

**Minutes of the Regular Meeting of the  
STATE BOARD OF EDUCATION  
OLIVER HODGE EDUCATION BUILDING:  
2500 NORTH LINCOLN BOULEVARD, ROOM 1-20  
OKLAHOMA CITY, OKLAHOMA**

**November 17, 2011**

The State Board of Education met in regular session at 1:10 p.m. on Thursday, November 17, 2011, in the Board Room of the Oliver Hodge Education Building at 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. The final agenda was posted at 12:35 p.m. on Wednesday, November 16, 2011.

The following were present:

Ms. Connie Holland, Chief Executive Secretary  
Ms. Terrie Cheadle, Administrative Assistant

Members of the State Board of Education present:

State Superintendent Janet Barresi, Chairperson of the Board  
Mr. Lee Baxter, Lawton  
Ms. Amy Ford, Durant  
Mr. Brian Hayden, Enid  
Mr. Phil Lakin, Tulsa  
Mr. William "Bill" Price, Oklahoma City  
Mr. William "Bill" Shdeed, Oklahoma City

Others in attendance are shown as an attachment.

**CALL TO ORDER  
AND  
ROLL CALL**

Superintendent Barresi called the State Board of Education regular meeting to order at 1:10 p.m. and welcomed everyone to the meeting. Ms. Holland called the roll and ascertained there was a quorum.

**PLEDGE OF ALLEGIANCE, OKLAHOMA  
FLAG SALUTE, AND MOMENT OF SILENCE**

Superintendent Barresi led Board members and all present in the Pledge of Allegiance to the American Flag, and a salute to the Oklahoma Flag, and a moment of silence.

**OCTOBER 27, 2011 REGULAR BOARD  
MEETING MINUTES TABLED**

Superintendent Barresi tabled the minutes to allow Board Members further review until the December 15, 2011, State Board meeting. She said in the future we are moving toward submitting Board information electronically. Board members were asked to consider their preference of having board packets in the meetings or laptop computers. Superintendent Barresi said they would be contacted at a later time.

**STATE SUPERINTENDENT**

Prior to the meeting Superintendent Barresi introduced and swore in Mr. Brian Hayden to the State Board of Education.

**FIRST-YEAR SUPERINTENDENTS**

First-year superintendent(s) attending the meeting were Mr. Joe Cummings, Superintendent, Dustin Public Schools; Mr. Randy Harris, Superintendent, Middleberg Public School; Mr. Jerry Johnson, Superintendent, Bethel Public School; Mr. Coby Nelson, Superintendent, Vici Public Schools; and Mr. Terry Stevens, Superintendent, Fargo Public Schools.

**Information from the State Superintendent**

Superintendent Barresi said she traveled to the Eighth Grade Center at Owasso Public Schools to present the 2011 Milken Award to Ms. Sarah Vance, a science instructor. Also, Ms. Vance is a finalist for the Presidential Awards for Excellence in Mathematics and Science Teaching. The school was also celebrating a 100 percent pass rate on the eighth grade algebra I exam. Superintendent Barresi said the Teacher of the Year and Milken programs are made up of a valuable group of educators and we want to work with this as an important resource within the State Department of Education (SDE).

This week Oklahoma was one of eleven states that applied for early admission for waivers under No Child Left Behind (NCLB). She commended staff for their work on the application and for immediately working on the Race to the Top application.

The United States Department of Education (USDE) will review Race to the Top applications and notify states after January 2012. The focus of the grant goal is to allow teachers to put focus on individual students within their classrooms and transform to an accountability system that is based on growth of the students rather than teachers drilling students to meet that one number at the end of the year. The growth of individual students will be shown no matter their level coming into the system/classroom. Schools will receive extra credit and rewards for offering AP courses or for students who are enrolled in an AP course at a career technology center, concurrent enrollment at nearby colleges/universities; and persistence with students beyond four years towards obtaining a high school diploma. If the waivers or flexibilities are allowed they would apply in the current academic year, with full implementation next year. Superintendent Barresi said Board members will be apprised as the process moves forward and the information available on the SDE Web site.

Work is ongoing on the student longitudinal data system. Mr. Kraman receives input from all sectors of the education community, work force development, higher education, and CareerTech. The last Teacher and Leader Effectiveness committee meeting is in December, prior to submission of the report/recommendation to the Legislature. The SDE will receive direction for implementation of the system chosen by the Commission.

