that some of these individuals have hired legal council in an effort to be compensated.

As soon as possible, please send me the payroll information that supports that all of your staff was paid for all services rendered last year and for this year.

You informed me on September 19th that I would be hearing from Mr. Johnson in response to these allegations. I have not heard from him at the time of writing this.

Thank you for all you do,

Ryan Pieper

Executive Director of Accreditation
Oklahoma State Department of Education
2500 North Lincoln Boulevard Suite 210
Oklahoma City, OK 73105-4599
Office Phone: (405) 521-6638
Cell Phone: (405) 365-3692
Fax: (405) 522-1519

<https://sde.ok.gov/accreditation-standards-division>

Oklahoma Education



From: Gina Darby <info@iggokc.org>

Sent: Monday, September 19, 2022 10:41 AM

To: Ryan Pieper <Ryan.Pieper@sde.ok.gov>

Cc: Leslie Janis <Leslie.Janis@sde.ok.gov>; James Robert Johnson <jim@resolutionlegal.com>

Subject: [EXTERNAL] Re: Payroll Records

Hello,

Mr. James Johnson, our legal representative will communicate with you concerning the request below.



Respectfully,

Gina Darby

Head of School

Infinity Generation Preparatory School (IGPS)
Oklahoma Youth Literacy Program (OKYLP)
P.O. Box 12455, OKC, OK 73112 (mailing)
5521 N.W. 13rd, Oklahoma City, OK 73127 (office)
405.615.4799 (c)
info@iggokc.org
www.iggokc.org

"Cultivating Minds For A Brighter Future."™

This communication is sent by Infinity Generation Preparatory School (IGPS)/Oklahoma Youth Literacy Program (OKYLP) and may contain privileged or confidential information. If you are not the intended recipient of this email, please notify the sender and delete the email. If you are a parent/guardian/legal advisor/entity affiliated in or with IGG/OKYLP you should not share this email as sharing or forwarding may result in a violation of HIPPA or FERPA laws.

On Sep 16, 2022, at 3:54 PM, Ryan Pieper <Ryan.Pieper@sde.ok.gov> wrote:

Mrs. Darby,

I received some very concerning phone calls today with allegations that 10 staff members of your school have resigned and did so because they were not paid last year, and at the time of writing this, have still not been compensated for services rendered. Further, I have been advised that some of these individuals have hired legal council in an effort to be compensated.

As soon as possible, please send me the payroll information that supports that all of your staff was paid for all services rendered last year and for this year.

Thank you for all you do,

Ryan Pieper

Executive Director of Accreditation
Oklahoma State Department of Education
2500 North Lincoln Boulevard Suite 210
Oklahoma City, OK 73105-4599
Office Phone: (405) 521-6638
Cell Phone: (405) 365-3692
Fax: (405) 522-1519

<https://sde.ok.gov/accreditation-standards-division>

ATTACHMENT 2



OKLAHOMA STATE DEPARTMENT OF EDUCATION

July 29, 2022

Infinity Generation Prep Sch - 55P082
3663 N LOTTIE AVE
Oklahoma City, OK 73111-

Dear School Administrator :

The 2022-2023 accreditation statuses for your school district and sites have been approved by the State Board of Education. **The district status and site status are listed separately, per State Board of Education rules.** State Board of Education regulations allow accreditation for one year only; therefore, continuing compliance with accreditation standards is imperative at all times.

Please see the attached page(s) for you district and site accreditation statuses for school year 2022-2023

If you have any questions, please contact your Regional Accreditation Officer. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Pieper".

Ryan Pieper
Executive Director
Accreditation Division

Enclosure

ATTACHMENT 2

Joy Hofmeister
State Superintendent of Public Instruction
Oklahoma State Department of Education

Accreditation Status for District 2022 - 2023

55P082 INFINITY GENERATION PREP SCH

Recommendation: Accreditation with Warning

- Mandated reports not submitted in a timely manner
- Not in compliance: SDE Federal Programs

Accreditation Status for Sites 2022 - 2023

106 INFINITY GENERATION PREP SCH : Grades - PK - 08

Recommendation: Accreditation with Warning

- Mandated reports not submitted in a timely manner
- Not in compliance: SDE Federal Programs

Accreditation Status for Sites 2022 - 2023

706 INFINITY GENERATION PREP HS : Grades - 09 - 12

Recommendation: Accreditation with Warning

- Mandated reports not submitted in a timely manner
- Not in compliance: SDE Federal Programs

ATTACHMENT 3

O.A.C. § 210:35-33-1

This document is current through Oklahoma Register Volume 39, Number 23, August 15, 2022.

OK - Oklahoma Administrative Code > Title 210. State Department of Education > Chapter 35. Standards for Accreditation of Elementary, Middle Level, Secondary, and Career and Technology Schools > Subchapter 33. Procedures to Recognize Private Accrediting Associations

210:35-33-1 Accreditation of private and parochial schools

Private and parochial schools may be accredited and classified in like manner as public schools. In addition a private accrediting association may be approved by the State Board of Education and have the authority to accredit schools within their association.

Statutory Authority

CHAPTER AUTHORITY:

Laws 1989, 1st Ex.Sess., c. 2; [70 O.S., § § 1-109, 1-111, 3-104, 3-104.4, 3-104\(10\), 3-104.7, 5-148, 5-149, 11-103.6\(h\), 24-100.5, 24-100\(a\), 628.13, 1210.284, 1210.508F, 1210.541](#); Laws 1994, c. 290; HB 1601 (2008)

History

Added at 12 Ok Reg 2785, eff 7-13-95.

Oklahoma Administrative Code

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End of Document

ATTACHMENT 3

James Johnson

ATTACHMENT 4

O.A.C. § 210:35-33-2

This document is current through Oklahoma Register Volume 39, Number 23, August 15, 2022.

OK - Oklahoma Administrative Code > Title 210. State Department of Education > Chapter 35. Standards for Accreditation of Elementary, Middle Level, Secondary, and Career and Technology Schools > Subchapter 33. Procedures to Recognize Private Accrediting Associations

210:35-33-2 Comparable standards required for accreditation of nonpublic schools

Nonpublic schools of the State differ widely in mission, structure, funding, and operation and no prescribed set of standards can be applied to all schools. However, the standards must be comparable with the State Board of Education's standards for public schools in terms of the applicable quality indicators.

Statutory Authority

CHAPTER AUTHORITY:

Laws 1989, 1st Ex.Sess., c. 2; [70 O.S., § § 1-109, 1-111, 3-104, 3-104.4, 3-104\(10\), 3-104.7, 5-148, 5-149, 11-103.6\(h\), 24-100.5, 24-100\(a\), 628.13, 1210.284, 1210.508F, 1210.541](#); Laws 1994, c. 290; HB 1601 (2008)

History

Added at 12 Ok Reg 2785, eff 7-13-95.

Oklahoma Administrative Code

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ATTACHMENT 4

James Johnson

ATTACHMENT 5

O.A.C. § 210:10-1-5

This document is current through Oklahoma Register Volume 39, Number 23, August 15, 2022.

OK - Oklahoma Administrative Code > Title 210. State Department of Education > Chapter 10. School Administration and Instructional Services > Subchapter 1. General Provisions

210:10-1-5 Audits

(a) Financial audit. All schools are required to make available, to personnel of the State Department of Education, all records pertaining to Federal programs, state aid appropriations, and expenditures from the general fund of the previous year; making it possible to complete an audit on all funds. Public officials, members of the boards of education, superintendents, principals, and any other persons, whose duty it is to make appropriations and/or expenditures in accordance with the provisions of applicable state and federal law, the regulations of the State Department of Education, and the adopted policies of the State Board of Education will be held responsible for any misappropriation or illegal expenditure of such funds.

(b) Penalty. If it is discovered that a school district is unable to pay its current year's obligations through careless handling of funds by a school administrator, the State Board of Education may require the administrator to show cause why their administrator's certificate should not be revoked.

(c) Student attendance record audits.

(1) Regional Accreditation Officers of the State Department of Education are required to audit the student attendance records of all Oklahoma public school districts.

(2) In addition to the Statistical Report, the official document for student attendance accounting and auditing is the Student Attendance Register. All other student attendance documents, reports and summaries only support the accuracy of the Student Attendance Register and the Statistical Report.

(3) A school or program within a district that has a different school year from the district must present a separate Statistical Report and Attendance information reflecting the different school year for that school or program. The school or program will be audited separately from the district.

(4) Each person who keeps a Student Attendance Register is required to make all entries in ink, record the attendance data for each pupil each day, keep the Register in a safe place and understand that the Register is subject to audit at any time. The Student Attendance Register may be maintained in an electronic format, provided that a school district maintaining its Student Attendance Register in an electronic format implements appropriate strategies for backing up data in the event of a potential system failure or other threat to digital record storage and retention.

(5) If the attendance records show that school was maintained for less than a full annual term without approval of the State Board of Education, state aid will be reduced accordingly unless it can be shown that the attendance records as originally presented were in error.

(6) When attendance, membership or transportation is deducted for any reason by the audit, state aid will be reduced accordingly. Factual information may be presented by the school within ninety (90) calendar days from the date of the audit showing acceptable evidence that indicates the audit is in error.

(d) Enrollment.

(1) Enrollment means recording the name of a pupil on a class roll. Total Enrollment for an attendance period or for the year, whether for a class or for an entire school is the number of all enrollments so recorded. If a student is promoted or moves from one district or school to another during a school year, the student's name will be recorded on each class roll concerned. A record of that student's enrollment will be included in the original and

every subsequent roll even though the pupil will be dropped from the original roll and every subsequent roll except the current one.

(2) All students attending any school within a school district shall have their names entered in the attendance register and have their attendance recorded. Students are to be placed on roll the first day that the student actually attends class or participates in their instructional program.

(3) All Entries and Exits are to be entered in the Student Attendance Register on the day that the transaction occurs. Students are not considered on roll until they actually attend class or participate in instructional activities. Students are always considered on roll until an exit code is entered.

(e) Entry and exit.

(1) Entry codes will always be placed on the Student Attendance Register. An entry code indicates where the student is coming from, e.g., another school in the district, another school district in Oklahoma, another state or country, or a private school or other placement. The Basis of Admission will be entered on the date that the student begins school. A Basis of Admission code indicates why a student is enrolling, e.g., because they are a district resident, a transfer student, an out-of-home placement student, or another authorized basis for enrollment applies.

(2) Entry codes are recorded on the first day the student actually attends class or participates in instructional activities. Each different Basis of Admission must have its own unique code on the Student Attendance Register, and must be reported to the State Department of Education using the appropriate code from the most recent requirements document for the SIF (Schools Interoperability Framework)-compliant statewide student data system, available on the agency website.

(3) When a pupil enrolls in a public school classroom in this state a second or succeeding time during the current school year, the entry must be reported to the State Department of Education using the appropriate entry code from the most recent requirements document for the SIF-compliant statewide student data system, available on the agency website.

