



JANET BARRESI
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF OKLAHOMA

MEMORANDUM

TO: The Honorable Members of the State Board of Education
FROM: Janet C. Barresi *JCB*
DATE: January 26, 2012
SUBJECT: Report on Current Rule Promulgation

The attached information is provided to update the State Board of Education on rules currently in the promulgation process pursuant to the *Oklahoma Administrative Procedures Act*, 75 O.S. § 250, *et seq.* This report is informational. No action is necessary or requested by the State Department of Education.

- a) Chapter 1. State Board of Education
Sub-Chapter 3. Departmental Precepts
210:1-3-2. Annexation, consolidation, and dispensation, and severance determination*
**Previously passed by Emergency Rule*
- b) Chapter 1. State Board of Education
Subchapter 5. Due Process
210:1-5-7. Teacher evaluation, dismissal, and non-reemployment*
210:1-5-8. Teacher due process hearings; hearing procedures; probationary teachers*
**Previously passed by Emergency Rule*
- c) Chapter 10. School Administration and Instructional Services
Subchapter 1. General Provisions
210:10-1-9. Transfers*
210:10-1-18. Transfers
210:10-1-19: Special Education and Gifted Education Transfers
**Previously revoked by Emergency Rule*
- d) Chapter 15. Curriculum and Instruction
Subchapter 27. Reading Sufficiency Act
210:15-27-1. Reading Sufficiency Act*
210:15-27-2. Alternative Standardized Reading Assessment and Use of Student Portfolio for Good Cause Promotion
210:15-27-3. Standards for Mid-Year Promotion of Retained Third Graders
**Previously passed by Emergency Rule*

- e) Chapter 15. Curriculum and Instruction
 - Subchapter 34. Supplemental Online Course Procedures
 - 210:15-34-1. General provisions
 - 210:15-34-2. Access
 - 210:15-34-3. Funding
 - 210:15-34-4. School Day
 - 210:15-34-5. Student Eligibility, Admissions & Enrollment
 - 210:15-34-6. Grading Scales
 - 210:15-34-7. Student information system
 - 210:15-34-8. Course withdrawal grace period
 - 210:15-34-9. Course completion
 - 210:15-34-10. Attendance
 - 210:15-34-11. Extracurricular and co-curricular activities
 - 210:15-34-12. Student assessments
 - 210:15-34-13. Communication: Progress Reports
 - 210:15-34-14. Online Course Providers
 - 210:15-34-15. Funding and Payment
 - 210:15-34-16. Special Education

- f) Chapter 30. School Facilities and Transportation
 - Subchapter 5. Transportation
 - 210:30-5-1. District operation and management

FACT SHEET

STATE DEPARTMENT OF EDUCATION

210:1-3-2. Annexation, consolidation, and dispensation

1. Write a brief summary of the rule(s) in simple language.

The proposed rule, which was passed by emergency in August 2011, interprets the severance determination provisions of the Oklahoma School Consolidation and Annexation Act, 70 O.S. §7-203. The rule creates a procedure for the determination of severance to be paid to teachers who lost their employment due to annexation, consolidation, and dispensation by establishing a criteria for reviewing and approving applications for severance by the OSBE.

2. Explain proposed changes as briefly as possible.

Prior to emergency adoption of the severance rules in August 2011, there was no procedure or criteria for the OSBE to review and award severance as authorized by statute. The proposed rule addition is needed to provide a true application process and to create a standard method and procedure for determining severance. The proposed rules will greatly assist the Board in fulfilling its statutory duty to manage the School Consolidation Fund and make appropriate severance awards under the law.

3. What are the circumstances which created the need for the rule(s)?

Prior to the emergency adoption of the severance application rule, the OSBE lacked a procedure or process for awarding severance which caused difficulty in determining appropriate severance awards.

4. Include reference to any statute that the rule change interprets, any related statute or any related rule, and include a description of the classes of persons who most likely will be affected by the rule(s).

The class of persons affected include: local districts affected by annexation or consolidation, school district employees dismissed due to annexation or consolidation, the State Department of Education, the State Board, the State Board of Education.

5. What is the intended effect of the rule(s)?

The effect is to provide clarification for the implementation of the severance application and determination process provided by statute that meets due process requirements, and to provide a standard method and procedure for the State Board of Education to rely upon when determining and calculating severance.

6. What is the statute or other legal instrument, which authorizes the Board to promulgate rules for this area of control, and/or the statute or other legal instrument, which authorized the rule change?

The Oklahoma School Consolidation and Annexation Act, 70 O.S. §7-203(B) authorizes the creation of a rule regarding the budgeting and expenditure of the School Consolidation Assistance Fund.

7. Does the proposed change incorporate a set of rules from a body outside the state, such as a national code? If so, list from what body and provide legal name of the set of rules, as recognized by that state.

The proposed change does not incorporate a set of rules from a body outside the state. This rule is to comply with state law.

SUBCHAPTER 3. DEPARTMENTAL PRECEPTS

210:1-3-2. Annexation, consolidation, and dispensation, and severance determination

(a) **State Board of Education role.** The State Board of Education's role is: to receive and implement an order from the State Superintendent which declares that all or part of a district has been voted to be annexed, following statutory requirements, to adjacent or transporting district(s); to decide on the division of assets and property of a disorganized district in the event the problem cannot be resolved by the boards of annexing districts; and to set standards, promulgate rules and procedures, and conduct studies relating to the consolidation of two or more adjacent school districts. [70:7-105 & 106]

(b) **Mandatory annexation.**

(1) Mandatory annexation will be considered by the State Board of Education upon occurrence of the following situations:

(A) When a school district has been declared "academically at-risk" pursuant to 70 O.S. 1989, §1210.541.

(B) When a school district is nonaccredited by the State Board of Education.

(C) When a district, without officially dispensing with school, fails to open or maintain a school (except when situations beyond the control of the district cause a normal delay). [Title 70 O.S. § 8-106].

(2) When it comes to the attention of the State Board of Education that a local school district is facing the possibility of mandatory annexation, the State Board of Education shall provide the district with an opportunity to be heard. The State Board of Education shall notify the superintendent and each school board member of the time, date and place of the meeting. At the meeting, representatives of the school district, including patrons, shall have an opportunity to address the State Board of Education and to provide information to the Board. The President of the State Board of Education may set time limits on individual presentations and may require groups to select a representative to speak on behalf of the group.

(3) When the State Board of education determines that a local school district is to be mandatorily annexed, the following steps will be followed:

(A) The Board will notify one or more of the potential receiving districts that they are responsible for taking an inventory of property and securing the buildings and other property of the district being mandatorily annexed. In selecting the district(s) responsible for this procedure, the State Board of Education may rely on recommendations from the State Superintendent.

(B) The State Board of Education will immediately notify the district superintendent of the Board's action.

(C) The state superintendent shall notify the parents or legal guardians of all students in the district being annexed that they must apply for a transfer to the state superintendent within 10 days of the State Board of Education's action to annex. The state superintendent may require the parents to furnish a legal description of their residence at the time the transfer request is made.

(D) Once the state superintendent has received the transfer requests, she/he shall notify the State Department of Education, in writing, of the breakdown of where students are asking to attend school by transfer and provide the State Department of Education with the legal description of the residence of each student.

(E) The State Department of Education will utilize the transfer requests and legal descriptions submitted to the state superintendent as a guide in plotting the proposed boundary lines for dividing the annexed district. To the maximum extent possible, the preference of the students and parents shall be acknowledged.

(F) The State Department of Education will present the proposed boundary lines for division of the annexed district to the State Board of Education for approval. The proposal shall be accompanied by the legal description of the property being annexed.

(G) The assets and liabilities of the annexed district shall become part of the annexing districts. When an annexing district assumes a debt incurred by the annexed district prior to July 1, the district assuming the debt should receive a comparable portion of the assets.

(H) When two or more annexing districts are involved in the division of an annexed district, the assets and liabilities are divided by agreement between the boards of education. If the boards of education are unable to agree, the matter shall be divided by the State Board of Education.

(c) Consolidation of school districts.

(1) A petition by the board of education of any school district desiring a study of the consolidation of such school district with another school district or districts, or proposing such consolidation, shall be signed by the president and clerk of such board of education, and such petition shall be considered by the State Board of Education at its next regular meeting. If a study of the proposed consolidation is deemed proper and advisable, the Secretary of the State Board of Education shall forthwith advise the boards of education of all districts involved that a study of the proposed consolidation is going to be made.

(2) The State Board of Education reserves the right to make a study of the advisability of consolidating two or more school districts in any area of the State, on its own initiative, and without any petition from a board of education. When such decision is made, each school district involved shall forthwith be advised that such study is going to be made, and such districts shall be directed to determine, by such procedures as the State Board of Education may prescribe what, if any, consolidation should be carried on in the area under study.

(3) All studies of the advisability of consolidation shall be under the direction of the President of the State Board of Education, who shall utilize the services of appropriate divisions of the State Department of Education.

(4) If after a study of the population, wealth, terrain, trade areas and other pertinent factors, it is determined that two or more school districts should be consolidated, the board of education of each school district involved shall be so advised.

(5) No election to determine consolidation shall be called or held unless there shall have been filed with the State Board of Education a petition therefore, signed by a majority of the school district electors of each school district included in the proposed consolidation. When such a petition is received and is determined to be sufficient, the State Board of Education shall call an election for the purpose of affording to the school district electors in the school districts involved an opportunity to express their wishes through a majority vote of the school district electors in the entire territory involved. Notice of such election, stating the time and date thereof and the polling places, shall be posted in five (5) public places in each school district involved, not less than ten (10) days before date of such election. Such election shall be conducted by one or more members of the State Department of Education, as designated by the President of the State Board of Education.

(6) If a majority vote at such election is in favor of consolidation, the State Board of Education shall issue a written order to such effect, declaring the participating school districts dissolved and the new school district established. Copies of such order shall be sent to the county treasurer, county assessor and the county clerk of each county in which the districts involved are situated, and to the Oklahoma Tax Commission, and to the board of education of each school district involved. If a majority vote at such election is not in favor of consolidation, the State Board of Education shall make a written order to such effect, and shall send a copy thereof to the board of education of each school district involved.

(7) The local board of education members representing the school district having the largest number of enumerated children shall serve as board members of the newly-formed school district for the remainder of their term.

(8) All liabilities, assets, powers and duties shall become the responsibility of the newly-formed school district.

(d) **Dispensing with a school district.**

(1) Should residents of a district desire to dispense with all or part of this school district, it is the duty of the State Superintendent to notify the State Board of Education of a majority vote of eligible electors at an annual or special election or by a petition signed by sixty (60) percent of eligible school district electors to dispense with either grades 1 thru 8 or grades 9 thru 12, or both, and such procedure shall be accomplished prior to June 30. Subsequently, parents of such children in the dispensed grades should file an application transfer for the ensuing year with the State Superintendent. Any district which dispenses with its entire school district for the ensuing year shall be mandatorily annexed on July 1 by the State Board of Education to an adjacent school district(s) to which pupils have been transferred.

(2) Provided that if a school district does not officially dispense with its school following the preceding procedure and fails to open and maintain a school during such ensuing year, the State Board of Education, except as otherwise provided, shall at its next regular meeting annex such district, as provided by law. [70-8-106]

(e) ~~Guidelines and forms. Copies of corresponding State Department of Education forms and guidelines for the implementation of annexations/consolidation are available from the consolidation officer of the State Department of Education.~~ Severance determination: Pursuant to 70 O.S. §7-203(B), the State Board of Education may promulgate rules regarding its authority to budget and make expenditures of monies contained in the School Consolidation Fund. School Consolidation Funds can be used by annexing or consolidating districts to provide employment assistance in the form of severance for school district employees who are dismissed due to annexation or consolidation under 70 O.S. §7-203(B)(1)(c). The procedure for employees to make a severance application and receive a severance determination is as follows:

(1) To qualify for severance, district employees (teachers, administrators, and support personnel) must first seek severance allowance from the annexing or consolidating district(s) prior to making application to the State Department of Education.