### **CONSENT DOCKET APPROVED**

Discussion and possible action on the following deregulation applications, statutory waivers, and exemptions for the 2011-2012 school years, and other requests:

- (a) **Abbreviated School Day – OAC 210:35-29-2 and OAC 210:35-3-46**  
Little Axe Public Schools, Cleveland County  
Paoli Public Schools, South Central Oklahoma Alternative Coop, Garvin County
- (b) **Guidance Counselor Certification – OAC 210:35-5-44**  
Fargo Public Schools, Ellis County
- (c) **Library Media Services – OAC 210:35-5-71 and OAC 210:35-9-71**  
Crowder Public Schools, Pittsburg County  
Depew Public Schools, Creek County  
Mountain View-Gotebo Public Schools, Kiowa County
- (d) **Planning Period – OAC 210:35-5-42**  
Ardmore Public Schools, High School, Carter County  
Crooked Oak Public Schools, Middle School, Oklahoma County  
Dustin Public Schools, Elementary School, Hughes County
- (e) **Library Media Specialist Exemption – 70 O. S. § 3-126**  
Kansas Public Schools, Delaware County  
Oklahoma City Public Schools, Oklahoma County  
Adams Elementary School      Britton Elementary School  
Douglass High School      Eugene Field Elementary School  
Prairie Queen Elementary School      Rogers Middle School  
Roosevelt Middle School      Stand Waite Elementary School  
Webster Middle School

Board Member Baxter made a motion to approve the Consent Docket. Board Member Ford seconded the motion. The motion carried with the following votes: Mr. Price, yes; Gen. Baxter, yes; Mr. Hayden, yes; Mr. Shdeed, yes; Ms. Ford, yes; and Mr. Lakin, yes.

## **TEACHER CERTIFICATION**

### **Report on Alternative Placement Certification and Troops to Teachers**

#### **Professional Standards Production Report**

Superintendent Barresi said Mr. Jeff Smith, Director, Teacher Certification, was present to answer questions from the Board, if needed.

This is report only and no action is required.

## **ACADEMIC AFFAIRS**

### **Office of Student Support**

#### **Exemption to the Achieving Classroom Excellence (ACE) Graduation Requirements Request from Lawton Public Schools, Comanche County Approved**

Ms. Kerri White, Assistant State Superintendent, Office of Student Support, said The *Achieving Classroom Excellence Act* puts forth a requirement for students to demonstrate mastery in algebra I, English II, and two other content areas.

Ms. Melissa White, Executive Director, ACE/Counseling, presented a request from Lawton Public Schools for an exemption to the achieving classroom excellence (ACE) graduation requirements. The student's military family was unexpectedly transferred to another state during the senior year and may graduate from MacArthur High School per the provisions of the Interstate Compact on Educational Opportunity for Military Children. The student had met the Oklahoma ACE requirements for graduation demonstrating mastery in three areas and was moving toward demonstrating mastery in U.S. History prior to the family transfer. However, the transferring state does not offer a U.S. History exam; therefore, the student will not meet the transferring state's graduation requirements before the end of the student's senior year. Ms. White reviewed criteria for an exception and exemption of a requirement, student privacy, assessment/accountability, and testing security/violation.

Board Member Ford made a motion to approve the ACE exemption request and Board Member Price seconded. The motion carried with the following votes: Mr. Lakin, yes; Ms. Ford, yes; Mr. Shdeed, yes; Mr. Hayden, yes; Gen. Baxter, yes; and Mr. Price, yes.

**Office of Instruction**

**Report on 2010-2011 Arts Assessment**

Mr. Glen Henry, Director, Arts in Education, presented a report on district visual arts and general music arts assessment status for 2010-2011. The four standards of arts Oklahoma students are expected to learn are the language of visual arts, visual arts history and culture, visual arts expression, and appreciation. The four standards in music are language of music, music history and culture, music expression, and music appreciation. He said arts and music standards are measured in the district arts assessment procedures and reporting, reviewed assessment strategies/options/objectives, student assessment data, Oklahoma arts institute student criteria and legislation.

This was a report only and no action was required.