(4) An exit code is recorded each time a student withdraws from school, and in certain other limited cases such as when a student changes grade level mid-year or changes to a different academic calendar through entrance into an alternative education program. Exit codes are to be recorded on the date when the exit occurred. A student is not considered to be off roll until a Loss code is recorded. A student exit must be reported to the State Department of Education using the appropriate exit code from the most recent requirements document for the SIF-compliant statewide student data system, available on the agency website.

(f) Attendance and absence.

(1) A student is to be considered present only on those days when in actual attendance in school or when participating in scheduled school activities under the direction and supervision of a regular member of the faculty. A student who is excused from attending school because of sickness or for any other reason shall not be counted in attendance. Students authorized by law to attend a partial school day or partial school week schedule shall not be counted as absent if they are in attendance during their scheduled education program.

(2) All student attendance, absence and transportation information is compiled on a half-day basis with the exception of attendance, absence and transportation information for half-day early childhood or kindergarten programs which are recorded on a full-day basis. A student must be in attendance for two-thirds (2/3) of the first half of the school day to be recorded present for one-half day; likewise, a student must be in attendance for two-thirds (2/3) of the second half of the school day to be recorded present for one-half day.

(3) As a condition of receiving accreditation from the State Board of Education, all students in grades nine (9) through twelve (12) shall enroll in a minimum of six (6) periods, or the equivalent in block scheduling, of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes, and physical education classes.

(4) A student who is absent from instruction without excuse for ten (10) consecutive days is to be recorded as absent each day. On day eleven (11), the pupil is to be exited from the roll.

(5) A school day for kindergarten or early childhood can either be a half-day of at least two and one half (2 1/2) hours, or the district's standard full school day. However, kindergarten and early childhood absence and attendance is always recorded on a full day basis. Three (3) year old students authorized to attend public school under the *Individuals with Disabilities Education Act* (IDEA) should not be indicated as absent if they are in attendance for their scheduled education program, including partial school day or partial school week instructional schedules.

(g) **School activities.** School activities may take place either on the school premises or off the school premises. In order for a student to be counted in attendance, the school activity must be under the direction and supervision of a teacher. Students dismissed and not under the direction and supervision of a teacher cannot be considered as participating in a school activity and cannot be counted in attendance. A student serving as a legislative page is to be counted in attendance at the school.

(h) **Parent-teacher conference days.** Only students active in membership are to be counted in attendance on parent-teacher conference days. For districts that use a one hundred eighty (180) day academic calendar, only one parent-teacher conference day per semester will be counted for attendance purposes as a regular school day and included as part of the one hundred eighty (180) days of required instruction. Other days are encouraged above the one day per semester for parent-teacher conferences, but will not be counted for attendance purposes as regular school days. For a school district which has implemented a one thousand eighty (1,080) hour school year pursuant to [70 O.S. § 1-109](#), parent-teacher conferences may be counted as instructional time for no more than six (6) hours per semester, for a total of up to twelve (12) hours per school year.

(i) **Concurrent enrollment.** A school district may receive full average daily attendance on a high school student who is participating in concurrent enrollment. In determining a legal school day for a student who is concurrently enrolled the district can use a combination of local school enrollment, college enrollment, and travel time. A student participating in concurrent enrollment is considered present when traveling to or from and while attending the college.

(j) **Professional meeting day.**

(1) The State Board of Education has defined a professional meeting day to be any day on which the faculty of a school district is engaged in the educational planning for improvement of the local school system; or that the faculty engages in a local, county, district or state education planning workshop or teacher's meeting. Such a day shall be identified as a professional day in each attendance register on the day the meeting occurred.

(2) Days used to work at the beginning or at the end of the school year shall not be counted as professional development activities. Preparing the classroom for instruction, grading papers, recording grades, completing report cards or enrolling students are not examples of professional development activities.

(3) A school district may not count more than thirty (30) hours each school year that are used for attendance of professional meetings toward the one hundred eighty (180) days or one thousand eighty (1,080) hours of classroom instruction time that school is required to be in session.

(k) **Transportation.**

(1) A student must reside one and one-half (1 1/2) miles or more by commonly traveled road from the school attended to be considered transported. Students living less than one-and one-half miles from the school may be transported but shall not be counted as transported pupils on the Transportation Report for state aid purposes.

(2) Transportation may be provided for early childhood and kindergarten students to and from school during the normally scheduled morning and afternoon bus operation. Districts may also provide additional transportation, at local expense, for either early childhood or kindergarten students at midday. However, the school district is not required to provide midday transportation to either early childhood or kindergarten students. Midday transportation for early childhood and kindergarten pupils shall not be recorded on the Transportation Report.

(3) A legally transferred or tuition student residing outside of the school district's approved transportation area may be transported to the school provided the student meets the bus within the transporting district's approved transportation area. However, tuition students may not be counted as transported students on the Transportation Report.

(l) Authority for birth.

(1) Documentation that can be used to verify school age. Examples of Authority for Birth are:

- (A) Birth certificate
- (B) Attending physician's certificate
- (C) Permanent school record
- (D) Family bible
- (E) Parent statement
- (F) Last year's attendance register
- (G) Other official scholastic record

(2) Birth certificates, if available, must be provided for early childhood, kindergarten, and first grade students who are first-time enrollees. Each different Authority for Birth must have its own unique code on the Student Attendance Register.

(m) Career and Technology Center. Students are considered in attendance when traveling to or from and while attending a Career and Technology Center.

(n) Home-based program. An educational program for special education students who are unable to participate in a full-day educational program at school, or for students who are unable to attend school in person for a period of time due to extended medical or other issues, and who receive education services from the school district at their home or an equivalent non-school site such as a hospital, provided by one or more certified teachers. Home-based pupils are considered on roll and in attendance for the duration of the time period they receive offsite education services from the school district.

(o) Out-of-home placement. A student who is not a resident of the district but is housed and educated in a residential child facility or a treatment center located in the district. Out-of-home placement students are carried on roll and are considered in attendance if they are present for their scheduled education program, whether at a school site or through offsite services provided by the district.

Statutory Authority

CHAPTER AUTHORITY:

70 O.S., § § 1-109, 1-111, 1-113, 1-114, 3-104, 5-105, 5-147, 7-101, 103 and 104, 8-101 through 104, 11-103.2, 11-103.3, 1210.307, 1210.507, 1210.541, 1210.545, 13-101, 18-108, 18-111, 18-118; Laws 1996, c. 277, § 9; 34 *CFR Part 299*, Subpart F S299.10-12 Elementary-Secondary Act, P.L. 107-110

History

Amended at 13 Ok Reg 71, eff 10-5-95 (emergency); Amended at 13 Ok Reg 1321, eff 5-13-96; Amended at 14 Ok Reg 3312, eff 5-5-97 (emergency); Amended at 15 Ok Reg 2227, eff 6-11-98; Amended at 16 Ok Reg 2069, eff 5-3-99 (emergency); Amended at 17 Ok Reg 2884, eff 7-13-00; Amended at 19 Ok Reg 16, eff 9-12-01 (emergency); Amended at 19 Ok Reg 971, eff 5-13-02; Amended at 25 Ok Reg 629, eff 1-14-08 (emergency); Amended at 25 Ok Reg 1571, eff 6-12-08; Amended at 32 Ok Reg 887, eff 8-27-15; Amended at 35 OK Reg 1090 eff 09-14-2018.



ATTACHMENT 6

OKLAHOMA STATE DEPARTMENT of EDUCATION

VIA EMAIL WITH CERTIFIED MAIL TO FOLLOW

Gina Darby, Director of Operations
Infinity Generation Preparatory School
P.O. Box 17433
Oklahoma City, OK 73117

info@iggokc.org

July 12, 2023

Director Darby,

This letter is to inform you, as Director of Operations at Infinity Generations Preparatory School ("School"), that the Oklahoma State Department of Education ("OSDE") is recommending revocation of the School's accreditation status to the State Board of Education for the following reasons:

The School did not complete a spring accreditation audit this year despite being contacted by your Regional Accreditation Officer ("RAO"). Due to the accreditation audit not being complete, there were five deficiencies issued for your high school site, four deficiencies issued for your elementary site, and three deficiencies issued for your district. It should be noted that this is the second year in a row the School has been cited for not submitting mandated reports in a timely fashion. Additionally, OSDE received notification of School closure from January 5th through March 17th this past year. Supporting this, in your correspondence dated June 12, 2023, you indicated that the School was "just now back up and running." The closure of your School resulted in parents and students unexpectedly having to find other educational opportunities.

The School has been accredited by the Oklahoma State Board of Education since August 26, 2021¹. In the previous year, your School received an accreditation status of accreditation with warning. As an accredited private school, the School must comply with all applicable laws and regulations, including accreditation standards set by the State Board of Education. Based on the foregoing actions and conduct, which do not comport with the requirements for continued school accreditation, OSDE intends to recommend that the State Board of Education revoke the School's Accreditation. At this time, it is anticipated that this matter will be presented to the State Board of Education at its **July 27, 2023**, regular meeting. This meeting is scheduled to commence at **9:30 a.m., at the Oliver Hodge Building, 2500 North Lincoln Boulevard, Room 1-20 (first floor), Oklahoma City, Oklahoma 73105**.

¹ Prior to this date, the OSDE believes the School has operated as a non-accredited private school.

Please advise as to whether the School intends to appear at the upcoming meeting of the State Board of Education, no later than **July 20, 2023**. Should the School choose not to request an opportunity to address the State Board of Education, revocation of the School's accreditation status with the State Board of Education may proceed without delay.²

Respectfully,


Andy N. Ferguson
Deputy General Counsel

² The State Board of Education previously approved Infinity Generation Preparatory Academy as a participating private school for the Lindsey Nicole Henry ("LNH") Scholarship Program pursuant to Oklahoma statute 70 O.S. § 13-101.2. Please note that continued status as an LNH participating school is dependent on fulfilling the necessary eligibility criteria, including private school accreditation through either the State Board of Education or through an approved accrediting association.

ATTACHMENT 7

From: [James R. \(Jim\) Johnson](#)
To: [Andy Ferguson](#)
Cc: [Kellie Keefe](#)
Subject: RE: Infinity Generation Preparatory School
Date: Thursday, July 20, 2023 10:24:26 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[RE Payroll Records - email to B Clark\(248445\).msg](#)

Andy:

I note your letter of 12 July did not identify any rules of the Board alleged to have been violated by the school. Likewise, I note your email this morning does not identify any rule of the Board which mandates or allows the Exec Dir. Of Accreditation ("Exec. Dir.) to proceed with making a recommendation when a member of the public is given very short notice of Board action in which that very short notice fails to identify any specific basis for Board action or recommendation.

Most critically, your letter does not assert any actual basis for action by the ODE or Board other than a general assertion that the school "failed to complete" a spring audit last year.

Given this, it is my client's intention to provide a written statement to the Board on 27 July and likewise, therein, demand an appearance on this matter at a later date which meets due process requirements.

I remind you specifically that action of the Board requires the fulfillment of due process. Your letter fails to provide any actual notice to my client. An assertion that an Exec. Dir wants to present all matters at the same time is hardly suggestive that due process requirements have been or can be met. For example, what rule of the Board mandated to be promulgated in compliance with 75 O.S. Sec. 302(A) sets forth the procedures of the Exec. Dir. in making and presenting recommendation to the Board and which, thereby, permits affected members of the public to "respond"?