(A) Any annexing or consolidating school district(s) that receive School Consolidation Funds must accept and consider all requests for severance made by district employees who were dismissed due to annexation or consolidation, but not subsequently employed by the consolidating or annexing district(s).

(B) The annexing or consolidating district(s) may elect to award qualifying employees a severance in an amount up to and not to exceed eighty percent (80%) of the individual's salary or wages, exclusive of fringe benefits.

- (C) Severance allowance from the annexing or consolidating district(s) is permissive in any amount from 0% to 80% of the individual's salary or wages, exclusive of fringe benefits, for the school year preceding the consolidation or annexation.
- (D) For the purposes of calculation, the district(s) shall include only the salary or wages actually paid to the employee for the school year preceding the consolidation or annexation.
- (E) Applications for severance shall be considered on an individual case by case basis.
- (F) Each district shall promulgate their own rules and procedures for accepting, reviewing, and awarding severance. The criteria used for awarding severance must be measurable, objective, non-discriminatory, and uniformly applied.
- (2) If the annexing or consolidating district makes an award of employment assistance in the form of severance, the district employee will not be eligible to make application to the State Department of Education for severance allowance unless the employee has also been denied unemployment compensation.
- (3) Unemployment benefits received by any district employee dismissed due to annexation or consolidation may be counted as a form of employment benefit under 70 O.S. §7-203(B)(1)(c). Unemployment compensation may be considered as part of the total employment assistance received and may be taken into account or offset when severance allowance determinations are made.
- (4) If a district employee is not employed by the annexing or consolidating district(s) and is subsequently denied severance or unemployment compensation by the annexing or consolidating district(s), pursuant to 70 O.S. §7-203(B)(1)(c), the district employee will be eligible to make an application for severance to the State Board of Education. Qualifying applicants shall receive a severance allowance from the State Board of Education pursuant to the following procedure:
- (A) Severance allowance from the State Board of Education shall be in an amount up to and not to exceed eighty percent (80%) of the individual's salary or wages, exclusive of fringe benefits. An award of a severance allowance by the State Board of Education will be made only if: (i) the applicant was not employed by the consolidating or annexing district and (ii) severance or unemployment compensation was denied at the district level.
- (B) Severance allowance from the State Department of Education can be in any amount from 0% to 80% of the individual's salary or wages, exclusive of fringe benefits, for the school year preceding the consolidation or annexation.
- (C) For the purposes of calculation, the State Department of Education shall include only the salary or wages actually paid to the employee by the district for the school year preceding the consolidation or annexation.
- (D) Only timely applications for severance received by the State Department of Education, Finance Division, will be considered. All applications for severance to the State Department of Education must be received no later than September 1 of the fiscal year immediately following the fiscal year in which the annexation or consolidation occurred. The application for employment assistance in the form of severance can be found on the SDE website, www.sde.ok.gov, or by contacting the State Department of Education, Finance Division.
- (5) Severance allowance by the State Department of Education can be denied only for good cause with supporting documentation of the following:

- (A) The applicant was hired by the consolidating or annexing district(s), regardless of the number of hours, part time or full time status, or rate of pay.
- (B) The applicant was dismissed or non-reemployed by the local school district board for reasons other than consolidation or annexation (i.e. reduction in force or inability to pay due to financial exigency),
- (C) The applicant received severance from the consolidating or annexing district(s) and in addition to unemployment compensation,
- (6) Severance allowance by the State Department of Education can be reduced or adjusted below eighty (80%) percent of the applicant's salary or wages, excluding fringe benefits, for good cause with supporting documentation. Good cause to reduce or adjust severance can include, but is not limited to, consideration of the following:
- (A) The annexation or consolidation was mandatory rather than voluntary.
- (B) The applicant's length of service to the district.
- (C) The applicant's service record, job performance, or conduct warrants consideration of a reduction or adjustment in severance. The application of this criteria must be supported by verifiable documentation and evidence that is made available for the Board's review.
- (D) The applicant was hired by the local school board after the annexation or consolidation election results are called by the State Superintendent of Public Instruction.
- (E) The applicant was hired by the local school board after the State Board of Education voted to non-accredit the district.
- (F) The applicant failed to apply for or make an attempt to gain employment with the consolidating or annexing district(s).
- (G) The applicant failed to apply for or attempt to obtain a severance allowance from the consolidating or annexing district(s).
- (H) The applicant received unemployment compensation. The amount of unemployment compensation received can be considered an offset when determining severance.
- (7) Severance Determinations. Upon receiving the application for severance the State Department of Education, Finance Division staff shall review the applications for severance and make a written recommendation to the State Board of Education regarding each severance application. Each severance application will be considered on an individual case by case basis and a recommendation for severance allowance or denial will be made by the SDE staff to the State Board of Education in writing during a regularly scheduled Board of Education meeting.
- (A) The applicant will be notified of the SDE staff recommendation and will be given written notice of the time, place, and date of the regularly scheduled State Board of Education meeting that the Board will consider and voting upon the SDE staff recommendation for severance.
- (B) The State Board of Education will vote on all SDE staff recommendations for severance in open meeting. All votes of the State Board of Education approving or denying a severance application will be considered a final order of the Board.
- (8) The applicant will be notified in writing of the State Board of Education's final determination regarding severance allowance. The applicant will have ten (10) days from the date the notification of severance determination is received within which time to file a petition for appeal or reconsideration of the Board's determination.

- (9) Any petition, reconsideration, or hearing on the Board's final order regarding severance shall be made pursuant to, and governed by, the Due Process Procedures of the State Board of Education as outlined in 210:1-5-1 of the Oklahoma Administrative Code.
- (f) Guidelines and forms. Copies of corresponding State Department of Education forms and guidelines for the implementation of annexations/consolidation and severance are available from the consolidation officer of the State Department of Education.


 **Oklahoma Statutes Citationized**

 **Title 70. Schools**

 **Chapter 1 - School Code of 1971**

 **Oklahoma School Consolidation and Annexation Act**

 **Article Article VII - Annexation and Consolidation**

 **Section 7-201 - Short Title**

Cite as: O.S. §. ___

Sections 7-201 through 7-206 of this title shall be known and may be cited as the "Oklahoma School Consolidation and Annexation Act".

Historical Data

Added by Laws 1989, SB 74, c. 323, § 1, emerg. eff. July 1, 1989; Amended by Laws 1989, 1st. Extr. Sess., HB 1017, c. 2, § 8, emerg. eff. July 1, 1990; Amended by Laws 2003, HB 1153, c. 296, § 1, emerg. eff. July 1, 2003 (superseded document available); Amended by Laws 2009, SB 1169, c. 448, § 2, eff. November 1, 2009 (superseded document available).

Oklahoma Statutes Citationized**Title 70. Schools****Chapter 1 - School Code of 1971****Oklahoma School Consolidation and Annexation Act****Article Article VII - Annexation and Consolidation****Section 7-202 - Applicability**

Cite as: O.S. §, __ __

The provisions of the Oklahoma School Consolidation and Annexation Act shall apply only to school districts whose entire territory has been annexed to one or more existing school districts or which have been created by the consolidation of two or more existing school districts in accordance with the provisions of Section 7-101 et seq. of this title or to school districts which have entered into a mutual contract with a superintendent as authorized pursuant to Section 5-106A of this title.

Historical Data

Added by Laws 1989, SB 74, c. 323, § 3, emerg. eff. July 1, 1989; Amended by Laws 1989, 1st Extr. Sess., HB 1017, c. 2, § 9, emerg. eff. July 1, 1990; Amended by Laws 1990, HB 1883, c. 257, § 8, emerg. eff. May 23, 1990; Amended by Laws 1992, SB 986, c. 324, § 12, emerg. eff. July 1, 1992; Amended by Laws 2003, HB 1153, c. 296, § 2, emerg. eff. July 1, 2003 (superseded document available); Amended by Laws 2009, SB 1169, c. 448, § 3, eff. November 1, 2009 (superseded document available); Amended by Laws 2011, HB 2115, c. 338, § 1, emerg. eff. July 1, 2011 (superseded document available).

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Oklahoma School Consolidation and Annexation Act

Article Article VII - Annexation and Consolidation

Section 7-203 - School Consolidation Assistance Fund - Budget - Allocations and Expenditures

Cite as: O.S. §, ___

A. There is hereby created in the State Treasury a fund to be designated the "School Consolidation Assistance Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies the Legislature may appropriate or transfer to the fund and any monies contributed for the fund from any other source, public or private.

B. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Board of Education for the purposes established by this section, the Legislature and in accordance with rules promulgated by the State Board of Education. The purposes shall be to provide:

1. Voluntarily or mandatorily consolidated school districts or districts who have received part or all of the territory and part or all of the students of a school district dissolved by voluntary or mandatory annexation, during the first year of consolidation or annexation with a single one-year allocation of funds needed for:

a. purchase of uniform textbooks in cases where the several districts were not using the same textbooks prior to consolidation or annexation,

b. employment of certified personnel required to teach courses of the district for which personnel from the districts consolidated or annexed are not certified and available,

c. employment assistance for personnel of the several districts who are not employed by the consolidated or annexing district. Employment assistance may include provision of a severance allowance for administrators, teachers and support personnel not to exceed eighty percent (80%) of the individual's salary or wages, exclusive of fringe benefits, for the school year preceding the consolidation or annexation. Personnel receiving such severance pay may accumulate one (1) year of creditable service for retirement purposes. Employment assistance may also include the payment of unemployment compensation benefits. The State Board of Education shall provide a severance allowance to employees dismissed from employment due to annexation or consolidation of a school district in the year of the annexation or consolidation and who were denied a severance allowance or unemployment compensation benefits and the voluntary consolidation funding of the annexing or consolidating district or districts has been paid on or after July 1, 2003, at the maximum allowable amount. Application for a severance allowance shall be made to the Finance Division of the State Department of Education by the dismissed employee no later than September 1 of the fiscal year immediately following the fiscal year in which the annexation or consolidation occurred,

d. furnishing and equipping classrooms and laboratories,

e. purchase of additional transportation equipment, and

f. when deemed essential by the school district board of education to achieve consolidation or combination by annexation, renovation of existing school buildings and construction or other acquisition of school buildings; and

2. Assistance to school districts which have entered into a mutual contract with a superintendent as authorized pursuant to Section 5-106A of this title in paying the salary or wages of the superintendent. The assistance shall equal not more than fifty percent (50%) of the salary or wages of the superintendent for not more than three (3) consecutive years. In no case shall the total amount of assistance paid over the three-year period be more than One Hundred Fifty Thousand Dollars (\$150,000.00) nor shall any school district be eligible to receive assistance pursuant to this paragraph for more than one three-year time period.

C. The State Board of Education shall only make allocations from the fund to school districts formed from the combination of two or more of the districts whose boards of education notify the State Board of Education on or before June 30 of their intent to annex or consolidate and are subsequently combined by such means by January 1 of the second year following the notification of intent. The boards of education which have entered into a mutual contract with a superintendent shall notify the Board on or before June 30 of the year preceding the school year the mutual contract will become effective.

D. Allocations will be made to school districts formed by voluntary or mandatory consolidation on the basis of combined average daily membership (ADM) of the school year preceding the first year of operation of the school district resulting from the consolidation; provided, not more than two hundred (200) ADM of any one school district shall be counted in determining the combined ADM of any district formed by consolidation. The ADM of any one school district shall not be considered more than once for allocations from the fund when the school district consolidates with two or more school districts. Allocations from the fund pursuant to this subsection shall be calculated by multiplying the combined ADM by Two Thousand Five Hundred Dollars (\$2,500.00).