**DEPARTMENT SERVICES**

**Change the Transportation Area of  
White Oak Public School, Craig County Approved**

Mr. Trent Gibson, Director, Transportation, presented a request to change the White Oak Public School transportation area. In 2010, White Oak discontinued the high school but at that time no transportation responsibilities were assigned to any of the surrounding districts for high school transportation. It is difficult for high school students in White Oak to get to a high school in another district. The surrounding districts, Bluejacket Public Schools, Vinita Public Schools, and Chelsea Public Schools were contacted and are in agreement to divide the transportation responsibilities for high school students in the White Oak Public School District. Mr. Gibson reviewed State Board of Education (SBE) responsibilities per Oklahoma statute and Administrative Code, district/county locations, and district student population.

Superintendent Barresi said the local school boards were in agreement and asked if actions of the local school boards approving the transportation responsibilities were required?

Mr. Gibson said the local school boards were reluctant but would agree once the SBE makes a decision.

Superintendent Barresi asked if the local board's decision to agree pending the SBE decision should have been taken up in a board meeting?

Mr. Gibson said per administrative rules in this case the SBE determines boundaries of the area in which each district shall provide transportation for each school. When discussing the proposed plan the Vinita superintendent stated he would institute the plan as soon as the SBE rules on the decision. The administrative rules give basic general guidelines for when a transportation area change is needed.

Ms. Lisa Endres, General Counsel, said per rule language a change in a transportation area after July 1 becomes effective the next July 1, unless all boards of education affected agree to the proposed change. The SBE can change the boundary and the change would go into effect July 1, 2012, if the affected boards of education do not

vote to approve. If the affected boards of education do agree it will be effective before July 1, 2012.

Board Member Ford made a motion to approve the request amending White Oak High School transportation area per 70 O.S. § 9-105. Board Member Hayden seconded. The motion carried with the following votes: Mr. Price, yes; Gen. Baxter, yes; Mr. Hayden, yes; Mr. Shdeed, yes; Ms. Ford, yes and Mr. Lakin, yes.

## **LEGAL SERVICES DIVISION**

### **Vote to Rescind, Amend, or Resubmit for Permanent Rulemaking the Emergency Rules in Title 210: Chapter 15. Curriculum and Instruction; Subchapter 34. Supplemental Online Course Procedures, Approved by the Board on October 27, 2011**

#### **Rescind Emergency Rules Approved**

Superintendent Barresi said the SBE approved the rules October 27, 2011.

Board Member Baxter called for a Point of Order. The Board was assured before the meeting began that the *Open Meeting Act* was being complied with. The *Open Meeting Act* requires posting the meeting agenda/items prior to the meeting. He said he had not seen agenda item 9(a), until the agenda was placed in the Board member books prior to taking their seats. He suggested this was not in order.

Superintendent Barresi said the agenda was posted timely and gave Board members background information. Senate Bill 2319 became effective September 2010; regarding online course offerings and at that time the SBE/SDE was to promulgate rules. Rules were not promulgated and in this past legislative session, Senate Bill 280 was offered to add the terminology around the term 'supplemental' which was passed as an emergency and effective July 1, 2011. As the SDE began addressing the rules it was discovered rules were never written as school districts responded and needed guidance. Staff consulted the authors of the bill and emergency rules were presented to the Board and were approved. Information was sent out and school districts voiced their concerns again. It was determined yesterday the rule needed further clarification in the permanent rule writing process and therefore the Board is requested to rescind the emergency rule. We are going to focus on providing individual assistance and guidance to districts, and providing much information while we go through the rule writing process. We regret the late nature of this request but felt because of time constraints it was important to rescind the rule.

Ms. Lisa Endres, General Counsel, presented a request to rescind, amend or resubmit for permanent rulemaking the following approved emergency rule:

Title 210: Chapter 15. Curriculum and Instruction; Subchapter 34. Supplemental Online Course Procedures – clarifies supplemental online course procedures.

Ms. Endres said today's State Board meeting was held at 1 p.m. and was posted in compliance with the Open Meetings Act. The amendment to the agenda was made prior

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to the posting time/location and it also appeared on the SDE Web site. The SDE apologizes for not providing the information to each Board member.

Board Member Baxter said for clarification, a week ago the Board was presented emergency rules staff put together and reviewed, and the Board approved October 27, 2011. Now two and half weeks later we decide the rules are no good because there was a lot of input, and now we need to reconsider the rules. Is this what we are doing?

Board Member Lakin said numerous school districts contacted him and asked the Board to rescind the rules, let them go through the public review/comment phase and not create rules before the permanent rules are made. The reason being is they are affecting the school district(s) mid-stream with no financial plans in place.