To this end, please immediately (before the end of the week):

- Provide a copy of each complaint or allegation leveled against the school identifying specifically each promulgated rule of the Board relative to that complaint or allegation.
- All evidence, records or other information of the ODE which the Exec. Dir. asserts supports the proposed recommendation and each recommendation or allegation.

At this point, given the blank nature of your 12 July letter, it is not possible to provide any form of response, either in person or in writing.

Thus, I suspect this relates to a matter raised by Brad Clark in September 2022, in which Brad asserted Ms. Darby was mandated to provide the Exec. Dir. certain financial records. I fully responded to this allegation, which was facially specious and frivolous, in a detailed analysis of the Board rules cited by Brad as the sole basis for action. That response, which is attached here, used a plain reading of Board rules in light of standard rules of statutory interpretation.

ATTACHMENT 7

I sent that response to Brad on 30 Sept. 2022. Brad never replied. In fact, the ODE and Board have been completely silent on the matter until your email last week telling my client (directly and knowing in fact she was represented by counsel) that she had a week to reconfigure her summer to accommodate the Exec. Dir. in the absence of any promulgated rule of the Board.

For the avoidance of doubt- the allegations were fully and specifically responded to 9 ½ months ago directly to the then General Counsel of the ODE, who simply ignored the response. The new General Counsel of the ODE likewise, evidently, ignored that response, and so did you.

Noting that my client has not been informed of any additional or different complaint of the ODE since then, I presume, but cannot confirm, that this is the gist of the complaint against her. I note that in my response from September 2022, I offered to meet with the Superintendent, Brad, the Board or anyone else will competence in this matter. The ODE was completely silent.

Once I have a copy of the information demanded above and your confirmation that this is simply a restatement (without agency assessment) of the matter asserted last September, I will very much provide the Board a detailed written response by Ms. Darby.

Regards,

Jim

From: Andy Ferguson <Andy.Ferguson@sde.ok.gov>
Sent: Thursday, July 20, 2023 8:31 AM
To: James R. (Jim) Johnson <jim@resolutionlegal.com>
Cc: Kellie Keefe <Kellie.Keefe@sde.ok.gov>
Subject: RE: Infinity Generation Preparatory School

CAUTION: **External**

Mr. Jordan,

I am in receipt of your emails and have made the relevant parties aware of your request. At this time, however, the Executive Director of Accreditation intends to present all of his annual accreditation recommendations to the Board during the regular meeting on July 27th. This includes the recommendation as related to Infinity Generation Prep. School. The Board will be fully apprised of your communications and requests.

Respectfully,

ANDY N. FERGUSON

Deputy General Counsel

OKLAHOMA STATE DEPARTMENT OF EDUCATION

2500 N Lincoln Blvd, Oklahoma City, OK 73015

Direct: 405-522-5260

From: James R. (Jim) Johnson <jim@resolutionlegal.com>

Sent: Thursday, July 20, 2023 6:58 AM

To: Andy Ferguson <Andy.Ferguson@sde.ok.gov>; Kellie Keefe <Kellie.Keefe@sde.ok.gov>

Subject: [EXTERNAL] RE: Infinity Generation Preparatory School

Importance: High

Andy and Kellie:

On 13 July 2023, I responded to your letter of 12 July 2023 to Gina Darby and her Infinity Generation Prep. School. Each letter was in regard to potential Board action set for 27 July 2023. You advised Ms. Darby to let you know by 20 July 2023 whether she would attend this meeting.

In my email below, I advised that Ms. Darby will be out of town on July 27 but wants to attend a Board meeting on this topic- she simply cannot be available on July 27. Likewise, I advised that I will be out of town on July 27. A request was made to remove the item from the agenda and for some other information.

While you left little time for a response by Ms. Darby, I note that since 13 July 2023, when I wrote you, you have made no response- either to confirm or reject the request.

- Please immediately confirm the item has been removed from the agenda of the 27 July 2023 Board meeting. As stated, there is no evident need for this to appear on the next meeting agenda.
- Please identify all promulgated rules of the Board which have been used, are being used or may be used relative to the proposed action against the school.
- Please identify a date, as requested below, for us to meet to discuss this matter to determine whether Board action is needed.

Since today is the deadline set in your letter, unless I receive a reply email from you this morning I will call your office later today to confirm you have received these emails and otherwise to move this matter forward.

Regards,

Jim Johnson

JAMES R. (JIM) JOHNSON

1214 N. Hudson Ave.

Oklahoma City, OK 73103

Phone [405.235.6500](tel:405.235.6500) | Fax 405.758.4775

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GENTNER DRUMMOND
ATTORNEY GENERAL

**ATTORNEY GENERAL OPINION
2023-3**

The Honorable Mark McBride
Oklahoma House of Representatives, District 53
2300 N. Lincoln Boulevard, Room 452.1
Oklahoma City, OK 73105

April 4, 2023

Dear Representative McBride:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

- 1. Does power vested in the State Board of Education ("Board") to promulgate administrative rules absent specific statutory authorization violate article 5, section 1 of the Oklahoma Constitution which vests the legislative power of the State in the Legislature?**
- 2. Is the language in section 3-104 of title 70 of the Oklahoma Statutes, authorizing the Board to adopt policies and make rules for the operation of public schools in the State, an unconstitutional overly broad delegation of legislative power to the executive branch of government?**

This office initially responded to your request on March 20, 2023, through a letter from this office's General Counsel. Because you have followed-up the March 20 letter with a request for a formal opinion and there is no longer pending legislation on the topics in the questions presented, this formal opinion is provided pursuant to the duty in 74 O.S.2021, § 18b(A)(5).

**I.
BACKGROUND**

Article I, section 5 of the Oklahoma Constitution obligates the Legislature to provide for the establishment and maintenance of a system of free public schools. Further, the Constitution establishes the Board and provides that its powers and duties shall be prescribed by law. OKLA. CONST. art. XIII, § 5. In 1949, the Legislature enacted the Oklahoma School Code (the "Code") to fulfill its constitutional obligation to establish and maintain the public schools and to set forth the powers and duties of the Board. *Oklahoma Farm Bureau v. State Bd. of Educ.*, 1968 OK 98, ¶ 3, 444 P.2d 182, 184; 70 O.S.2021, § 1-102. The Code sets forth the Board's general powers and authority at section 3-104 of title 70 of the Oklahoma Statutes. Relevant to this Opinion, the State Board is authorized in section 3-104 to:

1. Adopt policies and make rules for the operation of the public school system of the state;
7. Promulgate rules governing the classification, inspection, supervision and accrediting of the public schools;
17. Have authority to provide for the health and safety of school children and school personnel while under the jurisdiction of school authorities
18. Provide for the supervision of the transportation of pupils; and,
20. Perform all duties necessary to the administration of the public school system in Oklahoma as specified in the Oklahoma School Code.

Id. § 3-104(A)(1, 7, 17, 18, & 20).

In other provisions of the Code, the Legislature has established policy through its lawmaking powers and then required the Board to promulgate rules to implement those specific acts.¹ In light of the Legislature’s express statutory delegations of authority to the Board on specific subjects, this opinion addresses whether the Legislature has duly authorized the Board, pursuant to section 3-104 of title 70, to impose particular requirements on schools through rulemaking. In other words, the inquiry centers on whether such a broad grant of power can be justified under the Oklahoma Constitution and the Administrative Procedures Act (the “APA”). For the reasons set forth below, the broad statutory provision in section 3-104 does not expressly grant the Board with sweeping authority to promulgate specific rules. Further, while section 3-104 does not violate the non-delegation doctrine, any rule promulgated solely pursuant to that section is invalid and may not be enforced.

II. DISCUSSION

A. The Legislature may delegate rulemaking authority to the Board, but section 3-104(A)(1) does not authorize rulemaking on a specific statute or subject.

Article V, section 1, of the Oklahoma Constitution, expressly identifies the Legislature as the lawmaking authority of the State. Then, pursuant to article V, section 36, the authority of the Legislature extends to all rightful subjects of legislation, and specific grants of authority in the Constitution do not work as restrictions upon the legislative power. While the authority to enact laws and establish policy is the sole province of the Legislature, the Legislature may delegate some rulemaking authority to executive branch agencies to implement statutorily mandated policies.

¹ 70 O.S.2021, §§ 3-104.3 and 3-104.4 (requiring the Board to adopt accreditation standards that adhere to identified standards of ensuring children have an opportunity to receive an excellent education, that schooling is accomplished in an efficient manner for the taxpayers and providing for minimum guardrails for the accreditation system); 70 O.S.2021, § 1210.162 (requiring the Board to promulgate rules relating to ensuring the visibility and awareness to how reports of child abuse or neglect may be made); 70 O.S.2021, § 24-157 (requiring the Board to promulgate rules to implement legislative prohibitions on certain concepts being a part of any course); 70 O.S.2021, § 1-125 (for the identified purpose of ensuring privacy and safety of students, requiring the Board to promulgate rules regarding the use of multiple occupancy restrooms); 70 O.S.2021, §§ 9-101–9-119 (identifying standards for school districts to provide transportation to students, including safety inspections and referring to the Board promulgated rules).

Tulsa Cnty. Deputy Sheriff's Fraternal Ord. of Police, Lodge Number 188 v. Board of Cnty. Comm'rs, 2000 OK 2, ¶¶ 8–9, 995 P.2d 1124, 1128; *In re Initiative Petition No. 366, State Question No. 689*, 2002 OK 21, 46 P.3d 123; 75 O.S.2021, § 250.2.² Recently, the Oklahoma Supreme Court has recognized the Legislature's ability to delegate some rulemaking authority to the State Board of Education. *Western Heights Indep. Sch. Dist. v. State*, 2022 OK 79, ¶ 77, 518 P.3d 531, 554. Nevertheless, any delegation of rulemaking authority must not allow an executive branch agency to assume legislative powers beyond those which are *properly* delegable.

Generally, an agency may only exercise the powers “expressly given by statute,” as well as those “necessary for the due and efficient exercise of the powers expressly granted, or such as may be fairly implied from the statute granting the express powers.” *Marley v. Cannon*, 1980 OK 147, ¶ 10, 618 P.2d 401, 405. An agency “cannot *expand* those powers by its own authority.” *Id.* (emphasis added). For example, an agency may not identify within the administrative record that it is proposing a rule for the purpose of expanding an existing statutory framework. Thus, “[a]n administrative agency may not under the guise of its rule making power exceed the scope of its authority and act contrary to the statute which is the source of its authority. Its authority to make rules for its various procedures does not include authority to make rules which extend their powers beyond those granted by statutes.” *Adams v. Professional Pracs. Comm'n*, 1974 OK 88, ¶ 11, 524 P.2d 932, 934.

In 2020, the Attorney General determined that the general powers and duties in section 3-104 were insufficient, solely, to confer statutory authority for rulemaking authority. 2020 OK AG 13. Specifically, in that opinion, this office concluded:

In promulgating the rule in question, the Department did not point to any particular grant of authority from the Legislature. Rather, it cited Title 70, Section 3-104, which *generally* outlines the “powers and duties” of the State Board of Education. Nothing in Section 3-104, however, references the Henry Program, nor does it expressly or implicitly authorize the actions taken here.