E. Allocations will be made to school districts which have received part or all of the territory and students of a school district by voluntary or mandatory annexation on the basis of ADM of the annexed school district for the school year preceding the first year of operation of the school district resulting from the annexation; provided, not more than two hundred (200) ADM of the annexed district shall be counted. Allocations from the fund pursuant to this subsection shall be calculated by multiplying the allowable ADM by Five Thousand Dollars (\$5,000.00). In no case shall allocations payable pursuant to this subsection be greater than One Million Dollars (\$1,000,000.00).

F. If monies in the School Consolidation Assistance Fund are insufficient to make allocations to all qualified combined districts, allocations shall be made based upon the determination of the State Board of Education with preference given to school district consolidation and annexation.


Historical Data

Added by Laws 1989, SB 74, c. 323, § 4, emerg. eff. July 1, 1989; Amended by Laws 1989, 1st Extr. Sess., HB 1017, c. 2, § 10, emerg. eff. July 1, 1990; Amended by Laws 1990, HB 1883, c. 257, § 9, emerg. eff. May 23, 1990; Amended by Laws 1991, HB 1236, c. 280, § 59, emerg. eff. July 1, 1991; Amended by Laws 1992, SB 741, c. 111, § 1, emerg. eff. April 21, 1992; Amended by Laws 1993, HB 1383, c. 361, § 4, emerg. eff. July 1, 1993; Amended by Laws 2003, HB 1153, c. 296, § 3, emerg. eff. July 1, 2003 (superseded document available); Amended by Laws 2006, SB 1493, c. 278, § 4, emerg. eff. July 1, 2006 (superseded document available); Amended by Laws 2009, SB 1169, c. 448, § 4, eff. November 1, 2009 (superseded document available); Amended by Laws 2011, HB 2115, c. 338, § 2, emerg. eff. July 1, 2011 (superseded document available).


 **Oklahoma Statutes Citationized**

 **Title 70. Schools**

 **Chapter 1 - School Code of 1971**

 **Oklahoma School Consolidation and Annexation Act**

 **Article Article VII - Annexation and Consolidation**




 **Section 7-203.1 - Determination of the Number of Annexations or Consolidations for Fiscal Year - Fund Transfers**

Cite as: O.S. §, ___

Beginning July 1, 2006, and each year thereafter, the State Board of Education shall determine the number of districts that notified the Board of their intent to annex or consolidate by June 30 of the previous fiscal year. If the Board determines the number of qualified combined districts to be two or less, the Board is authorized to transfer up to one-half of the funds transferred to the School Consolidation Assistance Fund for that fiscal year for allocation to the Financial Support of Public Schools for distribution to school districts in the State Aid Formula, provided in Section 18-200.1 of Title 70 of the Oklahoma Statutes. The State Board of Education is further authorized to transfer up to one-half of the funds not allocated to school districts for annexation or consolidation for the fiscal year ending June 30, 2006, for allocation to the Financial Support of Public Schools.

Historical Data

Added by Laws 2006, 2nd Extr. Sess., SB 3, c. 50, § 36, emerg. eff. July 1, 2006.

 **Oklahoma Statutes Citationized** **Title 70. Schools** **Chapter 1 - School Code of 1971** **Oklahoma School Consolidation and Annexation Act** **Section 7-204 - Time Limit for Allocation of Funds for Consolidated Districts**


Cite as: O.S. §, ___


Consolidated districts and districts combined by annexation which are created pursuant to the Oklahoma School Consolidation and Annexation Act and districts that have entered into a mutual contract with a superintendent shall have for three (3) subsequent consecutive years after consolidation, annexation or the effective date of the mutual contract preference for allocations from funds appropriated to the State Board of Education for Community Education, Alternative and High Challenge Schools, School/Community Network for Arts-in-Education, Instructional Cooperative and Technical Education, Advanced Placement Incentives, and for all other allocations made by the Board on a competitive basis.

Historical Data

Added by Laws 1989, SB 74, c. 323, § 5, emerg. eff. July 1, 1989; Amended by Laws 1991, HB 1236, c. 280, § 60; Amended by Laws 1992, SB 583, c. 281, § 1, emerg. eff. July 1, 1992; Amended by Laws 2003, HB 1153, c. 296, § 4, emerg. eff. July 1, 2003 (superseded document available); Amended by Laws 2009, SB 1169, c. 448, § 5, eff. November 1, 2009 (superseded document available); Amended by Laws 2011, HB 2115, c. 338, § 3, emerg. eff. July 1, 2011 (superseded document available).


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 **Title 70. Schools**

 **Chapter 1 - School Code of 1971**

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 **Article Article VII - Annexation and Consolidation**

 **Section 7-205 - Consideration of Requests for Exceptions to Certification Requirements**

Cite as: O.S. §, ___

When considering requests for exceptions to certification requirements from districts created by consolidation or annexation pursuant to the Oklahoma School Consolidation and Annexation Act for personnel reassigned because of the consolidation or annexation, the State Superintendent of Public Instruction and the State Board of Education shall exercise the greatest degree of latitude that can be regarded as consistent with acceptable professional practice. Highest priority for placement assistance services of the State Department of Education shall be afforded personnel for whom the consolidated or annexing district has no assignment required.

Historical Data

Added by Laws 1989, c. 323, § 8, eff. July 1, 1989; Laws 1991, c. 280, § 61, eff. July 1, 1991.

FACTS SHEET

STATE DEPARTMENT OF EDUCATION

Title 210

Chapter 1

Subchapter 5-7 & 5-8

1. Write a brief summary of the rule(s) in simple language.

During the 2011 Legislative Session, HB 1380 passed and eliminated the trial de novo process for career teachers and requires OSBE to adopt a single due process hearing procedure that is applicable to all teachers. HB 1380 speeds up and simplifies the process for teacher termination and the bill requires the SBE to promulgate rules for the due process procedure.

In August of 2011, the OSBE revoked the trial de novo rule provisions which are located at 210:1-5-7 and amended the probationary and non-career teacher due process provisions contained at 210:1-5-8 to create one uniform due process procedure from the existing process outlined in OAC 210:1-5-8.

2. Explain proposed changes as briefly as possible.

OAC 210:1-5-7 was revoked by emergency. This was the trial de novo due process rule. The due process hearing procedure in 210:1-5-8 was modified to apply to all teachers. HB 1380 requires a single due process procedure for all teachers. The emergency changes adopted by the OSBE in August 2011 made minimal modification to the existing due process procedure for probationary and non-career teachers by making it applicable to all teachers

3. Include a reference to any statute that the rule change interprets, any related statute or any related rule, and include a description of the classes of persons who most likely will be affected by the rule(s).

70 O.S. §6-101.3: amends definitions of “nonreemployment”; eliminates “probationary teacher hearing” and “career teacher hearing” and provides only one definition of “teacher hearing.”

70 O.S. §6-101.26: eliminates distinction between a “probationary teacher hearing” and “career teacher hearing” by providing one definition of “teacher hearing.”

70 O.S. §6-101.27 (repealed); trial de novo process for career teachers.

70 O.S. §6-101.29: removed all reference to trial de novo process and clarifies the suspension process.

6. What is the statute or other legal instrument, which authorizes the Board to promulgate rules for this area of control, and/or the statute or other legal instrument, which authorized the rule change?

70 O.S. § 3-104.

7. Does the proposed change incorporate a set of rules from a body outside the state, such as a national code? If so, list from what body and provide legal name of the set of rules, as recognized by that state.

No.

CHAPTER 1. STATE BOARD OF EDUCATION

SUBCHAPTER 5. DUE PROCESS

210:1-5-7. Teacher evaluation, dismissal, and nonreemployment

(a) Teacher Evaluation, Dismissal, and Nonreemployment Act.

(1) The State Board of Education recognizes its regulatory and leadership role in the implementation of this statute and commits its cooperation accordingly. It believes that the most effective vehicle to promote professional growth is self-motivation. The teacher should be the prime recipient of the benefits of teacher evaluation thus identifying his/her own needs for improvement. The evaluation instrument serves as one objective measure by which administrators and boards of education can validly infer inadequate competencies of both teachers and administrators.

(2) The State Board of Education believes that grievances between boards of education and teachers can best be settled in the locale and thus supports the principle of due process before the local school board. It further supports the right of appeal in the exercise of human rights.

(b) **Duties.** The law requires the State Board of Education to develop and adopt standards and procedures to be followed in due process hearings of local boards of education. Such standards are to follow the pattern of the Administrative Procedures Act [75-301-308.2].

(c) **Written policy of evaluation.** A teaching principal may conduct teacher evaluations if so designated by the local board of education.

(d) **Minimum criteria for establishing evaluation systems.** The written policy and procedures will facilitate the implementation of the Teacher Evaluation Law of 1977, as amended by House Bill No. 1466 (70-6-102.2). Written policy of evaluation for all teachers and administrators is to be based on minimum criteria developed by the State Board of Education and shall include both teaching and administrative criteria. Each board of education shall maintain and annually review the evaluation policy. Each district's evaluation system should contain the following elements:

- (1) A written policy addressing purpose, goals, objectives, targets, procedures, methods, and uses of the evaluation system. This policy shall be developed by the board in consultation with representative teachers and administrators.
- (2) Procedures for making evaluation information available to all affected personnel.
- (3) A listing of the evaluation and hearing steps.
- (4) Written performance criteria by which to evaluate all certificated staff. This must include, but is not limited to, state mandated minimum criteria for effective teaching performance and minimum criteria for effective administrative performance.
- (5) Dates (or a schedule) for evaluation visits for probationary and tenured staff.
- (6) Identification of the personnel or positions which will perform the evaluations.
- (7) What is to be evaluated. Consideration should be given to:
 - (A) Self-evaluation progress reports by individuals being evaluated.
 - (B) Criteria, in addition to state mandated criteria, which might include: criteria related to the job description, district goals, school objectives, and the previously cooperatively developed position objectives.
 - (C) Equitable application of evaluation criteria to all personnel.
 - (D) Evaluating only those things which are currently applicable to the job the staff member is performing and not those things which should have been evaluated during preemployment.
- (8) Specified ways that evaluation data will be collected as well as when, how long, and how observations will be performed.
- (9) Security and controlled access to the evaluation reports.
- (10) Provisions for initial, post visit, and follow-up conferences with evaluator or immediate supervisor. Forms should be completed by evaluator, signed, then reviewed, commented on, and signed by the person being evaluated.

- (11) Place for recommendations, prescriptions, or citations of inadequacy. These procedures should include written statements by the evaluator as to:
- (A) What should be done by the person evaluated, including level of performance expected.
 - (B) When the corrective action is expected to be completed, which time shall not exceed two months.
 - (C) What resources the school will provide to help the person evaluated achieve the expected performance.
 - (D) The form in which the report of performance should be submitted (i.e., oral interview, self-evaluation report, narrative description, list of data action documents, etc.).
- (12) Ways the administration will provide resources and assistance for corrective action. This assistance should provide alternatives which could include:
- (A) Assignment to another school or position within the district.
 - (B) Visitations and planning.
 - (C) Demonstrations or simulations.
 - (D) Video tapings and assigned supervisor.
 - (E) Reports.
 - (F) Special supervision.
 - (G) Assignment to a performance team.
 - (H) Conference.
 - (I) Workshops and inservice sessions.
- (13) Ways the district will utilize the evaluation finding to improve learning in the district to:
- (A) Develop inservice education programs to resolve inadequacies.
 - (B) Identify areas where improvements are needed.
 - (C) Provide justification for changes in staff, facilities, resources, and programs, or to be a needs assessment for developing new programs.
 - (D) Disseminate valuable information to various publics.
 - (E) Provide a record of the quality of teaching and quality of staff in the district.