Board Member Baxter asked in all this did no one understand this would happen and would interfere in the middle of the school year? The Board did not know when the rule was approved at the October 27, 2011, State Board meeting. He said this is embarrassing.

Ms. Endres said these rules are about legislation originally passed and effective in September 2010. The feedback from school districts is against the legislation that has been in effect for over a year. Senate Bill 2319 was passed and signed by Governor Henry in June 2010. It made supplemental online course offerings something districts were to comply with by offering online courses. The districts were to follow this statutory legislative mandate effective September 2010 and the SBE was mandated to promulgate rules. The original bill had 13 areas and the SBE did not promulgate rules required by the legislation of Senate Bill 2319. Senator Stanislawski and Representative Coody authored both bills. They were contacted when Senate Bill 280 became effective July 1, 2011. This act of the legislature made it incumbent for districts to follow this school year and incumbent for the SBE to pass rules to guide districts. Ms Endres said she could not explain why districts are just now responding and why the 2010 legislation was not on the radar. During discussion Senator Stanislawski wanted the guidance in order for school districts to be in compliance with the legislation which was the reason for the emergency. It was a compelling public policy reason to get the rules out sooner than later. As far as the procedure for passing emergency rules, she assured, the administrative rulemaking procedures and legislation regarding rule making for agencies was followed. It allows approval of emergency rules and the determination of emergency is made at the agency level. After consulting with the bill authors it was determined emergency rules were needed. Since then there has been miscommunication about the agency rule making policy and emergency rule process. We are a month away from permanent rule making procedures. If the rules are submitted as permanent rules the school districts will feel they have a say. The legislation predates the rule and the rule cannot have a retroactive effect on districts.

Board Member Ford said she understood. The schools have been out of compliance without rules being promulgated since 2010. If the rule is rescinded to allow for the administrative rule process the schools are still out of compliance.

Ms. Endres said to be clear the rules do not create a burden the legislation does. The rules offer guidance and explanation of how to implement the Legislature's intent for the schools to develop policies.

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Board Member Baxter said the rules are not the problem nor is the objection to the rules. The objection is to the legislation which the SBE cannot fix.

Superintendent Barresi said we look forward to further clarification from the Legislature this session. We cannot legislate from the Department and we are narrowly defined in what we can do in writing rules. We did our best in communicating with the authors of the bills to only find out more clarification was needed.

Board Member Baxter said so we may have written rules that the Legislature did not intend.

Superintendent Barresi said no not purposely. We visited with the authors of the bill and were given an affirmative but then found further clarification was needed.

Ms. Endres said the authors of the bill were provided a draft of the rules on September 9, 2011. The negative commentary or feedback was received and the SBE approved the rules October 27, 2011.

Board Member Lakin said at this time we are very close to the public comment phase and if we go through the normal permanent rule process we need to rescind the emergency rule.

Board Member Lakin motioned to rescind the approved emergency rule and directed Superintendent Barresi and the SDE staff to begin the process to implement permanent rules which will go into effect July 2012. Ms. Endres has emphasized to the districts that the rules will provide guidance on how to comply with legislation are going through the legislation is still in effect and by the spring semester districts are required to provide supplemental online courses.

Superintendent Barresi said the motion died for lack of a second and therefore will table the motion.

Board Member Ford said if the emergency rule is rescinded we will not be in compliance. The SBE has an obligation to move quickly to get rules in place to be compliant.

Ms. Endres said we promulgated rules and are still in compliance, and as long as the rule process progresses according to the statute we are in compliance. The issue was we knew the rules were not going to be in place by July 1, 2011, nor by August 1, 2011. We were trying through the emergency process to at least have guidance by January 2012.

Superintendent Barresi said our entire motivation was because school districts were calling and asking for guidance.

Board Member Baxter asked the districts have indicated this wasn't the guidance they wanted and they wanted something different? Please explain what we are responding to and when does the normal rule process begin for this particular piece?

Board Member Price asked are you recommending rescinding the emergency rules?  
Ms. Endres said school districts will call the SDE for guidance. Districts are basically saying they want a voice. They claim they did not know this was coming, that



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it is retroactive, and did not understand why all of a sudden the SBE implemented emergency rules. There have been discussions with the legislative leaders and they are of the opinion that rescinding the rules and proceeding with the permanent rule making process puts this issue to bed. Districts will have input and at the end of the day we will have rules.

Board Member Baxter asked when do the rules making process begin?