Id. ¶ 14 (emphasis added). As a result, while the Board has general rulemaking authority under section 3-104, this provision standing alone does not confer the authority to make rules on any specific statutes or subject matter. Rather, the Board must identify a specific grant of authority from the Legislature, which is more precise than the Board's general powers and duties in section 3-104. Otherwise, the Board would invade the constitutionally granted purview of the Legislature and offend article IV, section 1 of the Oklahoma Constitution. Additionally, it is never assumed that the Legislature has done a vain or useless act. *Globe Life and Accident Ins. Co., v. Oklahoma Tax Comm'n*, 1996 OK 39, ¶ 15, 913 P.2d 1322, 1328. Here, if the Board's general powers and duties were sufficient authority to promulgate rules, then there would be no reason for the Legislature to explicitly provide in separate sections of title 70 that the Board is authorized or

² A “rule” is defined in the APA as “any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency.” 75 O.S.2021, § 250.3(19). Prior to adopting a rule, the agency is required to cause public notice to be published in the Oklahoma Register, such public notice to include the proposed action, the circumstances creating the need for the rule and the specific legal authority, including statutory citations, authorizing the proposed rule. 75 O.S.2021, § 303(B).

required to promulgate certain rules. *See* 70 O.S.2021, § 3-104(A)(1, 7, 17, 18, 20), *compare with* 70 O.S.2021, §§ 3-104.3, 3-104.4, 1210.162, 24-157, 1-115, 9-101.1. Therefore, such an interpretation would lead to a vain or useless act.

Accordingly, relying on the office’s conclusion reached in the Attorney General Opinion 2020-13 and the foregoing authorities, any administrative rule promulgated with section 3-104 as the sole authority for the rulemaking action is invalid. It follows then that regulations promulgated in excess of statutory authority are void, cannot be placed into effect, and cannot be enforced. *See* 2017 OK AG 11, ¶ 15; 1979 OK AG 213, ¶ 18. Furthermore, an agency is not authorized to enforce an invalid rule, nor does it “elevate administrative rules above statutes,” merely because a court has yet to officially declare it invalid. *Southwestern Bell Tel. Co. v. Oklahoma Corp. Comm’n*, 1994 OK 142, ¶¶ 11–13, 897 P.2d 1116, 1119–20. And except where it declares a state statute unconstitutional, an Attorney General opinion such as this “is binding upon the state official affected by it and it is their duty to follow and not disregard those opinions.” *State ex rel. York v. Turpen*, 1984 OK 26, ¶ 5, 681 P.2d 763, 765.

B. Similarly, any rule that is promulgated with section 3-104 as the sole authority for the rulemaking is invalid as it renders that section an unconstitutional delegation to an executive branch agency.

The non-delegation doctrine arises from the Oklahoma Constitution—both the express separation of powers provision in article IV and the reservation to the Legislature of policymaking for the state in article V. *Tulsa Cnty. Deputy Sheriff’s Fraternal Ord. of Police*, 2000 OK 2, ¶ 8, 995 P.2d at 1128. The State Board of Education is an executive branch entity. *See* OKLA. CONST. art. VI, § 1; OKLA. CONST. art. XIII, § 5. Article V, section 1 vests “the state’s policy-making power . . . exclusively in the Legislature”; the sole exception being the reservation to the people of powers of the initiative and referendum. *Oklahoma Educ. Ass’n v. State ex rel. Okla. Legislature*, 2007 OK 30, ¶ 20, 158 P.3d 1058, 1065. Article IV, section 1 creates our State’s three branches and commands that they be “separate and distinct.” Moreover, “neither shall exercise the powers properly belonging to either of the others.” *Id.* ¶ 19, 158 P.3d at 1065.

The Oklahoma Supreme Court has repeatedly scrutinized state law to determine whether the Legislature has performed its assigned duties in establishing state law and policy. After all, the Legislature may not abdicate its responsibility to resolve fundamental policymaking by delegating that function to others or by failing to provide adequate directions for the implementation of its declared policy. *Democratic Party v. Estep*, 1982 OK 106, ¶ 16, n.23, 652 P.2d 271, 277 n.23. Rather, the Legislature must “establish its policies and set out definite standards for the exercise of any agency’s rulemaking power.” *Id.* ¶ 16, 652 p.2d 277–78. Put another way, the Legislature must provide an agency with certain contours of its policy goals. When that does not occur, such as in *Estep*, the court will not hesitate to strike down acts that violate the non-delegation doctrine. In *Estep*, the court ruled that the Oklahoma Campaign Finance Act violated the non-delegation doctrine because it allowed the Campaign Commission unfettered discretion to promulgate rules *without* legislative standards. *Id.* ¶ 1, 652 P.2d at 272.

Over a decade later, in *Oklahoma City v. State ex rel. Dep’t of Labor*, the court struck down a statute that delegated the task of determining the prevailing wage for Oklahoma workers to the

United States Department of Labor. 1995 OK 107, 918 P.2d 26. The court held such a delegation to be improper because it gave an agency of unelected bureaucrats in Washington the authority to set prevailing wages. *Id.* ¶¶ 5–14, 918 P.2d at 29–30. More recently, in the case of *In re Initiative Petition No. 366*, 2002 OK 21, 46 P.3d 123, the court ruled unconstitutional a delegation of rulemaking authority to the State Board of Education and the State Regents for Higher Education “to promote the following principles.” This delegation of authority, according to the court, was unlawful because it failed to state any principles, provided no guidelines for implementing rules, and allowed the agency unfettered discretion to make law. *Id.* ¶¶ 16, 18, 46 P.3d at 128–129.

The court has also been adversarial to boards and commissions that use vague statutory powers to justify the reach of the public body’s powers. Prior to *Estep*, the court held that the agency did not have the power to fix retail liquor prices because the Legislature did not delegate such power to the Board. *Oliver v. Oklahoma Alcoholic Beverage Control Bd.*, 1961 OK 9, 359 P.2d 183. Notably, the court rejected the Board’s argument that a legal basis for the regulation arose from the Board’s statutory powers to supervise, regulate, promulgate rules, and exercise all other powers and duties conferred by law and those incidental thereto. *Id.*

Presently, the delegation to the Board to “adopt policies and make rules for the operation of public schools,” is likely constitutionally infirm. Without more by way of standards and guidelines, it leaves important determinations to the unrestricted and standardless discretion of bureaucrats. *Oklahoma City*, 1995 OK 107, ¶ 14, 918 P.2d at 30. Alone, the language in section 3-104(A)(1) fails to set forth any standards or guidelines for the Board to follow and lacks any safeguards to limit political opportunism.

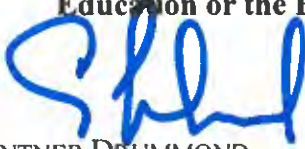
Clearly, the Legislature may delegate authority to the State Board to determine facts and enact rules *within prescribed legislative standards*. The instances of doing so are numerous within title 70. *See* statutes cited *supra*, note 1.³ However, nothing within the confines of section 3-104(A)(1), by itself, sets forth the requisite prescribed legislative standards. As a result, a construction in favor of the agency constitutes either an impermissible abdication of lawmaking responsibility or an impermissible delegation of policymaking authority to the Board. Either way, it constitutes an impermissible invasion of the proper province of the Legislature secured for it by article IV, section 1 of the Oklahoma Constitution—which is something this office will not permit. *Oklahoma State Chiropractic Indep. Physicians Ass’n v. Fallin*, 2011 OK 102, 290 P.3d 1; *Estep*, 1982 OK 106,

³ Relative to sections 3-104.3 and 3-104.4, setting forth the Legislature’s policies and standards governing the Board’s setting of accreditation standards for the public schools, these standards were once in section 3-104. *Oklahoma Farm Bureau*, 1968 OK 98, 444 P.2d 182 (the court and all parties recognizing that the statute granting the Board the power to establish accreditation standards did, at that time, properly set forth standards and guidelines to guide the Board in establishing rules). *Id.* ¶ 22, 444 P. 2d at 187. *At that time*, the statute contained five fixed standards and extended authority for the Board to consider other factors in determining the accreditation of schools. *Id.* ¶ 21, 444 P. 2d at 187. However, the Legislature subsequently amended the Code and moved the standards and guidelines for accreditation of schools to a separate and distinct section of title 70. Taking the standards and guidelines from section 3-104, the Legislature moved those to what are now sections 3-104.3 and 3-104.4. As a result, it appears unlikely that the general authority in section 3-104(A)(7)—authorizing the Board to promulgate rules governing the supervision and accrediting of schools—would be held to be a proper delegation of authority for accreditation rules. In *Western Heights*, the Oklahoma Supreme Court looked to sections 3-104.3 and 3-104.4 of title 70, together with section 3-104, to recognize the Board’s proper rulemaking authority concerning the accreditation of the state’s public schools. *Western Heights Indep. Sch. Dist. v. State*, 2022 OK 79, ¶¶ 80–81, 518 P.3d at 555–56.

¶¶ 16–20, 652 P.2d at 277. Accordingly, any rulemaking that is promulgated with section 3-104 as the sole authority for the rulemaking is invalid as it renders that section an unconstitutional delegation to an executive branch agency.

It is therefore, the official Opinion of the Attorney General that:

- 1. The Legislature may delegate rulemaking authority to the Board, but section 3-104(A)(1) does not authorize rulemaking on a specific statute or subject.**
- 2. Section 3-104 does not violate the non-delegation doctrine, but any rulemaking promulgated solely pursuant to section 3-104 is invalid as it renders that section, as applied, an unconstitutional delegation to an executive branch agency.**
- 3. Any rule promulgated relying only on the general “powers and duties” within section 3-104 is invalid and may not be enforced by the State Department of Education or the Board.⁴**



GENTNER DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA



⁴ Although this Opinion does not examine or interpret a specific rule, it unquestionably does apply to all purported rulemaking by the State Board of Education under section 3-104(A)(1). Further, questions relating to a specific rule would undergo an analysis similar to that provided herein. For example, questions relating to a specific rule would require an examination of the administrative record, including but not limited to the notice of rulemaking intent and whether the statutory or constitutional authority cited expressly or impliedly grants the rulemaking authority and is consistent with the non-delegation doctrine.

From: James R. (Jim) Johnson <jim@resolutionlegal.com>
Sent: Friday, July 28, 2023 11:12 AM
To: Andy Ferguson; Ryan Pieper; Ryan Walters
Cc: Gentner Drummond
Subject: [EXTERNAL] Infinity Generations- Records demand relative to Board direction of July 27, 2023
Attachments: Response Ltr to B Cleveland 04.26.23(253975).PDF; Ltr to OK Bd of Ed regarding July 27 Meeting(255990).PDF

Andy and Ryan P.:

This is sent as follow up to the direction from the Board of Education ("Board") yesterday as to Infinity Generation Preparatory School ("Infinity"). Since the Board seeks information about the actions of the agency as to Infinity, likewise I require information so that I might give the Board a full assessment of my client's position in the matter. As you know, the agency's lack of clarity prompted by appearance at the meeting.