(e) Procedures designed to avoid potential teacher dismissal. Principals having delegated administrative responsibilities as a part of the comprehensive operation of their respective schools have an inherent obligation for the professional success of their teaching staff. Subsequent to an analysis of the results of a number of measures from which it can be validly inferred from a teacher's performance the principal or evaluator shall, according to law:

- (1) Bring the matter to the attention of the teacher, in writing, and make a reasonable effort to assist the teacher to correct whatever appears to be the cause for potential dismissal or nonreemployment; and
- (2) Allow a reasonable time for improvement, which time shall not exceed two (2) months. The nature and gravity of the teacher's conduct shall be considered in determining what length of time would be reasonable. If the teacher does not correct the cause for potential dismissal or nonreemployment within a reasonable length of time, the principal shall make a recommendation to the superintendent of the school district for the dismissal or nonreemployment of the teacher. (70-6-103.2) This section does not apply to a superintendent of schools. 648 P.2d 26
- (3) The school system should make facilities at its disposal available to help such teachers. The principal will encourage the use of such facilities as:
 - (A) an accessible professional library and/or media center;
 - (B) local, county, and State Department of Education supervisory services;
 - (C) inservice education activities with local, county, regional service center, college, or state groups;
 - (D) individual study; and
 - (E) the acquisition and utilization of a wide variety of teacher materials.

~~(f) Pretermination procedures. Subsequent to the decision by the superintendent that cause does, in fact, exist for the dismissal or nonreemployment of a teacher certain steps must be followed. These~~

~~include notification and hearing. The United States Supreme Court has ruled that school employees have certain pretermination rights which must be met prior to dismissal which include:~~

- ~~(1) Being told orally or in writing the charges against the employee.~~
- ~~(2) Being given an explanation of the school's evidence against the employee; and~~
- ~~(3) Being given an opportunity to present evidence in person or in writing of why the employee should not be discharged.~~

210:1-5-8. Teacher due process hearings; hearing procedures; ~~probationary teachers~~

(a) The parties to the hearing are the ~~probationary~~ teacher and the district superintendent or designee and they shall be afforded the following rights at any hearing held pursuant to these regulations.

- (1) The right to be represented.
- (2) The right to present witnesses in person or to present their testimony by interrogatories, affidavits, or depositions. A list of all witnesses shall be furnished to the other party at least five (5) days before the hearing.
- (3) The right to cross-examine witness.
- (4) The right to testify in his/her own behalf and present evidence and argument on all issues involved.
- (5) The right to have an orderly hearing.
- (6) The right to have an impartial decision based upon the evidence presented.

(b) The President of the school board, or in case of absence a designee, shall be the presiding officer at the hearing.

(c) All hearings shall conform to the following:

(1) Hearings shall be held no sooner than twenty (20) and no later than sixty (60) days after the teacher receives written notification of the recommendation for dismissal or nonreemployment and notice of the opportunity for hearing.

~~(1)~~ (2) Hearings held within the scope of these guidelines shall be convened by the President of the board who shall state the purpose of the hearing, introduce the parties and administer the oath to all persons who will testify.

~~(2)~~ (3) Upon the request of either party, the Presiding Officer may exclude from the hearing room the witnesses not at the time under examination, except that a party to the proceeding and his/her representative shall not be excluded.

~~(3)~~ (4) At the hearing, the burden of proof shall be on the superintendent and the standard of proof shall be by a preponderance of the evidence.

~~(4)~~ (5) ~~While a record of the hearing is not required by law, the State Board of Education strongly suggests that the~~ The local board of education shall maintain such a record (including a tape recording of the hearing and any documents or evidence presented to the board) for two (2) years from the date of the hearing.

~~(5)~~ (6) Informal disposition of any recommendation for dismissal or nonrenewal may be made by written stipulation, agreed settlement, consent order or default.

(d) The order of procedures shall be:

- (1) Opening statement by superintendent.
- (2) Opening statement by the teacher.
- (3) Presentation of superintendent's evidence, followed by cross-examination of witnesses by teacher.
- (4) Questions by local board members.
- (5) Presentation of teacher's evidence followed by cross-examination of witnesses by superintendent.
- (6) Questions by local board members.
- (7) Presentation of Rebuttal and Surrebuttal Evidence as necessary.
- (8) Closing argument by superintendent.
- (9) Closing argument by teacher.

- (10) Deliberation by local board.
- (11) Vote by local board to accept or reject the superintendent's recommendation and recitation of findings of fact upon which the decision is based.
- (e) Presentation and consideration of evidence shall abide by the following:
 - (1) Only evidence which reasonably relates to the issues before the board, as reflected in the notice to the teacher, should be deemed relevant.
 - (2) Strict rules of evidence as required by a court of law shall not apply in these hearings.
 - (3) Rulings on admissibility of evidence will be made by the Presiding Officer.
 - (4) Documentary evidence may be received in the form of copies or excerpts.
 - (5) Documentary evidence presented to the board shall be marked with a distinguishing number or letter such as Teacher's Exhibit #1 or Superintendent's Exhibit #1.
 - (6) While hearings are open to the public, no questions or statements will be allowed by members of the public attending the hearing except through the parties or their council.
- (f) Decision on hearing will be rendered.
 - (1) After due consideration of the evidence and the testimony presented at the hearing, the local board shall decide whether to dismiss or nonreemploy the teacher.
 - (2) The board's decision shall be voted in open meeting.
 - (3) The decision of the board shall include a recitation of the basic or underlying facts relied upon by the board in reaching its decision.
 - (4) The board shall notify the ~~probationary~~ teacher in writing of its decision as set out above by certified mail, restricted delivery, return receipt requested or substitute process as authorized by law within ten (10) business days of the hearing.
 - (5) The school board's decision regarding the dismissal or nonreemployment of a ~~probationary~~ teacher is final.

An Act

ENROLLED HOUSE
BILL NO. 1380

By: Holland, Derby, Kern,
Newell, Osborn, Tibbs,
Nelson and Denney of the
House

and

Ford of the Senate

An Act relating to schools; amending 70 O.S. 2001, Sections 6-101.3, as amended by Section 8, Chapter 434, O.S.L. 2003 and 6-101.3, as last amended by Section 8, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.3), which relate to teacher contract definitions; modifying certain definitions; deleting certain definitions; amending 70 O.S. 2001, Sections 6-101.26, as last amended by Section 2, Chapter 112, O.S.L. 2006, 6-101.26, as last amended by Section 12, Chapter 291, O.S.L. 2010 and 6-101.29 (70 O.S. Supp. 2010, Section 6-101.26), which relate to the Teacher Due Process Act of 1990; updating statutory language; deleting obsolete language; deleting career teacher pretermination hearing procedures and requirements; deleting right to trial de novo; deleting requirement to extend suspensions until completion of a trial de novo; and repealing 70 O.S. 2001, Sections 6-101.27 and 6-101.27, as amended by Section 13, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.27), which relate to a teacher's right to a trial de novo.

SUBJECT: Teachers

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 70 O.S. 2001, Section 6-101.3, as amended by Section 8, Chapter 434, O.S.L. 2003 (70 O.S. Supp. 2010, Section 6-101.3), is amended to read as follows:

Section 6-101.3 As used in Section 6-101 et seq. of this title:

1. "Administrator" means a duly certified person who devotes a majority of time to service as a superintendent, elementary superintendent, principal, supervisor, vice principal or in any other administrative or supervisory capacity in the school district;

2. "Dismissal" means the discontinuance of the teaching service of an administrator or teacher during the term of a written contract, as provided by law;

3. "Nonreemployment" means the nonrenewal of ~~an administrator's or teacher's~~ the contract of an administrator or teacher upon expiration of the contract;

4. "Career teacher" means a teacher who has completed three (3) or more consecutive complete school years in such capacity in one school district under a written teaching contract;

5. "~~Probationary teacher~~ Teacher hearing" means the hearing before a local board of education after a recommendation for dismissal or nonreemployment of a ~~probationary~~ teacher has been made but before any final action is taken on ~~said~~ the recommendation, held for the purpose of affording ~~such~~ the teacher all rights guaranteed by the United States Constitution and the Constitution of Oklahoma under such circumstances and for enabling the board to determine whether to approve or disapprove the recommendation;

6. "~~Career teacher pretermination hearing~~" means ~~the informal proceeding before the local board of education held for the purpose of providing a meaningful opportunity to invoke the discretion of the decision maker after a recommendation for dismissal or nonreemployment of a career teacher has been made but before any final action is taken on the recommendation in order to ensure that the career teacher is afforded the essential pretermination due process requirements of notice and an opportunity to respond;~~

7. "Probationary teacher" means a teacher who has completed fewer than three (3) consecutive complete school years in such capacity in one school district under a written teaching contract;

~~8-~~ 7. "Suspension" or "suspended" means the temporary discontinuance of ~~an administrator's or teacher's~~ the services of an administrator or teacher, as provided by law; and

~~9-~~ 8. "Teacher" means a duly certified or licensed person who is employed to serve as a counselor, librarian or school nurse or in any instructional capacity; ~~an.~~ An administrator shall be considered a teacher only with regard to service in an instructional, nonadministrative capacity.

SECTION 2. AMENDATORY 70 O.S. 2001, Section 6-101.3, as last amended by Section 8, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.3), is amended to read as follows:

Section 6-101.3 As used in Section 6-101 et seq. of this title:

1. "Administrator" means a duly certified person who devotes a majority of time to service as a superintendent, elementary superintendent, principal, supervisor, vice principal or in any other administrative or supervisory capacity in the school district;

2. "Dismissal" means the discontinuance of the teaching service of an administrator or teacher during the term of a written contract, as provided by law;

3. "Nonreemployment" means the nonrenewal of ~~an administrator's or teacher's~~ the contract of an administrator or teacher upon expiration of the contract;

4. "Career teacher" means a teacher who:

a. for teachers employed by a school district during the 2011-12 school year, has completed three (3) or more consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract, or

b. for teachers employed for the first time by a school district under a written continuing or temporary teaching contract on or after July 1, 2012:

(1) has completed three (3) consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract and has achieved a rating of "superior"

as measured pursuant to the Oklahoma Teacher and Leader Effectiveness Evaluation System (TLE) as set forth in Section 6 of this act for at least two (2) of the three (3) school years, with no rating below "effective",

- (2) has completed four (4) consecutive complete school years as a teacher in one school district under a written continuing or temporary teaching contract, has averaged a rating of at least "effective" as measured pursuant to the TLE for the four-year period, and has received a rating of at least "effective" for the last two (2) years of the four-year period, or
- (3) has completed four (4) or more consecutive complete school years in one school district under a written continuing or temporary teaching contract and has not met the requirements of subparagraph a or b of this paragraph, only if the principal of the school at which the teacher is employed submits a petition to the superintendent of the school district requesting that the teacher be granted career status, the superintendent agrees with the petition, and the school district board of education approves the petition. The principal shall specify in the petition the underlying facts supporting the granting of career status to the teacher;

5. "~~Probationary teacher~~ Teacher hearing" means the hearing before a school district board of education after a recommendation for dismissal or nonreemployment of a ~~probationary~~ teacher has been made but before any final action is taken on ~~said the~~ recommendation, held for the purpose of affording ~~such the~~ the teacher all rights guaranteed by the United States Constitution and the Constitution of Oklahoma under ~~such~~ circumstances and for enabling the board to determine whether to approve or disapprove the recommendation;

6. "~~Career teacher pretermination hearing~~" means ~~the informal proceeding before the school district board of education held for the purpose of providing a meaningful opportunity to invoke the discretion of the decision maker after a recommendation for dismissal or nonreemployment of a career teacher has been made but~~

~~before any final action is taken on the recommendation in order to ensure that the career teacher is afforded the essential pretermination due process requirements of notice and an opportunity to respond;~~

7. "Probationary teacher" means a teacher who:

- a. for teachers employed by a school district during the 2011-12 school year, has completed fewer than three (3) consecutive complete school years as a teacher in one school district under a written teaching contract, or
- b. for teachers employed for the first time by a school district under a written teaching contract on or after July 1, 2012, has not met the requirements for career teacher as provided in paragraph 4 of this section;

~~8. 7. "Suspension" or "suspended" means the temporary discontinuance of an administrator's or teacher's the services of an administrator or teacher, as provided by law; and~~

~~9. 8. "Teacher" means a duly certified or licensed person who is employed to serve as a counselor, librarian or school nurse or in any instructional capacity; an administrator shall be considered a teacher only with regard to service in an instructional, nonadministrative capacity.~~

SECTION 3. AMENDATORY 70 O.S. 2001, Section 6-101.26, as last amended by Section 2, Chapter 112, O.S.L. 2006 (70 O.S. Supp. 2010, Section 6-101.26), is amended to read as follows:

Section 6-101.26 A. Whenever a board of education receives a recommendation from the superintendent for the dismissal or nonreemployment of a teacher, the board or individual designated by the board shall mail a copy of the recommendation to the teacher by certified mail, restricted delivery, return receipt requested, by personal delivery to the teacher with a signed acknowledgement of receipt, or by delivery by a process server. By the same means, the board shall notify the teacher of the right to a hearing before the board and the date, time and place set by the board for the hearing, which shall be held within the school district not sooner than twenty (20) days or later than sixty (60) days after receipt of notice by the teacher, the date on the personal receipt by hand-delivery to the teacher, or the date of delivery by a process

server. The notice shall specify the statutory grounds upon which the recommendation is based upon for a career teacher or shall specify the cause upon which the recommendation is based upon for a probationary teacher. The notice shall also specify the underlying facts supporting the recommendation. At the hearing, the teacher shall be entitled to all rights guaranteed under the circumstances by the United States Constitution and the Constitution of Oklahoma.

~~B. The career teacher pretermination hearing shall be conducted by the district board as follows:~~

~~1. The superintendent or designee shall, in person or in writing, specify the statutory ground upon which the recommendation is based. The superintendent or designee shall also specify the underlying facts and provide an explanation of the evidence supporting the recommendation for the dismissal or nonreemployment of the career teacher; and~~

~~2. The career teacher or designee shall have the opportunity to present reasons, either in person or in writing, why the proposed action should not be taken.~~

~~C. Only after the career teacher has a meaningful opportunity to respond to the recommendation for dismissal or nonreemployment at the pretermination hearing shall the board decide whether to accept or reject the recommendation of the superintendent. The vote made by the board shall be made in an open meeting. The board shall also notify the career teacher of its decision, including the basis for the decision, by certified mail, restricted delivery, return receipt requested or substitute process as provided by law. If the decision is to accept the recommendation of the superintendent, the board shall include notification of the right of the career teacher to petition for a trial de novo in the district court within ten (10) days of receipt of notice of the decision. At the pretermination hearing the burden of proof shall be upon the superintendent or designee and the standard of proof shall be by the preponderance of the evidence. The career teacher shall receive any compensation or benefits to which such teacher is otherwise entitled until such time as the teacher's case is adjudicated at a trial de novo if the career teacher petitions for the trial de novo. Such compensation and benefits shall not be provided during any further appeal process.~~

D. The probationary teacher hearing shall be conducted by the district board according to procedures established by the State Board of Education.

E. C. Only after due consideration of the evidence and testimony presented at the hearing shall the district board decide whether to dismiss or nonreemploy the probationary teacher. The vote of the board shall be made in an open meeting. The board shall also notify the probationary teacher of the decision, including the basis for the decision, by certified mail, restricted delivery, return receipt requested, or substitute process as provided by law. The decision of the board regarding a probationary teacher shall be final and nonappealable. At the hearing the burden of proof shall be upon the superintendent or designee, and the standard of proof shall be by the preponderance of the evidence. The probationary teacher shall receive any compensation or benefits to which the teacher is otherwise entitled until ~~such time as~~ the decision of the board becomes final. If the hearing for a probationary teacher is for nonreemployment, such compensation and benefits may be continued only until the end of the current contract of the teacher.

SECTION 4. AMENDATORY 70 O.S. 2001, Section 6-101.26, as last amended by Section 12, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.26), is amended to read as follows:

Section 6-101.26 A. Whenever a board of education receives a recommendation from the superintendent for the dismissal or nonreemployment of a teacher, the board or individual designated by the board shall mail a copy of the recommendation to the teacher by certified mail, restricted delivery, return receipt requested, by personal delivery to the teacher with a signed acknowledgement of receipt, or by delivery by a process server. By the same means, the board shall notify the teacher of the right to a hearing before the board and the date, time and place set by the board for the hearing, which shall be held within the school district not sooner than twenty (20) days or later than sixty (60) days after receipt of notice by the teacher, the date on the personal receipt by hand-delivery to the teacher, or the date of delivery by a process server. The notice shall specify the statutory grounds upon which the recommendation is based upon for a career teacher or shall specify the cause upon which the recommendation is based upon for a probationary teacher. The notice shall also specify the underlying facts supporting the recommendation. At the hearing, the teacher shall be entitled to all rights guaranteed under the circumstances by the United States Constitution and the Constitution of Oklahoma.

~~B. The career teacher pretermination hearing shall be conducted by the district board as follows:~~

~~1. The superintendent or designee shall, in person or in writing, specify the statutory ground upon which the recommendation is based. The superintendent or designee shall also specify the underlying facts and provide an explanation of the evidence supporting the recommendation for the dismissal or nonreemployment of the career teacher; and~~

~~2. The career teacher or designee shall have the opportunity to present reasons, either in person or in writing, why the proposed action should not be taken.~~

~~C. Only after the career teacher has a meaningful opportunity to respond to the recommendation for dismissal or nonreemployment at the pretermination hearing shall the board decide whether to accept or reject the recommendation of the superintendent. The vote made by the board shall be made in an open meeting. The board shall also notify the career teacher of its decision, including the basis for the decision, by certified mail, restricted delivery, return receipt requested or substitute process as provided by law. If the decision is to accept the recommendation of the superintendent, the board shall include notification of the right of the career teacher to petition for a trial de novo in the district court within ten (10) days of receipt of notice of the decision. At the pretermination hearing the burden of proof shall be upon the superintendent or designee and the standard of proof shall be by the preponderance of the evidence. The career teacher shall receive any compensation or benefits to which the teacher is entitled as provided in Section 6-101.27 of this title. Such compensation and benefits shall not be provided during any further appeal process.~~

~~D. The probationary teacher hearing shall be conducted by the district board according to procedures established by the State Board of Education.~~

~~E. C. Only after due consideration of the evidence and testimony presented at the hearing shall the district board decide whether to dismiss or nonreemploy the probationary teacher. The vote of the board shall be made in an open meeting. The board shall also notify the probationary teacher of the decision, including the basis for the decision, by certified mail, restricted delivery, return receipt requested, or substitute process as provided by law.~~

The decision of the board regarding a probationary teacher shall be final and nonappealable. At the hearing the burden of proof shall be upon the superintendent or designee, and the standard of proof shall be by the preponderance of the evidence. The probationary teacher shall receive any compensation or benefits to which the teacher is otherwise entitled until ~~such time as~~ the decision of the board becomes final. If the hearing for a probationary teacher is for nonreemployment, such compensation and benefits may be continued only until the end of the current contract of the teacher.

SECTION 5. AMENDATORY 70 O.S. 2001, Section 6-101.29, is amended to read as follows:

Section 6-101.29 Whenever the superintendent of a school district has reason to believe that cause exists for the dismissal of a teacher and is of the opinion that the immediate suspension of the teacher would be in the best interests of the children in the district, the superintendent or the local board of education upon receiving recommendation for suspension from the superintendent may suspend the teacher without notice or hearing. However, the suspension shall not deprive the teacher of any compensation or other benefits to which otherwise entitled. ~~Such suspension shall extend to such time as the teacher's case is adjudicated at a trial de novo for a career teacher but such extension shall not include time for any further appeal process.~~ Within ten (10) days' time after ~~such~~ the suspension becomes effective, the local board of education shall initiate a hearing for dismissal pursuant to law.

However, in a case involving a criminal charge or indictment, ~~such~~ the suspension may extend to ~~such time as~~ until the teacher's case for the teacher is finally adjudicated at trial. ~~Provided,~~ ~~however,~~ ~~such~~ The extension shall not include any appeal process.

SECTION 6. REPEALER 70 O.S. 2001, Section 6-101.27, is hereby repealed.

SECTION 7. REPEALER 70 O.S. 2001, Section 6-101.27, as amended by Section 13, Chapter 291, O.S.L. 2010 (70 O.S. Supp. 2010, Section 6-101.27), is hereby repealed.

Passed the House of Representatives the 8th day of March, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the 31st day of March, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____

FACTS SHEET: TRANSFER RULES
STATE DEPARTMENT OF EDUCATION

Title 210
Chapter 10
Subchapter 1
Sections 18 and 19

- 1. Write a brief summary of the rule(s) in simple language.**
The State Board of Education revoked by emergency action rules relating to the implementation of the Oklahoma Education Transfers Act. Previous rules were outdated and did not reflect current law. Proposed rules have been updated to reflect current statutory requirements and clarify departmental policy and procedures. Proposed rules address open, emergency, special education and gifted transfers.
- 2. Explain proposed changes as briefly as possible.**
Proposed rules clarify the current statutory scheme relating to emergency, open, special education and gifted transfers. Rules clarify procedures for obtaining each respective transfer and provide guidance to school districts.
- 3. What are the circumstances which created the need for the rule(s)?**
Previous revocation of the Department's rules relating to transfers necessitated that new, revised rules be promulgated to reflect current statutes and procedures.
- 4. Include a reference to any statute that the rule change interprets, any related statute or any related rule, and include a description of the classes of persons who most likely will be affected by the rule(s).**
70 O.S. § 8-101, *et seq*; 70 O.S. § 13-101; 70 O.S. § 13-103; 70 O.S. § 1210.307.
Proposed rules will affect the students and parents of students seeking transfers pursuant to the law. The proposed changes will provide guidance on special education transfers and gifted education transfers. School districts will also be affected by this rule.
- 5. What is the intended effect of the rule(s)?**
To implement the Oklahoma Education Open Transfers Act, and other provisions of law relating to the transfer of special education and gifted students.
- 6. What is the statute or other legal instrument, which authorizes the Board to promulgate rules for this area of control, and/or the statute or other legal instrument, which authorized the rule change?**
70 O.S. § 3-104
- 7. Does the proposed change incorporate a set of rules from a body outside the state, such as a national code? If so, list from what body and provide legal name of the set of rules, as recognized by that state.**
Not applicable.
- 8. Why is this considered an emergency and what might happen if not promulgated as soon as possible?**
Not applicable.

CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-9. Transfers [REVOKED]

~~(a) Regular transfers (70-8-101, 102, 103). Regular transfers may be approved by the County Superintendent if both the sending and receiving boards of education approve. Provided, however, if the grade such child is entitled to pursue is not offered in the district where such child resides, the transfer must be approved. A special education transfer must be approved with the consent of the receiving board. The following statutory time lines must be followed for the regular transfer process:~~

~~(1) Not later than May 15 Application by parents or guardian filed with county superintendent.~~

~~(2) Not later than May 25 County superintendent must notify the clerk of each affected board of education of the proposed transfers and a hearing date.~~

~~(3) On or before June 5 County superintendent conducts a hearing for either board of education to show cause as to whether or not the transfer should be granted.~~

~~(4) Not later than June 15 County superintendent must notify the clerk of each affected board of education as to whether or not the transfer was granted.~~

~~(5) Anytime before June 20 Either district or parent or guardian may appeal the action of the county superintendent to the district court, in writing.~~

~~(6) Not later than June 30 The decision must be rendered by the court and the decision is final.~~

~~(b) Emergency transfers (70-8-104). Emergency transfers ordered by the county superintendent of schools, subject to approval of the State Board of Education, are based upon any one of the following: destruction of a building, inability to furnish the grade of study the pupil is entitled to pursue, inability to offer the subject a pupil desires to pursue, nonavailability of science, mathematics, or foreign language, total failure of transportation facilities previously had or contemplated, approval of the boards of education of the sending and receiving districts. Emergency transfers must be filed with the State Department of Education within 30 days of date of order by county superintendent.~~

~~(c) Special education transfers.~~

~~(1) Regular special education transfer: In order that a child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101 may be transferred, a written application for such transfer, designating the district to which the transfer is desired, shall be made by either of his/her parents, or by his/her guardian, and such application shall be filed with the county superintendent of schools for transfers to school districts in the State of Oklahoma and with the State Board of Education for transfers to school districts in another state not later than May 15, preceding the school year for which the transfer is desired. The county superintendent of schools shall notify, no later than May 25, the clerk of the board of education of the district from which the transfer is proposed to be made and the clerk of the board of education of the district to which the transfer is proposed to be made. The notices of the application for transfer shall so state that the board of education, from which the transfer is proposed, will submit information as required by STATE BOARD OF~~

~~EDUCATION POLICIES AND PROCEDURES MANUAL FOR SPECIAL EDUCATION IN OKLAHOMA for the delivery of Special Education Services for each identified child with a disability and that on or before June 5, the board of education of either district affected by the proposed transfer shall have an opportunity to show cause, if any, why the transfer should or should not be granted. This information will include (1) a current individual evaluation, (2) a categorical eligibility statement and (3) a current Individualized Education Program (IEP). The county superintendent of schools shall, not later than June 15, notify, in writing, the clerk of each board of education affected as to whether or not the transfer has been granted. Provided that at any time before June 20, the board of education of either district or the parent or guardian of the child may appeal, in writing, from the action of the county superintendent of schools to the district court of the county in which the child resides, and such appeal shall be heard, and a decision rendered thereon not later than June 30, and such decision shall be final.~~

~~(2) Emergency special education transfer. A written application for an emergency special education transfer for a child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101, designating the district to which the transfer is desired shall be made by either the parent or guardian, and on an adequate showing of emergency based on information as required by STATE BOARD OF EDUCATION POLICIES AND PROCEDURES MANUAL FOR SPECIAL EDUCATION IN OKLAHOMA for the delivery of Special Education Services for each identified child with a disability. This information will include (1) a current individual evaluation, (2) a categorical eligibility statement and (3) a current Individualized Education Program (IEP) and shall be submitted to the county superintendent who may make and order a transfer, subject to approval by the State Board of Education.~~

~~(3) Cancellation of regular or emergency special education transfer. A transfer made may be canceled with the concurrence of the board of the receiving district, and a transfer granted. Also, on affidavit of parent or guardian, or of the school board of the transferring district, disclosing removal of residence from the transferring district, a transfer previously made may be canceled. Cancellation of special education transfers are subject to the rules and regulations of the State Board of Education and the procedural due process requirements outlined at 20 U.S.C. § 1415, of the Individuals With Disabilities Education Improvement Act.~~

~~(4) Residence of child attendance in transportation area. Any child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101, residing in a school district in the State of Oklahoma that does not offer the grade such child is entitled to pursue shall be entitled to attend the school of the school district in the transportation area in which such pupil resides that offers the grade he is entitled to pursue.~~

~~(d) Kindergarten transfers (70-18-108). It is the duty of every school district in this state to provide and offer kindergarten free of tuition for every child residing in such district who attains the age of five (5) years by the second day of September of the school year such kindergarten is offered. This duty may be satisfied by transferring kindergarten children to other school districts which accept them and provide kindergarten for such children with the district in which the child resides paying seventy five percent (75%) of the average daily attendance per capita cost of the receiving district. The average daily attendance of such child shall be credited to the sending district of the child. When tuition is paid to a public school district for an underage kindergarten~~

student during a given year, said student can legally enroll as a first-grade student the following year in the same district without paying tuition. (70-1-114)

~~(e) Gifted and talented transfers (70-1210.307). Beginning with the school year 1983-84, it shall be the duty of each school district to provide gifted child educational programs for all identified gifted children, as defined in Section 1210.301 of Title 70 of the Oklahoma Statutes, who reside in that school district. This duty may be satisfied by: The district transferring identified gifted and talented children to other school districts which provide the appropriate gifted child educational programs, provided, no transfer shall be made without the consent of the board of education of the receiving school district. The district in which the child resides shall provide transportation for the transferred student and pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district. Transfers authorized by this section shall be made under such rules and regulations as the State Board of Education may prescribe; or the district located wholly or in part in a county participating in any program established by that county superintendent of schools.~~

210:10-1-18. Transfers

(a) All district transfers shall be governed by the Oklahoma Education Open Transfer Act, 70 O.S. § 8-101.1, et seq. Transfers made for the purpose of providing a free and appropriate public education (FAPE) to special education students shall be governed by 70 O.S. § 18-110 and 70 O.S. § 13-101, et seq. Transfers made for the purpose of providing gifted child educational programs shall be governed by 70 O.S. § 1210.307.

(b) The following definitions shall apply in State Department of Education rules relating to transfers:

- 1) Open Transfer- The transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue. An open transfer may be requested and approved only during the statutory timeframe.
- 2) Emergency Transfer- the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue which, for specific reasons, must be requested and approved outside of the statutory timeframe required for open transfers.
- 3) IEP Service Agreement- An agreement between school districts to provide special education and related services to a qualified student with a disability solely for the purpose of providing the student a free and appropriate public education (FAPE). An IEP Services Agreement is the resourcing of special education and related services to a school district that agrees to provide FAPE to a qualified student with a disability on behalf of the resident district.
- 4) "Special Education and Related Services"- All services required to be provided pursuant to the Individuals with Disabilities Act (IDEA). Namely, a free and appropriate public education (FAPE) as defined by that law.
- 5) Receiving School District- The school district in which the student is seeking to be transferred.
- 6) Resident School District- The school district in which the custodial parent or person having custody of the student resides.
- 7) Parent- The parent, guardian, or person having legal custody of the student.

(c) Open Transfers. Transfers to another district may be approved by the board of education of the receiving school district. If the grade a student is entitled to pursue is not offered in the district where the student resides, the transfer shall be automatically approved by the receiving school district. No student may be granted more than one (1) open transfer per school year, but may qualify for additional transfers pursuant to emergency provisions of the Education Open Transfers Act or a legal change in residence.

- 1) The parent of the student must complete an application form specified by the State Board of Education. The application must be submitted to the receiving school district by April 1 of the school year preceding the school year for which the transfer is being requested.
- 2) The receiving school district shall notify the resident school district that an application for transfer has been filed.
- 3) The board of education of the receiving school district shall approve or deny the application no later than June 1 of the same year and notify the parents of the student in writing.
- 4) The parents of the student shall confirm enrollment in the receiving school district by July 1 of the same year. Failure of the parents to notify may result in the loss of the student's right to enroll in the school district for that year only. If a parent fails to notify the receiving school district that a student will be enrolling, and the receiving school district chooses to cancel the transfer, the receiving school district shall provide a written notice of the cancellation to the parent and the resident district immediately upon cancellation.
- 5) Local school districts shall adopt a policy governing the transfer of students who do not reside in the school district. A receiving school board of education may refuse the transfer request of a student who does not reside in the district in accordance with the provisions of the adopted policy, but may not accept or deny a request based on statutorily prohibited factors.
- 6) Approval of the resident district is not required for an open transfer.
- 7) Transfer requests submitted outside of the statutory time frame will not be considered timely and must meet the statutory criteria of an emergency transfer to be approved.

(d) Emergency Transfers. In addition to the open transfer process, students may be transferred on an emergency basis, as proscribed by statute.

- 1) The parents of the student may make an application for an emergency transfer. The application for emergency transfer must be filed with the superintendent of the receiving school district.
- 2) The superintendent of the receiving school district may approve the emergency transfer only upon an adequate showing of emergency, and subject to approval of the State Board of Education.
- 3) Only the superintendent of the receiving school district or his/her designee responsible for approving transfers may submit an application for emergency transfer to the State Board of Education for approval. The superintendent or designee of the receiving school district shall collect documentation from the student desiring to be transferred, and may be required to submit such documentation to the State Board of Education. In submitting an application for an emergency transfer to the State Board of Education, the superintendent or designee verifies that he/she has personally reviewed and approved the application and attests that the student qualifies for an emergency transfer.
 - a. If the superintendent has appointed a designee to review and approve emergency transfers, the school district shall notify the State Department of Education of the appointment.
 - b. Resident district approval of an emergency transfer is only required if the emergency transfer is being conducted pursuant to 70 O.S. § 8-104(5). Emergency transfer approval requests submitted to the State Board of Education shall be reviewed by the resident district within ten (10) business days of submission. Failure to review the emergency transfer request within ten (10) business days shall result in an automatic approval.
- 4) Emergency transfers shall be approved only in the following circumstances:
 - a. The destruction or partial destruction of a school building;
 - b. Inability of the resident district to offer the subject a student desires to pursue, if the student becomes a legal resident of the school district after February 1 of the school year immediately prior to the school year the student is seeking to transfer.
 - c. A catastrophic medical problem of a student, which for purposes of this section shall mean an acute or chronic serious illness, disease, disorder or injury which has

- permanently detrimental effect on the body's system or renders the risk unusually hazardous;
 - d. Total failure of transportation facilities;
 - e. With the concurrence of both the sending and receiving school districts;
 - f. The unavailability of remote or on-site Internet-based instruction by course title in the district of residence for a student identified as a result of the district's intake and screening procedures as in need of drop-out recovery or alternative education services, provided such student was enrolled at any time in a public school in this state during the previous three (3) school years; or
 - g. The unavailability of specialized deaf education programs for a student who is deaf or hearing impaired. This transfer may be processed and handled as an IEP Services Agreement. Such determination shall be made in coordination with the parents of the requesting student.
- 5) Obtaining an emergency transfer by submitting an application that includes false or inaccurate information, or obtaining an emergency transfer on behalf of a student who remains in the resident school district may result in a reduction of a district's funding allocation based on Average Daily Attendance (ADA) and/or Average Daily Membership (ADM).
 - 6) If a student to whom a transfer has been granted fails to report and/or enroll in the receiving school district, the superintendent of the receiving school district shall notify the State Board of Education and the resident school district within ten (10) business days.
 - 7) Emergency transfers may be cancelled with the concurrence of the board of the receiving school district and the parents of the student. A school district must notify the parent in writing of the date and time for which the transfer will be considered for cancellation by the school board.

210:10-1-19: Special Education and Gifted Education Transfers

(a) It shall be the duty of each school district to provide special education and related services for all children with disabilities who reside in that school district in accordance with the Individuals with Disabilities Act (IDEA), P.L. No. 105-17. A school district/LEA may fulfill this duty, to provide FAPE, by one of the following:

- 1) The district directly providing special education for such children;
- 2) The district joining a cooperative program with another district or districts to provide special education;
- 3) The district joining in a written agreement with a private or public institution, licensed residential childcare and treatment facility or day treatment facility within the district to provide special education and related services to students with disabilities;
- 4) The district entering into a written agreement with another school district whereby the resident district agrees that the receiving school district will provide FAPE to a qualified student with a disability. This agreement is an IEP Service Agreement, entered into solely for the purpose of providing special education and related services (FAPE) to a qualified student with a disability. In this case, all funds remain with the resident school district, which agrees to pay tuition to the receiving district. Further, the average daily membership (ADM) of the student is credited to the resident district. The resident district has the responsibility to provide FAPE, special education and related services, including transportation for students serviced pursuant to this provision. Representatives of the resident district are responsible for the development and implementation of the IEP and must be included in all IEP meetings. In the event of a due process complaint, the resident district retains responsibility.
 - a. The transfer of the provision of special education and related services to a child pursuant to this section for three (3) consecutive years to the same school district shall lead to automatic renewal of the agreement each year. In these cases, the resident district shall continue to pay tuition as provided by law. Automatic renewal occurs only in cases where

IEP Service Agreements transfer of the provision of services to a receiving school district.