For this, I note Mr. Pieper specifically stated in the Board meeting that the personnel in his office are "experts" in the area of accreditation. Likewise I note that in response to the concerns raised by my client, Mr. Walters specifically asked Mr. Ferguson, "are we good?" relative to the procedures and promulgated rules challenged by Infinity as to the audit. Mr. Ferguson replied, and I believe this is a close quote, "yes, we are good." Title 75 O.S. Sec. 250.3(19) broadly defines "rules" under the Administrative Procedures Act (75 O.S. Sec. 250 et seq.) (the "APA"). Section 302 of the APA makes it clear agencies must promulgate all rules of procedures of the agency without need for further amendment, interpretation or expansion. 75 O.S. Sec. 302(D). "Experts" running an agency program covered by the APA thus know they must operate based on promulgated rules without further interpretation. I note further the mandates of 67 O.S. Sec. 206(A)(2) relative to the contents of all agency records. Although Mr. Walters has powers and duties strictly limited to statute, the duty to create lawful agency records is one such duty placed directly on him.

Similar but complementary limits on agency powers were described in Gentner Drummond's recent A.G. Op. 2023-3. Briefly, agencies must first have express statutory authority to implement a program and the agencies must promulgate rules in compliance with that authority. Agencies are prohibited from enforcing "invalid" rules, even without a court ruling them invalid. I trust you are familiar with A.G. Op. 2023-3 and how it is binding on the agency.

These requests extend from direction of the Board to present further information to it as well as identified concerns about whether the agency complies with Oklahoma law.

Since time is short until the next Board meeting, please provide all of the following within 5 business days.

1. Ryan Pieper yesterday identified in detail that the Board's authority as to accreditation arises from specific aspects of 70 O.S. Sec. 3-104. Request: In light of the mandatory determination of the Attorney General in A.G. Op. 2023-3, please identify all statutory authority allowing the Board authority over private school accreditation given that 70 O.S. Sec. 3-104 has been specifically determined, in a mandatory fashion, to be insufficient for the Board to promulgate rules to implement any program of the agency thereunder.
2. Regarding Andy Ferguson's letter to Ms. Darby of July 12, 2023, please provide all records of the Board and agency regarding all matters stated in that letter. Specific to this:
 - a. Please provide specific statutory authority for the Board/agency to perform a "spring accreditation audit."
 - b. Please provide all promulgated rules of the Board regarding the implementation and all standards relative to the spring accreditation audit program.
 - c. In the event the agency uses any agency record (as defined by relevant law) or document, in any form, to provide guidance for any aspect of the spring accreditation program, please provide a copy of each.

- d. Please provide all records of the agency which supports or asserts the “expertise” of agency personnel in the operation of the accreditation program.
 - e. Please identify statutory authority for the Board or agency to assert, identify, define or enforce any form of “deficiency” stated but not described in the letter of July 12, 2023.
 - f. Please identify all promulgated rules of the Board implementing, interpreting, establishing or used by the agency to assert or determine any covered person (defined to include private schools) is deficient in any manner.
 - g. In the event the agency uses any agency records (as defined by relevant law) or document, in any form, to provide guidance for any aspect of determining or asserting the existence of a deficiency, please provide a copy of each.
 - h. Please identify statutory authority for the Board or agency to assert, identify, define or enforce any form of “mandatory report” stated but not described in the letter of July 12, 2023.
 - i. Please identify all promulgated rules of the Board implementing, interpreting, establishing or used by the agency to require the submission of any mandatory report. Please ensure these rules describe the contents or form of any mandatory report.
 - j. In the event the agency uses any agency records (as defined by relevant law) or document, in any form, to provide guidance for any aspect of determining or asserting the basis for the submission of a mandatory report please provide a copy of each.
 - k. Relative to my letter submitted to the Board for its meeting, please provide all records of the Board and agency relative to the concerns raised therein. If these are not clear, please advise.
3. On April 26, 2023, I submitted an Open Records demand to Mr. Cleveland and Mr. Walters. It has been over three month with neither an acknowledge nor response from the agency. A copy of this original demand is attached. As you are doubtless aware, timely access to agency records is a constitutional right (Okla. Const. Art. 2, Sec. 1) and public policy (51 O.S. Sec. 24A.2) in Oklahoma. I have copied Mr. Drummond on this email since he has stated an interest in assuring prompt access to agency records. In the event you are unfamiliar with the mandates of the Open Records Act, I expect Mr. Drummond can provide you clarification. Likewise, so as not to confuse Mr. Drummond, I have attached a copy of my letter to the Board earlier this week.

I presume the agency has been actively working on my original ORA demand. Thus, I presume a five day turnaround for that is entirely reasonable.

Please advise a suitable day and time the week of August 7, 2023, for me to visit in person with each of you (as a group) to discuss this matter. I assume the Board would appreciate all efforts to resolve as many issues herein amicably as possible. Such a meeting would likely greatly reduce the burden this matter might place on the Board.

Please confirm receipt of this email.

Regards,

Jim Johnson

JAMES R. (JIM) JOHNSON

1214 N. Hudson Ave.

Oklahoma City, OK 73103

Phone 405.235.6500 | Fax 405.758.4775

www.ResolutionLegal.com



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From: James R. (Jim) Johnson <jim@resolutionlegal.com>
Sent: Tuesday, August 1, 2023 11:15 AM
To: Andy Ferguson; Ryan Walters; Ryan Pieper
Subject: [EXTERNAL] Infinity

All:

I emailed you last Friday requesting information to move forward the matter to be re-presented to the Board at its next meeting. Likewise, I requested confirmation of receipt by you.

This email is sent because no confirmation was provided. Given the shortness of time before the next Board meeting, it remains necessary that the ODE provides the information by this Friday, August 4.

To help clarify the records to be provided, this email is also sent to provide an example. OAC 210:25-5-5 provides for auditing standards to be implemented by the agency. This rule mandates each school district "to cause an annual audit of the district's financial activity." Certain standards are described.

On its face, OAC 210:25-5-5 is applicable solely to public school districts, since by its plain language it says that. Likewise, OAC 210:25-1-1 states specifically that all rules in Chapter 25 of Title 210 "describe the basis for funding of public schools" and other matters relative solely to school "districts." Of course, public schools spend public funds, so there is a public interest in auditing them.

Private schools are not public schools. Rules may not be expanded or interpreted outside of rule promulgation. 75 O.S. Sec. 302(D). OAC 210:25-5-5 cannot be used as the basis for auditing private schools. This, of course, states the obvious under the APA. The specific constitutional basis for this is likewise obvious, I presume.

There is no indication of any rule which implements audits of private schools promulgated by the Board. The purpose of my request is to determine how the ODE audits private schools in the absence of a promulgated rule or if I missed the audit rule in my review.

Please note this is an example only and not a limiter of my original request.

I suggest meeting at ODE offices with all of you on Weds. Aug. 9, preferably in the morning. Please advise.

Likewise, please confirm receipt.

Regards,

Jim Johnson

JAMES R. (JIM) JOHNSON
1214 N. Hudson Ave.
Oklahoma City, OK 73103
Phone 405.235.6500 | Fax 405.758.4775
www.ResolutionLegal.com



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immediately, before we get in really big trouble. If this notice does not have you shaking in your boots, we will start using really big words, throw things, and scream about how easy life was before computers.

County OKLAHOMA

District

INFINITY GENERATION PREP
SCH**Oklahoma State Department of Education****2022-2023 APPLICATION FOR ACCREDITATION**

Beginning this school year, the State Department of Education will no longer require the submission of certified paper copies of the Accreditation Applications to the Accreditation office. Districts will still be required to enter Accreditation data online, as usual, beginning October 1st and to be completed and certified by the deadline of October 15th.

District

Does the district have a written plan with procedures in place to protect students, faculty, administration, and visitors from natural and man-made disasters. (i.e., tornados, and other disasters)?

☒

Is the plan on file in each district AND with the local emergency management organization within the district? (Enter the organization names below)

☒

OKCEM ATTN: SHARON
Oklahoma City Emergency Management

Does the district have and follow a policy on felony record searches?

☒

Has each of the local elected school board members met their required training according to Oklahoma Law?

☒

Has the board of education appointed a residency committee for any certified resident teacher?

☐

Number of resident teachers:

3

Have the district treasurers and all encumbrance clerks received the minimum of 12 hours of training on school finance laws, accounting, ethics, and duties?

☐

Have they completed 12 hours of continuous education every 3 years?

☐

Are the district treasurer and superintendent bonded?

☐

Do all teacher assistants have a high school diploma?

☒

OKLAHOMA

INFINITY GENERATION PREP
SCH**Oklahoma State Department of Education**

CountyOKLAHOMA

DistrictINFINITY GENERATION
PREP SCH

SchoolINFINITY GENERATION
PREP SCH

Oklahoma State Department of Education

2022-2023 APPLICATION FOR ACCREDITATION: ELEMENTARY SCHOOL

Beginning this school year, the State Department of Education will no longer require the submission of certified paper copies of the Accreditation Applications to the Accreditation office. Districts will still be required to enter Accreditation data online, as usual, beginning October 1st and to be completed and certified by the deadline of October 15th.

CERTIFICATE OF ACCURACY

Status: Superintendent Certified

On: Thursday, November 10, 2022

I hereby certify that the information contained in the following report is complete and correct.

Street Address5517 NW 23rd Street

Mailing AddressPO Box 17433

City, State, ZipOKLAHOMA CITY, OK, 73131

Phone (Include area code)(405) 6013055

Superintendent (Please sign here)

Principal (Please sign here)

Contact Person: Gina Darby

Is the school located within the city limits of the city listed to the left: Yes ☒ No ☐

Are you operating as a conversion site? Yes ☐ No ☒

Statistical Information

Please indicate membership (Total number of students enrolled in this school site) on October 1. Use only the grade levels included in this school.

Count each student only once in the appropriate grade level(PK thru Out-of-Home Students).															
GRADE	Hispanic*		American Indian or Alaskan Native (non-Hispanic)*		Asian (non-Hispanic)*		Black (non-Hispanic)*		Hawaiian or Pacific Islander (non-Hispanic)*		White (Non-Hispanic)*		Two or More Races (non-Hispanic)*		TOTAL
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	
Pre K 3 (1/2 day)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pre K 3 (full day)	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Pre-Kindergarten (1/2 day)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Kindergarten (full day)	0	0	0	0	0	0	2	1	0	0	0	0	0	0	3
Kindergarten (1/2 day)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kindergarten (full day)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1	0	0	0	0	0	0	1	1	0	0	0	0	0	0	2
2	0	0	0	0	0	0	1	1	0	0	0	1	0	0	3
3	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
4	0	0	0	0	0	0	2	1	0	0	0	0	0	0	3
5	0	1	0	0	0	0	2	0	0	0	0	0	0	0	3
6	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2
7	0	0	0	0	0	0	3	2	0	0	0	0	0	0	5
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Out-of-Home Students+	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Grand Total	0	2	0	0	0	0	12	8	0	0	0	1	0	0	23
Bilingual Total by Ethnicity++	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

* The student is a member of a specific ethnic group if he/she, or the community, considers him/her to be a member of that group.

** PK3 - Three year old students enrolled in prekindergarten program and three year olds who must be served.

The Pre-Kindergarten will include all 4-year-old students including non-IEP and IEP.

+ Out-of-Home Students are out-of-home placement and not residents of the school district in which the residential child facility or treatment program or center is located. Therapeutic foster children should be listed in this category unless parents are residents of the district.

++ See instruction sheet for Bilingual Eligibility criteria. This Bilingual count is part of the calculation used by State Aid. The Bilingual total must not exceed the grand total in each ethnic category.

Students who have passed compulsory attendance age and are required by law to be served by the public schools, should be included in the most appropriate grade.

School Calendar

a. School Days Taught

172

b. First day classes met

(Month/Day/Year)

8/15/2022

c. Last day classes will meet

(Month/Day/Year)

5/19/2023

d. Day first quarter ends

(Month/Day/Year)

10/21/2022

e. Date spring break begins

(Month/Day/Year) if applicable

3/13/2023

If not applicable, please describeN/A

f. Does your site have a four day week?

Yes

No

X

g. Schedule parent/teacher conferences:

Date:10/24/20224:00PM7:00PM

Date:3/10/20234:00PM7:00PM

Date:

Date:

h. Interactive Calendar: List all dates when classes will be dismissed for functions and holidays.

Calendar Event:	Date:	ToDate:
First Day of Classes	8/15/2022	
Last Day Of Classes	5/19/2023	
End of 1st 9 weeks	10/21/2022	
Labor Day	9/5/2022	
Fall Break	10/10/2022	10/14/2022
Thanksgiving	11/23/2022	11/25/2022
Winter Break	12/19/2022	1/3/2023
Martin Luther King Day	1/16/2023	
Spring Break	3/13/2023	3/17/2023
Good Friday	4/7/2023	

Calendar Description. (Do not include Summer School.)

Check the box if your school is year-round (July to June) instead of traditional:

Check the box if your school offers a traditional calendar (August to June) :

X

School Day

a.	Length of school day in minutes (i.e., 360 do not include breakfast and lunch period)	_____	390
b.	Number of minutes for lunch	_____	60
c.	Time first class period starts	_____	8:30AM
d.	Time last class period of the day ends	_____	3:30PM
Number of minutes per week Physical Education is provided for Kindergarten through 5th grade. (Do not include recess)			90
Number of minutes for recess?		A.M. _____ 15 P.M. _____ 15 N/A _____	0
Total number of hours in the school day excluding breakfast and lunch time?			6.50 HRS
Total Instructional Hours:			1118

Library Media

a.	Is there a central library at this school site?	Yes	<u>X</u>	No	_____
	If no, where is this library located? _____				
b.	Does this library serve more than one site?	Yes	<u>X</u>	No	_____
	If yes, list other locations: _____ High school				
c.	Library Media Specialist(s)/Librarian(s) _____				
d.	Certification of Library Media Specialist(s)/Librarian(s) _____				
Library Assistants: Sharon Johnson					
e.	Library is staffed in the following way:	Other: _____			
f.	Is the Library accessible to students and staffed during the school day?	Yes	<u>X</u>	No	_____
g.	EXCLUDING federal funds, give the amount of LOCAL FUNDS spent during the 2021-2022 school year for books, software and periodicals (not hardware or supplies) at this site	_____ \$0.00			
h.	Total number of students enrolled at this site as reported on 2021-2022 Application for Accreditation (number used to calculate required library expenditures)	_____ 23			

Adjunct Teacher

a.	Do you have an adjunct teacher?	Yes	_____	No	<u>X</u>
No adjuncts found (Check adjunct check box on teacher assignment to add teacher to this list)					

High School Credit for 7th and 8th Grade Students

a.

Are any 7th or 8th grade students enrolled in classes for high school credit?

at this site:

at the High School (or other site):

Yes

No

-----X

Yes

No

-----X

b.

Number of 7th or 8th Grade Students enrolled in courses for High School Credit

7th

8th

Total Students

*

*

* This is not an unduplicated total

c.

Does the site document a student's failure to participate in remediation, including written acknowledgement by parents of district plan?

X

Application for Accreditation

Program of Studies Summary

1. List of courses from the 'Teacher Assignment' menu area:

Health/Nutrition/Physical Education			Units
1363	Physical Education		0.00
Total Health/Nutrition/Physical Education			0.00
Keyboarding			Units
1335	Keyboarding		0.00
Total Keyboarding			0.00
Language Arts			Units
1114	Language Arts		0.00
1115	Spelling/Vocabulary		0.00
Total Language Arts			0.00
Mathematics			Units
2204	Mathematics		0.00
Total Mathematics			0.00
Nonteaching Assignments			Units
1920	Counselor		0.00
1954	Instructional Coach		0.00
1952	Principal/Teaching		0.00
Total Nonteaching Assignments			0.00
Reading			Units
1132	Reading		0.00
Total Reading			0.00
Science			Units
2266	6th Grade Science		0.00
2276	7th Grade Science		0.00
2254	General Science		0.00
Total Science			0.00
Self-Contained			Units
1013	Pre-K (Full Day)		0.00
1052	Second Grade		0.00
1053	Third Grade		0.00
Total Self-Contained			0.00
Social Studies			Units
2317	6th Grade World Geography -Western Hemisphere		0.00
2318	7th Grade World Geography -Eastern Hemisphere		0.00

2305	PK-5 Social Studies	0.00
	Total Social Studies	0.00
1. TOTAL 'Teacher Assignment' units =		0.00

CO:55 - OKLAHOMA
DIST:P082 - INFINITY GENERATION
PREP SCH
SITE:106 - INFINTY GENERATION
PREP SCH

Oklahoma State Department of Education

School Counselor Report

This form must be completed and returned with the Application for Accreditation, due by October 15th. Each school is required by 70 O.S. 3-104.4 to provide this information.

1.

Are guidance and counseling services provided by a certified school counselor employed at this school site?

.....

NO

1a.

If this is an elementary or charter school and you answered no, are guidance and counseling services provided by a person specially trained in the area of guidance?

.....

YES

1b.

If other staffing, please specify. (Note: If services are contracted, list the name, address and certification of the provider.)

1c.

Does this certified counselor also serve another district; if so, where?

.....

2.

Total number of students enrolled at this school site as of October 1.:

.....

23

3a.

List only the names of certified counselors employed at this site:

3b.

Teacher Number

3c.

Number of clock hours per day as counselor at this site
OR
Time assigned to this site (for example: 5 hours per week)

3d.

Number of students the counselor is responsible for serving at this site:

4. Identify the duties and responsibility of all counselors (check all that apply).

- a.

X

Individual/group counseling
- b.

Academic and career guidance
- c.

X

Consult with parents/staff
- d.

X

Plan/coordinate guidance
- e.

X

Facilitate referrals
- f.

X

Serve on duty schedule
- g.

X

Substitutue for teachers
- h.

X

Coordinate special education
- i.

X

Student discipline duties
- h.

X

Work on master schedule

CO:55-OKLAHOMA

Oklahoma State Department of Education

DIST:P082-INFINITY GENERATION PREP SCH

SITE:106-INFINTY GENERATION PREP SCH

Early Childhood Report

This form must be completed and returned with the Application for Accreditation, due by October 15, 2013. Each school is required by 70 O.S. 3-104.4 to provide this information. (Questions regarding this form only, should be directed to Early Childhood, at 405/521-3346.)

A. Pre-Kindergarten/Four-Year-Old Children

1. Do you provide a public school Pre-Kindergarten program for four-year-olds? ☒ Yes ☐ No
2. If yes, is the Pre-Kindergarten program offered through collaboration with a public or private provider? (A Pre-Kindergarten collaboration is defined as a mutual arrangement between a public school and a private or public provider to offer the public school four-year-old program which includes the employment of a bachelor degreed, early childhood certified teacher and the implementation of the public school curriculum as well as compliance with public school rules and regulations for four-year-olds.)

☐ N/A We offer a Pre-Kindergarten program through a collaboration agreement only

☐ N/A We offer both the regular public school Pre-Kindergarten program and a collaboration program

Questions 3 through 8 refer to collaboration programs. If your district does not have a collaboration agreement, skip to question 9.

3. If you have a collaboration agreement with a public or private provider for the Pre-Kindergarten program, is the collaboration teacher listed on the school personnel record? ☐ Yes ☐ No ☒ X N/A
4. If the teacher(s) is not listed on the school personnel record, is the collaboration teacher paid the salary and benefits appropriate for their years of experience as identified on the current state minimum teacher salary schedule? ☐ Yes ☐ No ☒ X N/A
5. If the teacher(s) is not listed on the school personnel record, please list their names and certificate numbers below:
6. If you have a collaboration program, are any of the four-year-olds in your collaboration out-of-district transfers? ☐ Yes ☐ No ☒ X N/A
7. If yes, do you have proper documentation of legal transfers for all out-of-district transfer students? ☐ Yes ☐ No ☒ X N/A
8. If you are collaborating with another entity to offer your Pre-Kindergarten Program, please identify with whom you are collaborating:

☐ Childcare ☐ Church ☐ Head Start ☐ Private School
☐ Other (Specify) _____

9. How many of your Pre-Kindergarten students counted for state aid purposes attend class in each of these settings:

0 Public school facilities (includes Head Start programs located on the public school campus)
 0 Head Start facilities (off public school campus only)
 0 Childcare facilities
 0 Church facilities
 0 Private school facilities
 0 Other (specify) _____
 0 TOTAL number of students attending the four-year-old program*

*(Please ensure the total number of students listed is equal to the total number of Pre-Kindergarten students you report on the grade grid of the Accreditation Report.)

10. Is your district able to serve all eligible four-year-old children who request enrollment in the program? ☒ Yes ☐ No ☐ N/A
11. If you have a waiting list, how many four-year-old children are on your waiting list? 0

B. Three-Year-Old Children

If your school provides a classroom program for three-year-old children, how is it funded?

☐ Title I funds ☐ District funds ☒ X Tuition charged to parents
☐ Special Education (619 funds) ☐ Head Start Collaboration
☐ Other (specify) _____

CO:55
DIST:P082
SITE:106

Oklahoma State Department of Education

Paraprofessional Report

This form must be completed and returned with the Application for Accreditation, due by October 15. (Questions regarding this form only, should be directed to Title I at (405) 521-2846.)

Title I Paraprofessional Definition

A professional is an individual with instructional duties. Individuals who work solely in noninstructional roles, such as food service, cafeteria or playground supervision, personal care services, and noninstructional computer assistance are not considered to be paraprofessionals for Title I programs.