- b. IEP Service Agreements are granted by approval of both the resident and receiving school districts. Such agreements shall be memorialized in writing and documented in State Department of Education's student information system. This agreement should not be documented as a transfer pursuant to the Education Open Transfer Act.

(b) All other transfers involving a student with disabilities are open transfers and shall be conducted in accordance with the Open Transfer Act and State Department of Education rules. Transfers granted to students who are incidentally special needs students are not granted pursuant to this section and shall be governed by OAC 210:10-1-18 and governing state law. Consideration shall be given to the original purpose of the transfer.


- 1) In the event a student with disabilities requests a transfer for any reason other than to receive FAPE, the following provisions shall apply:
 - a) The receiving school district shall establish availability of the appropriate program, staff, and services prior to the approval of the transfer; and
 - b) The receiving school district shall consult the resident school district and the parents of the student to determine how FAPE will be provided to the student. Services comparable to those described in the IEP shall be provided until the receiving school district adopts the child's IEP from the resident district or develops, adopts and implements a new IEP that meets IDEA requirements.
- 2) In such cases, the receiving district shall claim the child in the average daily membership (ADM) for state and federal funding purposes and shall assume responsibility for education of the child. The receiving district will be responsible for all special education and related services provided to the child, including transportation if necessary to provide FAPE to a student with a disability. The provisions of IEP Service Agreements shall not apply in these cases.
- 3) Upon approval of the transfer pursuant to the Education Open Transfer Act, the receiving district shall claim the child in the average daily attendance for membership (ADM) for state and federal funding purposes and shall assume responsibility for education of the child. For state funding purposes, the State Department of Education shall include the appropriate grade level weight and all category weights to which the pupil is assigned to calculate State Aid pursuant to 70 O.S. § 18-200.1, et seq.

(c) In the event of an IEP Services Agreement, it is the responsibility of the resident school district to provide transportation to a child who has been granted a transfer for the purpose of providing a free and appropriate public education (FAPE). In the event of an open transfer, the receiving school district is responsible for providing transportation if necessary to provide FAPE to the student with a disability.


- 1) The need for transportation must be determined on an individualized basis by the IEP team, which consists of a parent, special education teacher, general education teacher, and an administrator. If the IEP team determines that transportation is a related service the child needs in order to access FAPE, then the service will be provided regardless of the distance the child resides from the school. The need for, frequency, and duration of these services must not be determined by the category of disability, the availability of services, or the distance the child lives from the school where the special education program is to be delivered. If the child requires transportation to receive, benefit from, or obtain access to a special education program, the district shall provide it at no cost to the student. When possible, children on an IEP should be transported with nondisabled peers.
 - i. Under federal regulations, transportation and such developmental, corrective, and other supportive services may be required for a child with a disability benefit from special education. Transportation includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment required to provide transportation to a child with disability, such as special or adapted buses, lifts, and ramps.

- ii. The provision of transportation for preschool children with disabilities must be considered on an individual basis by the IEP team. The team must consider transporting a preschool aged child to the site where special education and related services are provided, if that site is different from the site at which the child receives other preschool services.
 - iii. The school district may provide transportation services directly or contract with parents or some other person to furnish transportation. The miles driven and cost per mile to be paid by the school district should be specified in the IEP. Based on a mutual agreement, between two school districts, a school district offering special education classes may extend its transportation services to include the transportation of children qualifying for special education in an adjacent district that does not offer special education classes.
 - iv. Children with disabilities are entitled to the same length of school day offered to all children as established in Oklahoma state law. Transportation, scheduling, or administrative conveniences are not acceptable reasons for students with disabilities to have shortened school days. Additionally, academic schedules may not be lengthened or shortened to accommodate transportation.
- 2) Independent school districts are responsible for providing FAPE to children aged three (3) through twenty-one (21) years old. Elementary school districts are responsible for providing FAPE to children aged three (3) through the highest-grade level of the school. A school district's responsibility to provide transportation to children with disabilities extends to the grade offered by that school district.
- i. If a child transfers to an independent school district upon completion of the highest grade offered by an elementary school district, and the student lives within the independent school's transportation area, that independent district must provide transportation for that child.
 - ii. Other independent school districts may also enroll any transferred high school child, but they are not required to provide this transportation service outside their transportation area.
 - iii. In the event that transportation is included as a related service in the IEP and is reviewed by the receiving independent school district, the receiving school district will be required to provide transportation regardless of the transportation area where the child resides.
- (d) It shall be the duty of each school district to provide gifted child educational programs and to serve those children, as defined in 70 O.S. § 1210.301. This duty may be satisfied by:
- 1. The district directly providing gifted child educational programs for such children;
 - 2. The district joining in a cooperative program with another district or districts to provide gifted child educational programs for such children;
 - 3. The district joining in a cooperative program with a private or public institution within such district; or
 - 4. The district entering into a written agreement with another school district whereby the resident district agrees that the receiving school district will provide appropriate gifted child educational programs.
 - a. No transfer shall be made without the consent of the board of education of the receiving school district;
 - b. The resident school district shall provide transportation for the transferred student; and
 - c. The resident school district shall pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district.


 **Oklahoma Statutes Citationized**

 **Title 70. Schools**

 **Chapter 1 - School Code of 1971**

 **Education Open Transfer Act**

 **Article Article VIII - Transfer of Pupils**

 **Section 8-101.1 - Short Title**

Cite as: O.S. §, __ __

Sections 20 through 29 of this act shall be known and may be cited as the "Education Open Transfer Act".

Historical Data

Added by Laws 1999, c. 320, § 19, eff. July 1, 1999.

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Article Article VIII - Transfer of Pupils

Section 8-101.2 - Approval of Transfer by Board of Education - No More than One Transfer Per

Year

Cite as: O.S. §, ___

A. On and after January 1, 2000, the transfer of a student from the district in which the student resides to another school district furnishing instruction in the grade the student is entitled to pursue shall be granted if the transfer has the approval of the board of education of the receiving district. A student granted a transfer may continue to attend the school to which the student transferred with the approval of the receiving district only, and any brother or sister of such student may attend such school with the approval of the receiving district only. No student shall be permitted to transfer more than once in any school year.

If the grade a student is entitled to pursue is not offered in the district where the student resides, the transfer shall be automatically approved.

B. When a student has been transferred and later changes residence to another school district in the State of Oklahoma, the student shall be entitled to continue to attend school in the district to which the student was transferred. If a change of residence is to the district to which the student was transferred, upon affidavit of the parent of the student, that district shall become the resident district. If a student changes residence to another district during the school year which is not the same district the student transferred to, the student shall be entitled to attend school in either the receiving district or the new district of residence for the remainder of the current year.

C. Any student transfer approved for any reason prior to January 1, 2000, shall continue to be valid and shall not be subject to the Education Open Transfer Act unless the parent having custody chooses otherwise.

Historical Data

Added by Laws 1999, HB 1759, c. 320, § 20, emerg. eff. July 1, 1999; Amended by Laws 2000, HB 2728, c. 232, § 8, emerg. eff. July 1, 2000 (superseded document available).

Oklahoma Statutes Citationized**Title 70. Schools****Chapter 1 - School Code of 1971****Article Article VIII - Transfer of Pupils****Section 8-103 - Application for Transfer - Procedure**

Cite as: O.S. §, ___

A. In order that any student may be transferred, an application form specified by the State Board of Education must be completed by the parents of the student. For purposes of the Education Open Transfer Act, the term "parent" means the parent of the student or person having custody of the student as provided for in paragraph 1 of subsection A of Section 1-113 of this title. The application shall be obtained from and filed with the superintendent of the receiving school district for transfers to school districts in the State of Oklahoma and with the State Board of Education for transfers to school districts in another state. Except as otherwise provided for in this section, applications shall be filed no later than April 1 of the school year preceding the school year for which the transfer is desired. By April 1 of the same school year, the receiving school district shall notify the resident school district that an application for transfer has been filed by a student enrolled in the resident school district. The board of education of the receiving school district shall approve or deny the application for transfer not later than June 1 of the same year and shall notify the parents of the student of the decision. By July 1 of the same year, the parents of the student shall notify the receiving school district that the student will be enrolling in that school district. Failure of parents to notify the district as required may result in loss of the student's right to enroll in the district for that year.

B. On or before September 1, it shall be the duty of the superintendent of the receiving school district to file with the State Board of Education and each resident district a statement showing the names of the students granted transfers to the school district, the resident school district of the transferred students and their respective grade level.

C. The receiving school district of a student transferred pursuant to the provisions of this act shall notify the resident school district and parents of the student of a cancellation of the transfer. Such notice shall be made by June 1 prior to the school year for which the cancellation is applicable.

D. For students who are deaf or hearing impaired who wish to transfer to a school district with a specialized deaf education program, applications may be filed at any time during the school year. Upon approval of the receiving school district, the student may transfer to the receiving school district at any time during the school year.

Historical Data

Added by Laws 1971, HB 1155, c. 281, § 8-103, emerg. eff. July 2, 1971; Amended by Laws 1989, 1st Extr. Sess., HB 1017, c. 2, § 89, emerg. eff. July 1, 1990; Amended by Laws 1993, HB 1744, c. 239, § 35, emerg. eff. July 1, 1993; Amended by Laws 1994, HB 1927, c. 232, § 2, emerg. eff. May 25, 1994; Amended by Laws 1999, HB 1759, c. 320, § 21, eff. July 1, 1999 (superseded document available); Amended by Laws 2000, HB 2728, c. 232, § 9, emerg. eff. July 1, 2000 (superseded document available); Amended by Laws 2003, HB 1767, c. 434, § 12, eff. July 1, 2003 (superseded document available); Amended by Laws 2006, HB 1646, c. 248, § 1, emerg. eff. June 7, 2006 (superseded document available).

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Article Article VIII - Transfer of Pupils

Section 8-103.1 - Transfer of Student not Residing in District - Criteria and Standards

Cite as: O.S. §, ___

A local school district board of education which receives a request for a transfer for a student who does not reside in the school district may refuse the transfer in accordance with the provisions of the open transfer policy adopted by the local school district board of education. Each local board of education shall adopt an open transfer policy for the school district which specifies its criteria and standards for approval of transfers of students who do not reside in the district. The policy shall include, but shall not be limited to, provisions relating to the availability of programs, staff, or space as criteria for approval or denial of transfers. A school district may include in the policy as the basis for denial of a transfer, the reasons outlined in Section 24-101.3 of Title 70 of the Oklahoma Statutes.

In considering requests for students to transfer into a school district, the board of education shall consider the requests on a first-come, first-serve basis. A school district shall not accept or deny a transfer based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language, measure of achievement, aptitude, or athletic ability.

Notwithstanding the provisions of the Education Open Transfer Act, transfers of children with disabilities shall be granted as authorized in Section 13-103 of Title 70 of the Oklahoma Statutes.

Historical Data

Added by Laws 1999, c. 320, § 22, eff. July 1, 1999.

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Article Article VIII - Transfer of Pupils

Section 8-103.2 - Extramural Athletic Competition for Transfer Student Not Residing in District

Cite as: O.S. §. __ __

Except as otherwise provided, a student who enrolls, pursuant to the Education Open Transfer Act or pursuant to Section 2 of this act, in a school district in which the student is not a resident shall not be eligible to participate in school-related extramural athletic competition governed by the Oklahoma Secondary School Activities Association for a period of one (1) year from the first day of attendance at the receiving school unless the transfer is from a school district which does not offer the grade the student is entitled to pursue. If the student is granted an emergency transfer pursuant to Section 8-104 of this title, was granted a transfer for any reason prior to January 1, 2000, or enrolls pursuant to the Education Open Transfer Act and qualifies for a hardship waiver pursuant to the rules of the Oklahoma Secondary School Activities Association, eligibility to participate in school-related extramural athletic competition shall be determined by the Oklahoma Secondary School Activities Association.