1. Select the Title I information that describes your school site.

Schoolwide Targeted Assistance Not a Title I School X

Complete the rest of the form only if your school site receives Title I, Part A funds

2. How many Title I, Part A instructional paraprofessionals are currently employed at this school site?0

3. How many of these paraprofessionals who are involved in the instruction of students meet the Title I, Part A paraprofessional quality requirement (two years of college [48 hours], Associate's Degree, passed the Oklahoma General Education Test or Para Pro Assessment available from the Educational Testing Service, or a local school district academic assessment approved by the Oklahoma State Board of Education)?0

Migrant Student Program

If your school site serves Migrant students please report the following:

1. How many of the Title I paraprofessionals are involved in the instruction of migrant students?0

2. How many of these Title I paraprofessionals involved in the instruction of migrant students meet the "highly qualified" requirement?0

County OKLAHOMA

District	INFINITY GENERATION PREP SCH
----------	------------------------------

School Site: INFINITY GENERATION
PREP SCH

Oklahoma State Department of Education

TEACHER ASSIGNMENTS

119533 Anderson, Rosie		INFINTY GENERATION PREP SCH									
		Pre AP	Honors	Gifted	Adjunct	Lab	Units	Semesters	Sections	Class Type	
Class Code	Description	Assistant Names									
1052	Second Grade	T	1	1,2	0.00						
Self Contained	Second Grade	3 Students									
1053	Third Grade	T	1	1,2	0.00						
Self Contained	Third Grade	1 Students									

Couch, Rider		INFINTY GENERATION PREP SCH									
		Pre AP	Honors	Gifted	Adjunct	Lab	Units	Semesters	Sections	Class Type	
Class Code	Description	Assistant Names									
1335	Keyboarding	T	1	1,2	0.00						
General	Fourth Grade	3 Students									
General	Fifth Grade	3 Students									
General	Sixth Grade	2 Students									
General	Seventh Grade	5 Students									
1114	Language Arts	T	1	1,2	0.00						
General	Fourth Grade	3 Students									
General	Fifth Grade	3 Students									
General	Sixth Grade	2 Students									
General	Seventh Grade	5 Students									
1114	Language Arts	T	1	1,2	0.00						
General	First Grade	2 Students									
General	Second Grade	3 Students									
General	Third Grade	1 Students									
1115	Spelling/Vocabulary	T	1	1,2	0.00						
General	First Grade	2 Students									
General	Second Grade	3 Students									
General	Third Grade	1 Students									
2204	Mathematics	T	1	1,2	0.00						
General	First Grade	2 Students									
General	Second Grade	3 Students									
General	Third Grade	1 Students									
2305	PK-5 Social Studies	T	1	1,2	0.00						
General	First Grade	2 Students									
General	Second Grade	3 Students									
General	Third Grade	1 Students									

2305	PK-5 Social Studies	T	1	1,2	0.00
General	First Grade	2 Students			
General	Second Grade	3 Students			
General	Third Grade	1 Students			
2254	General Science	T	1	1,2	0.00
General	First Grade	2 Students			
General	Second Grade	3 Students			
General	Third Grade	1 Students			
2204	Mathematics	T	1	1,2	0.00
General	Fourth Grade	3 Students			
General	Fifth Grade	3 Students			
General	Sixth Grade	2 Students			
General	Seventh Grade	5 Students			
1132	Reading	T	1	1,2	0.00
General	Fourth Grade	3 Students			
General	Fifth Grade	3 Students			
General	Sixth Grade	2 Students			
General	Seventh Grade	5 Students			
1363	Physical Education	T	1	1,2	0.00
General	Pre-K (Full Day)	4 Students			
General	First Grade	2 Students			
General	Second Grade	3 Students			
General	Third Grade	1 Students			
General	Fourth Grade	3 Students			
General	Fifth Grade	3 Students			
General	Sixth Grade	2 Students			
General	Seventh Grade	5 Students			
1013	Pre-K (Full Day)	T	1	1,2	0.00
Self Contained	Pre-K (Full Day)	4 Students			
1920	Counselor	T	0	1,2	0.00
Non Teaching Assignment	0 Students				

431695 Douglas, Chris**INFINTY GENERATION PREP
SCH**

Class Code	Description	Class Type	Sections	Semesters	Units	Lab	Adjunct	Gifted	Honors	Pre AP	Assistant Names
2305	PK-5 Social Studies	T	1	1,2	0.00						
General	Fourth Grade		3	Students							
General	Fifth Grade		3	Students							
2317	6th Grade World Geography - Western Hemisphere	T	1	1,2	0.00						
General	Sixth Grade		2	Students							
2317	6th Grade World Geography - Western Hemisphere	T	1	1,2	0.00						
General	Sixth Grade		2	Students							
2318	7th Grade World Geography - Eastern Hemisphere	T	1	1,2	0.00						
General	Seventh Grade		5	Students							

183773 Johnson, Sharon**INFINTY GENERATION PREP
SCH**

Class Code	Description	Class Type	Sections	Semesters	Units	Lab	Adjunct	Gifted	Honors	Pre AP	Assistant Names
2254	General Science	T	1	1,2	0.00						
General	Fourth Grade		3	Students							
General	Fifth Grade		3	Students							
2266	6th Grade Science	T	1	1,2	0.00						
General	Sixth Grade		2	Students							
2276	7th Grade Science	T	1	1,2	0.00						
General	Seventh Grade		5	Students							
1952	Principal/Teaching	T	0	1,2	0.00						
Non Teaching Assignment			0	Students							

430030 Woods, Marilyn**INFINTY GENERATION PREP
SCH**

Class Code	Description	Class Type	Sections	Semesters	Units	Lab	Adjunct	Gifted	Honors	Pre AP	Assistant Names
1954	Instructional Coach	T	0	1,2	0.00						
Non Teaching Assignment			0	Students							

Oklahoma State Department of Education

Special Education Teachers Report

County OKLAHOMA

District INFINITY GENERATION
PREP SCH

School INFINITY GENERATION
PREP SCH

Oklahoma State Department of Education
Alternative Education Teachers Report

County OKLAHOMA

District INFINITY GENERATION
PREP SCH

School INFINITY GENERATION
PREP SCH

CountyOKLAHOMA

DistrictINFINITY GENERATION PREP SCH

School Site:INFINITY GENERATION PREP SCH

Oklahoma State Department of Education

Co-Teacher Class AssignmentsReport

County OKLAHOMA District INFINITY GENERATION PREP SCH School INFINITY GENERATION PREP HS

Oklahoma State Department of Education

2022-2023 APPLICATION FOR ACCREDITATION: HIGH SCHOOL

Beginning this school year, the State Department of Education will no longer require the submission of certified paper copies of the Accreditation Applications to the Accreditation office. Districts will still be required to enter Accreditation data online, as usual, beginning October 1st and to be completed and certified by the deadline of October 15th.

CERTIFICATE OF ACCURACY

Status: Superintendent Certified

On: Thursday, November 10, 2022

I hereby certify that the information contained in the following report is complete and correct.

Street Address	5517 NW 23rd Street	Superintendent (Please sign here)
Mailing Address	PO Box 17433	Principal (Please sign here)
City, State, Zip	Oklahoma City, OK, 73127 2324	Contact Person: Gina Darby
Phone (Include area code)	(405) 6013055	Is the school located within the city limits of the city listed to the left: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
		Are you operating as a conversion site? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

Statistical Information

Please indicate membership (Total number of students enrolled in this school site) on October 1. Use only the grade levels included in this school.

Count each student only once in the appropriate grade level(PK thru Out-of-Home Students).															
	Hispanic*		American Indian or Alaskan Native (non-Hispanic)*		Asian (non-Hispanic)*		Black (non-Hispanic)*		Hawaiian or Pacific Islander (non-Hispanic)*		White (Non-Hispanic)*		Two or More Races (non-Hispanic)*		
GRADE	M	F	M	F	M	F	M	F	M	F	M	F	M	F	TOTAL
9	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Out-of-Home Students+	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Grand Total	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
Bilingual Total by Ethnicity++	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2021-22 Graduates Total by ethnic group	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2021-22 Number graduated in standard four years	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2021-22 Graduates on IEP	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2021-22 Graduates identified as ELL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2021-22 Graduates eligible for free/reduced lunch	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

* The student is a member of a specific ethnic group if he/she, or the community, considers him/her to be a member of that group.

** PK3 - Three year old students enrolled in prekindergarten program and three year olds who must be served.

The Pre-Kindergarten will include all 4-year-old students including non-IEP and IEP.

+ Out-of-Home Students are out-of-home placement and not residents of the school district in which the residential child facility or treatment program or center is located. Therapeutic foster children should be listed in this category unless parents are residents of the district.

++ See instruction sheet for Bilingual Eligibility criteria. This Bilingual count is part of the calculation used by State Aid. The Bilingual total must not exceed the grand total in each ethnic category.

Students who have passed compulsory attendance age and are required by law to be served by the public schools, should be included in the most appropriate grade.

School Calendar

a. School Days Taught

172

b. First day classes met

(Month/Day/Year)

8/15/2022

c. Last day classes will meet

(Month/Day/Year)

5/19/2023

d. Day first quarter ends

(Month/Day/Year)

10/21/2022

e. Date spring break begins

(Month/Day/Year) if applicable

3/13/2023

If not applicable, please describe

N/A

f. Does your site have a four day week?

Yes

No

X

g. Schedule parent/teacher conferences:

Date:10/24/20224:00PM7:00PM

Date:3/10/20234:00PM7:00PM

Date:

Date:

h. Interactive Calendar: List all dates when classes will be dismissed for functions and holidays.

Calendar Event:	Date:	ToDate:
First Day of Classes	8/15/2022	
Last Day Of Classes	5/19/2023	
End of 1st 9 weeks	10/21/2022	
Labor Day	9/5/2022	
Fall Break	10/10/2022	10/14/2022
Thanksgiving	11/23/2022	11/25/2022
Winter Break	12/19/2022	1/3/2023
Martin Luther King Day	1/16/2023	
Spring Break	3/13/2023	3/17/2023
Good Friday	4/7/2023	

Calendar Description. (Do not include Summer School.)

Check the box if your school is year-round (July to June) instead of traditional:

Check the box if your school offers a traditional calendar (August to June) :

X

School Day

- a. Length of school day in minutes (i.e., 360 do not include breakfast and lunch period) 390
- b. Number of minutes for lunch 60
- c. Time first class period starts 8:30AM
- d. Time last class period of the day ends 3:30PM
- e. Are all students in Grades nine through twelve enrolled in a minimum of six periods, or the equivalent in block schedule of rigorous academic and/or rigorous vocational courses each day, which may include arts, vocal and instrumental music, speech classes and physical education classes (Do not include alternative education students.) Yes ☒ No ☐

Total number of hours in the school day excluding breakfast and lunch time? 6.50 HRS

Total Instructional Hours: 1118

Library Media

- a. Is there a central library at this school site? Yes ☒ No ☐
If no, where is this library located? _____
- b. Does this library serve more than one site? Yes ☒ No ☐
If yes, list other locations: _____ Elementary Site
- c. Library Media Specialist(s)/Librarian(s) d. Certification of Library Media Specialist(s)/Librarian(s)
- Library Assistants: Sharon Johnson
- e. Library is staffed in the following way: A half-time librarian with a full-time assistant
- f. Is the Library accessible to students and staffed during the school day? Yes ☒ No ☐
- g. EXCLUDING federal funds, give the amount of LOCAL FUNDS spent during the 2021-2022 school year for books, software and periodicals (not hardware or supplies) at this site \$0.00
- h. Total number of students enrolled at this site as reported on 2021-2022 Application for Accreditation (number used to calculate required library expenditures) 1

Adjunct Teacher

- a. Do you have an adjunct teacher? Yes ☐ No ☒
- No adjuncts found (Check adjunct check box on teacher assignment to add teacher to this list)

Do all students (except those waived or opted out) receive instruction in CPR incorporating psychomotor skills training and awareness of the purpose of an AED at least once b/tween ninth grade and graduation from high school?

X

How many 2022 - 2023 students were waived and/or opted out of the requirement?

0

Training Provider

What contracted organization provides CPR training?

American Heart Association	<input type="checkbox"/>	Emergency Medical System	<input type="checkbox"/>	American Red Cross	<div>X</div>
Local Fire Department	<input type="checkbox"/>	Other	<input type="checkbox"/>	County Health Department	<input type="checkbox"/>

Does the school have a minimum of one certified teacher and one noncertified staff member at this school site that is trained in CPR and the Heimlich maneuver?

X

Name of Certified Teacher trained in CPR/Heimlich: Sharon Johnson

Name of Noncertified Staff trained in CPR/Heimlich Chris Douglas

Does the school have a diabetes medical management plan developed for each student with diabetes?

X

Does the school have a Safe School Committee?

X

Does the school have a Healthy and Fit School Advisory Committee?

X

Childcare

Is childcare provided at this school site for children of your enrolled students?

Miscellaneous

a. When are competitive athletic classes offered?

<input type="checkbox"/>	During the school day
<input type="checkbox"/>	After the school day
<div>X</div>	Nonapplicable

b. List competitive athletic classes offered: (example: Football, Basketball, Track)

c. List the number of transfer students from other districts attending this site.

0

No Special Education Long Term Substitues Checked on Accreditation Report

College Preparatory/Core Curriculum

a. Number of students enrolled in the college preparatory/work ready curriculum.	<div>.....</div>	<div>1</div>
b. Does the school maintain a file of letters signed by the parents or guardians of students who choose to Opt Out?		<div>X</div>
c. Number of students enrolled in core curriculum.	<div>.....</div>	<div>0</div>
a. + c. = Total number of ninth graders		<div>1</div>

High School Units of Credit

a.	Number of carry-over units offered on alternate year basis (if needed for 38 unit requirement)	0
b.	How many Advanced Placement courses are being offered?	0
c.	How many Advanced Placement courses are being taught?	0
d.	How many students are concurrently enrolled during the first semester?	0
e.	Are policies in place that appropriately reflect the district's method of transcribing credit earned for concurrent courses?	

Graduation Requirements

Number of high school units or competencies required by your site for graduation:

(Units and Competencies are equal in the law.)

a.	English/Language Arts	4.00
b.	Mathematics	4.00
c.	Social Studies	3.00
d.	Science	3.00
e.	Foreign Language	3.00
f.	The Arts	1.00
g.	Number of Electives	6.00
h.	Total units required by your site for graduation (a through g=h)	24.00

Has the Annual Drop Out report for grades 7-12 and the Annual Student College Remediation Report been presented to the local school board?	X
Does the site have an ACE Remediation plan?	
Does the site maintain an ACE Demonstration of Mastery cumulative record?	
Does the site document a student's failure to participate in remediation, including written acknowledgement by parents of district plan?	X

Technology Centers

Please provide the name an appropriate county-district-site code for your participating technology center.

Name of out of state technology center:

Are local board minutes available annually reflecting the mathematics and science courses approved by local boards when taken at the Career Tech?	
---	--

Application for Accreditation

Program of Studies Summary

This report has four sections.

1. List of courses and units from the 'Teacher Assignment' menu area.
2. List the courses and units from the 'CareerTech Ed. Center Course of Studies' menu area
3. 'Total high school units offered' from the 'High School Units of Credit, Grad Requirements, Technology Center' menu area.
4. 'Total carryover units offered on alternate year basis' from the 'High School Units of Credit, Grad Requirements, Technology Centers' menu area.

1. List of courses from the 'Teacher Assignment' menu area:

Additional Subject Codes		Units
2780	Resource Teacher (must have student counts & not be the Teacher of Record)	0.50
Total Additional Subject Codes		0.50
Computer Education		Units
2551	Computer Applications I	1.00
Total Computer Education		1.00
Health/Nutrition/Physical Education		Units
3320	Physical Education	1.00
Total Health/Nutrition/Physical Education		1.00
Language Arts		Units
4045	English I (Grammar/Comp)	1.00
Total Language Arts		1.00
Mathematics		Units
4411	Algebra I	1.00
Total Mathematics		1.00
Nonteaching Assignments		Units
1952	Principal/Teaching	0.00
Total Nonteaching Assignments		0.00
Personal Financial Literacy		Units
1451	Personal Financial Literacy	1.00
Total Personal Financial Literacy		1.00
Science		Units
5160	Physical Science	1.00
Total Science		1.00
Social Studies		Units
5615	Oklahoma History	1.00
Total Social Studies		1.00
1. TOTAL 'Teacher Assignment' units =		7.50

* Total does NOT include Technology Center units (those classes are listed below)

2. List of COURSES & UNITS from the CareerTech Ed. Center 'Course of Studies' menu area:

2. TOTAL CareerTech units=

TOTAL units = 7.50

(1. Teacher Assignments + 2 CareerTech Ed. Center Course of Studies)

'Total carryover units offered' = 0.00

(item 'b' from the 'High School Units of Credit, Grad requirements, Technology Centers' menu area)

CO:55

DIST:P082

SITE:706

Oklahoma State Department of Education

Paraprofessional Report

This form must be completed and returned with the Application for Accreditation, due by October 15. (Questions regarding this form only, should be directed to Title I at (405) 521-2846.)

Title I Paraprofessional Definition

A professional is an individual with instructional duties. Individuals who work solely in noninstructional roles, such as food service, cafeteria or playground supervision, personal care services, and noninstructional computer assistance are not considered to be paraprofessionals for Title I programs.

1. Select the Title I information that describes your school site.

Schoolwide

Targeted Assistance

Not a Title I School

X

Complete the rest of the form only if your school site receives Title I, Part A funds

2. How many Title I, Part A instructional paraprofessionals are currently employed at this school site?

0

3. How many of these paraprofessionals who are involved in the instruction of students meet the Title I, Part A paraprofessional quality requirement (two years of college [48 hours], Associate's Degree, passed the Oklahoma General Education Test or Para Pro Assessment available from the Educational Testing Service, or a local school district academic assessment approved by the Oklahoma State Board of Education)?

0

Migrant Student Program

If your school site serves Migrant students please report the following:

1. How many of the Title I paraprofessionals are involved in the instruction of migrant students?

0

2. How many of these Title I paraprofessionals involved in the instruction of migrant students meet the "highly qualified" requirement?

0

CO:55 - OKLAHOMA
DIST:P082 - INFINITY GENERATION
PREP SCH
SITE:706 - INFINITY GENERATION
PREP HS

Oklahoma State Department of Education

School Counselor Report

This form must be completed and returned with the Application for Accreditation, due by October 15th. Each school is required by 70 O.S. 3-104.4 to provide this information.

1. Are guidance and counseling services provided by a certified school counselor employed at this school site?

.....NO
- 1a. If this is an elementary or charter school and you answered no, are guidance and counseling services provided by a person specially trained in the area of guidance?

.....YES
- 1b. If other staffing, please specify. (Note: If services are contracted, list the name, address and certification of the provider.)

.....
- 1c. Does this certified counselor also serve another district; if so, where?

.....
2. Total number of students enrolled at this school site as of October 1.:

.....1

3a. List only the names of certified counselors employed at this site:	3b. Teacher Number	3c. Number of clock hours per day as counselor at this site OR Time assigned to this site (for example: 5 hours per week)	3d. Number of students the counselor is responsible for serving at this site:
--	--------------------	---	---

4. Identify the duties and responsibility of all counselors (check all that apply).

- | | |
|--|--|
| a. <div><div>X</div></div> Individual/group counseling | f. <div><div>X</div></div> Serve on duty schedule |
| b. <div><div></div></div> Academic and career guidance | g. <div><div>X</div></div> Substitutue for teachers |
| c. <div><div>X</div></div> Consult with parents/staff | h. <div><div></div></div> Coordinate special education |
| d. <div><div>X</div></div> Plan/coordinate guidance | i. <div><div>X</div></div> Student discipline duties |
| e. <div><div>X</div></div> Facilitate referrals | h. <div><div>X</div></div> Work on master schedule |

Oklahoma State Department of Education

District

County		INFINITY GENERATION PREP HS									
Couch, Rider		TEACHER ASSIGNMENTS									
District		Class Type	Sections	Semesters	Units	Lab	Adjunct	Gifted	Honors	Pre AP	Assistant Names
2551	Computer Applications I	T	1	1,2	1.00						
General	Ninth Grade	1 Students									
3320	Physical Education	T	1	1,2	1.00						
General	Ninth Grade	1 Students									
4411	Algebra I	T	1	1,2	1.00						
General	Ninth Grade	1 Students									
2780	Resource Teacher (must have student counts & not be the Teacher of Record)	T	1	1,2	0.50						
General	Ninth Grade	1 Students									
431695 Douglas, Chris		INFINITY GENERATION PREP HS									
Class Code	Description	Class Type	Sections	Semesters	Units	Lab	Adjunct	Gifted	Honors	Pre AP	Assistant Names
1451	Personal Financial Literacy	T	1	1,2	1.00						
General	Ninth Grade	1 Students									
5615	Oklahoma History	T	1	1,2	1.00						
General	Ninth Grade	1 Students									
183773 Johnson, Sharon		INFINITY GENERATION PREP HS									
Class Code	Description	Class Type	Sections	Semesters	Units	Lab	Adjunct	Gifted	Honors	Pre AP	Assistant Names
5160	Physical Science	T	1	1,2	1.00						
General	Ninth Grade	1 Students									
1952	Principal/Teaching	T	0	1,2	0.00						
Non Teaching Assignment		0 Students									
430030 Woods, Marilyn		INFINITY GENERATION PREP HS									
Class Code	Description	Class Type	Sections	Semesters	Units	Lab	Adjunct	Gifted	Honors	Pre AP	Assistant Names
4045	English I (Grammar/Comp)	T	1	1,2	1.00						
General	Ninth Grade	1 Students									

Oklahoma State Department of Education

Special Education Teachers Report

OKLAHOMA

District

County

Oklahoma State Department of Education
Alternative Education Teachers Report

INFINITY GENERATION
PREP SCH

School INFINITY GENERATION
PREP HS

OKLAHOMA

District

County

OKLAHOMA

INFINITY GENERATION PREP SCH

School Site:

INFINITY GENERATION PREP HS

County

District

School

INFINITY GENERATION PREP HS

Oklahoma State Department of Education

INFINITY GENERATION PREP SCH

Co-Teacher Class Assignments