Historical Data

Added by Laws 1999, HB 1759, c. 320, § 23, emerg. eff. July 1, 1999; Amended by Laws 2000, HB 2728, c. 232, § 10, emerg. eff. July 1, 2000 (superseded document available); Amended by Laws 2006, HB 2363, c. 93, § 1, emerg. eff. July 1, 2006 (superseded document available).

Oklahoma Statutes Citationized**Title 70. Schools****Chapter 1 - School Code of 1971****Article Article VIII - Transfer of Pupils****Section 8-104 - Emergency Transfers - What Included in Emergencies**

Cite as: O.S. §, ___

In addition to the transfer process provided in Section 8-103 of this title, students may be transferred on an emergency basis. A written application for an emergency transfer designating the district to which the transfer is desired shall be made by the parent and filed with the superintendent of the receiving school district. On an adequate showing of emergency the superintendent of the receiving school district may make and order a transfer, subject to approval by the State Board of Education. An emergency shall include only:

1. The destruction or partial destruction of a school building;
2. The inability to offer the subject a pupil desires to pursue, if the pupil becomes a legal resident of a school district after February 1 of the school year immediately prior to the school year for which the pupil is seeking the transfer;
3. A catastrophic medical problem of a student, which for purposes of this section shall mean an acute or chronic serious illness, disease, disorder or injury which has a permanently detrimental effect on the body's system or renders the risk unusually hazardous;
4. The total failure of transportation facilities;
5. The concurrence of both the sending and receiving school districts;
6. The unavailability of remote or on-site Internet-based instruction by course title in the district of residence for a student identified as in need of drop-out recovery or alternative education services, provided such student was enrolled at any time in a public school in this state during the previous three (3) school years; or
7. The unavailability of a specialized deaf education program for a student who is deaf or hearing impaired.

An emergency transfer previously made may be canceled, with the concurrence of the board of the receiving district and the parent.

Historical Data

Added by Laws 1971, c. 281, § 8-104, eff. July 8, 1971; Amended by Laws 1981, c. 353, § 3; Amended by Laws 1984, c. 151, § 1, emerg. eff. April 19, 1984; Amended by Laws 1993, c. 239, § 36, eff. July 1, 1993; Amended by Laws 1994, c. 168, § 2, eff. July 1, 1994; Amended by Laws 1996, c. 319, § 2, eff. July 1, 1996; Amended by Laws 1997, c. 343, § 3, eff. July 1, 1997 (superseded document available); Amended by Laws 1999, HB 1759, c. 320, § 24, eff. July 1, 1999 (superseded document available); Amended by Laws 2002, SB 1408, c. 453, § 3, emerg. eff. July 1, 2002 (superseded document available); Amended by Laws 2004, HB 1855, c. 319, § 1, emerg. eff. May 20, 2004 (superseded document available).

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Article Article XIII - Special Services for Children With Disabilities

Section 13-101 - Special Services for Exceptional Children - Cooperative Provide Special Education.

Cite as: O.S. §. ___

The several school districts of Oklahoma are hereby authorized to provide special education and related services necessary for children with disabilities as hereinafter defined. Two or more school districts may establish cooperative programs of special education for children with disabilities when such arrangement is approved by the State Board of Education. Funds may be expended for school services for an additional period during the summer months for approved programs for qualified children with disabilities, provided their individualized education program (I.E.P.) states the need for extended school year special education and related services. Children with disabilities shall mean children, as defined in the Individuals with Disabilities Education Act (IDEA), P.L. No. 105-17, who are three (3) years of age.

Provided, on and after July 1, 1991, children from age birth through two (2) years (0-36 months) of age who meet the eligibility criteria specified in Section 13-123 of this title, shall be served pursuant to the provisions of the Oklahoma Early Intervention Act. The attendance of said children in special education classes shall be included in the average daily membership computations for State Aid purposes.

The State Board of Education is authorized to modify and redefine by regulation the eligibility definitions whenever such modification is required to receive federal assistance under the Individuals with Disabilities Education Act (IDEA), P.L. No. 105-17. Rules developed pursuant to Section 18-109.5 of this title shall provide for such modification and revised definitions.

It shall be the duty of each school district to provide special education and related services for all children with disabilities as herein defined who reside in that school district in accordance with the Individuals with Disabilities Education Act (IDEA), P.L. No. 105-17. This duty may be satisfied by:

1. The district directly providing special education for such children;
2. The district joining in a cooperative program with another district or districts to provide special education for such children;
3. The district joining in a written agreement with a private or public institution, licensed residential child care and treatment facility or day treatment facility within such district to provide special education for children who are deaf or hard-of-hearing, children who are blind or partially blind or other eligible children with disabilities; or
4. Transferring eligible children and youth with disabilities to other school districts which accept them and provide special education and related services for such children, with the district in which the child resides paying tuition therefor as hereinafter provided. For those students who transfer pursuant to the provisions of the Education Open Transfer Act, the receiving school district shall assume all responsibility for education and shall count the student for federal and state funding purposes according to the provisions of subsection B of Section 13-103 of this title.

Historical Data

Added by Laws 1971, c. 281, § 13-101, eff. July 2, 1971. Amended by Laws 1973, c. 136, § 1, emerg. eff. May 10, 1973; Laws 1975, c. 118, § 1, emerg. eff. May 13, 1975; Laws 1980, c. 211, § 8, eff. July 1, 1981; Laws 1980, c. 267, § 1; Laws 1981, c. 278, § 5, eff. July 1, 1981; Laws 1989, c. 102, § 10, operative July 1, 1989; Laws 1993,

c. 116, § 1, eff. July 1, 1993; Amended by Laws 1999, HB 1759 c. 320. § 27, eff. July 01,1999 (superseded document available).

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Article Article XIII - Special Services for Children With Disabilities

Section 13-103 - Exceptional Children - Authorized Provisions for Education of Exceptional Children

Cite as: 70 O.S. § 13-103 (OSCN 2012)

A. Any school district in the state may provide suitable facilities and employ qualified teachers and therapists for children with disabilities, either in schools, classrooms, or in other places as the board of education of the district may deem advisable. When a school district cannot provide special educational facilities and qualified teachers, a child may be transferred pursuant to the provisions of paragraph 4 of Section 13-101 of this title.

B. If a child with disabilities is transferred to a school district other than the district of residence of the child pursuant to the Education Open Transfer Act the following provisions shall apply:

1. The receiving district shall establish availability of the appropriate program, staff, and services prior to approval of the transfer;

2. Prior to the approval of the transfer of a child on an individualized education program (IEP), a joint IEP conference shall be required between the district of residence and the receiving district; and

3. Upon approval of the transfer, the receiving district shall claim the child in the average daily membership for state and federal funding purposes and shall assume all responsibility for education of the child. For state funding purposes, the State Department of Education shall include the appropriate grade level weight and all category weights to which the pupil is assigned pursuant to the provisions of Section 18-201.1 of this title when calculating State Aid pursuant to the provisions of Section 18-200.1 of this title, regardless of whether the receiving district provides education to the student using traditional in-class means or via online instruction. When applicable, the receiving district may apply to the Oklahoma Special Education Assistance Fund for assistance in meeting any extraordinary costs incurred.

C. Transfers authorized by this section shall be made under rules adopted by the State Board of Education. When a child with disabilities or pregnant child is unable to attend any school or class in the district of residency, the board of education of the district may provide for home instruction for the child. The State Board of Education is further authorized to cooperate with any school district in the state to make it possible for a child with disabilities to attend the regular school by making special provisions for the transportation of the child, or for special equipment, devices, books, supplies or other facilities, or for special instruction within the regular school building. The provisions for services and transfers as provided for in this section shall be made with consideration of the least restrictive environment and IEP requirements under the Individuals with Disabilities Education Act (IDEA).

D. Beginning with the 2008-2009 school year, a transfer granted for a child with disabilities pursuant to paragraph 4 of Section 13-101 of this title for three (3) consecutive years to the same school district shall automatically be renewed each year. The district in which the child resides shall continue to pay tuition as provided for in paragraph 4 of Section 13-101 of this title.

Historical Data

Added by Laws 1971, HB 1155, c. 281, § 13-103, emerg. eff. July 2, 1971; Amended by Laws 1993, HB 1638, c. 116, § 3, emerg. eff. July 1, 1993; Amended by Laws 1999, HB 1759, c. 320, § 28, emerg. eff. July 1, 1999 (superseded document available); Amended by Laws 2008, HB 2518, c. 185, § 1, emerg. eff. July 1, 2008 (superseded document available); Amended by Laws 2010, SB 2109, c. 478, § 1, emerg. eff. July 1, 2010 (superseded document available).

Oklahoma Statutes Citationized**Title 70. Schools****Chapter 20 - Gifted and Talented Children****Section 1210.307 - Provisions for Gifted Child Educational Programs**

Cite as: O.S. §, ___

A. It shall be the duty of each school district to provide gifted child educational programs and to serve those children, as defined in Section 1210.301 of this title, who reside in that school district. This duty may be satisfied by:

1. The district directly providing gifted child educational programs for such children;
2. The district joining in a cooperative program with another district or districts to provide gifted child educational programs for such children;
3. The district joining in a cooperative program with a private or public institution within such district; or
4. The district transferring identified gifted and talented children to other school districts which provide the appropriate gifted child educational programs, provided, no transfer shall be made without the consent of the board of education of the receiving school district. The district in which the child resides shall provide transportation for the transferred student and pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district. Transfers authorized by this section shall be made under such rules and regulations as the State Board of Education may prescribe.

B. Each district shall, regardless of the method used for accomplishing the duty set forth in subsection A of this section, notify in writing the parents of each child identified as gifted of the fact that the child has been so identified. The district shall also provide each such parent a summary of the program to be offered such child.

C. Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in Section 1210.301 of this title to the State Department of Education which shall include:

1. A written policy statement which specifies a process for selection and assessment of children for placement in gifted and talented programs that is consistent for grades one through twelve;
2. A description of curriculum for the gifted child educational program. Such description shall demonstrate that the curriculum is differentiated from the normal curriculum in pace and/or depth and that it has scope and sequence;
3. Criteria for evaluation of the gifted child educational program;
4. Evidence of participation by the local advisory committee on education for gifted and talented children in planning, child identification process and program evaluation;
5. Required competencies and duties of gifted child educational program staff;
6. Number and percentage of students identified by the district as gifted children pursuant to subparagraph g of paragraph 2 of subsection B of Section 70-18-201 of this title; and
7. A budget for the district gifted child educational programs.

D. At the conclusion of the 1994-95 school year and each school year thereafter, the board of education of each school district shall prepare a report which outlines the expenditures made by the district during that year for gifted child educational programs. For districts which receive six percent (6%) or more of their total State Aid money for gifted and talented programs or which received One Million Dollars (\$1,000,000.00) or more in State Aid for gifted

and talented programs for the preceding year, the report shall identify expenditures by major object codes and program classifications pursuant to the Oklahoma Cost Accounting System, as adopted by the State Board of Education pursuant to Section 5-135 of this title. All other districts shall identify expenditures by major object codes. Copies of the report shall be sent to the State Department of Education by August 1 of each year.

E. The State Department of Education shall, after each school year, report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives concerning the number of children identified for the programs, number of children served by the programs, type of programs provided, type of screening procedures utilized, cost analysis of the programs and the estimated number of gifted and talented children unserved by the programs.

Historical Data

Added by Laws 1981, SB 214, c. 278, § 4, emerg. eff. July 1, 1981; Amended by Laws 1985, HB 1466, c. 329, § 22, emerg. eff. July 30, 1985; Amended by Laws 1990, SB 770, c. 263, § 63, emerg. eff. July 1, 1990; Amended by Laws 1993, HB 1744, c. 239, § 51, emerg. eff. July 1, 1993; Amended by Laws 1994, HB 2041, c. 359, § 4, emerg. eff. July 1, 1994.