Ms. Endres said the beginning of the legislative session is when permanent rules can be adopted by the legislature.

Board Member Baxter said which is January.

Superintendent Barresi said February.

Board Member Price said if the emergency rules are rescinded is the statute eliminated?

Superintendent Barresi said no. These are rules reflecting legislative intent and we took great care to do whatever we could to determine legislative intent. The authors of the legislation received the questions, answers, and district responses from the SDE with concerns that they did not reflect legislative intent. It does not mean we cannot give guidance. We can support and work closely with districts because we are still bound by the statute. It was determined the best course of action was to rescind the rules and allow the SDE to continue to give districts guidance and immediately move towards permanent rule writing. Superintendent Barresi said we look forward to further clarification from the Legislature during session.

Board Member Price said the permanent rule writing will conclude before the next school session starts. Therefore, the new permanent rule that had not gone through the process of review would be our voice in the meantime. It sounds like there were some mistakes in the emergency rule which we are trying to rectify and get them out quickly before the next semester of school begins. The rules will be fully approved by July.

Superintendent Barresi said these were sent to the authors September 9, 2011. We did not receive any negative comments or further directions and moved forward. The negative responses/concerns came from superintendents and legislators.

Board Member Lakin said he was told that the House author was not consulted.

Board Member Shdeed asked how many school districts have complied and been operating within this system and how many are complaining they are just now aware of this legislation?

Superintendent Barresi said to her knowledge we have not received any type of comments from parents or districts. Some districts are offering supplemental courses to students within their districts and students are performing well.

Ms. Endres said the feedback she received was that some districts did not know about the 2010 legislation, even though they received notices of legislation.

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Board Member Ford said the SBE passed rules based on what we thought was the legislative intent of the statute. However, even though authors of the legislation had opportunities to review, the rules may actually not be in compliance with the intent.

Board Member Baxter asked where was the evidence of that?

Ms. Endres said the two authors of the legislation are 180 degree opposites on certain aspects of the legislative intent. The rule should be rescinded and put it into the permanent rule making procedure so the Legislature can be involved. We met to address a question with the authors of the bill yesterday evening. Not only was there a telephone conference in August 2011 with Representatives Coody and Stanislawski along with myself, Mr. Damon Gardenhire, Executive Director, Communications, and Ms. Jessica Russell, Legislative Liaison, but there was ongoing communication during this rule making process. We believed we had a consensus for clear definitions on certain aspects of this legislation and its meaning of supplemental course and academically appropriate. It is these types of issues the coauthors are not agreeing on.

Board Member Price said the SBE recommendations on permanent rule will come out before next semester and you will get the two authors together to figure it out. If waiting until the legislative session any guidance would be put off until a full year. He would have much less problems with it being put off a month or so until the authors get together, than when some guidance come out for next semester on a bill that should have been in effect a year and half ago.

Board Member Baxter said since September 2010, school districts have not liked the law, nor have they done anything to follow the law. Fifteen months later the SBE requires them to follow the law through a set of rules, which they still do not want to do. Now we throw out the rules. I'm not sure I understand all of this.

Board Member Lakin said the SBE emergency rule was more specific. We did not know the interpretation of the law, legislative intent, and exactly what is required.

Board Member Baxter said Ms. Endres has emails from the legislators saying we did.

Board Member Lakin said he did not know if the legislators agreed with what the intent was.

Superintendent Barresi said there are school districts who want to comply with the law and have asked good questions in an effort to comply. Schools received notice regarding the passage of the law in 2010. We look forward to receiving more clarification from the legislators regarding this issue.

Board Member Baxter made a motion to rescind the Title 210: Chapter 15. Curriculum and Instruction; Subchapter 34. Supplemental Online Course Procedures approved emergency rules and move to the permanent rule process. Board Member Ford seconded the motion. The motion passed with the following votes: Mr. Price, yes; Gen. Baxter, yes; Mr. Hayden, yes; Mr. Shdeed, yes; Ms. Ford, yes; and Mr. Lakin, yes.

Board Member Price said the reason why we are doing this is the difference in the legislative intent and interpretation, not because school districts are objecting, and it is not delaying implementation of the legislation.

**EXECUTIVE SESSION**

**Update State Board Members with Regard to the  
Lawsuit of Jack Herron v.  
State of Oklahoma ex rel OSDE,  
Oklahoma County District Court,  
Case no. CJ-2011-5109-25 O.S. § 307 (B) (2) and (4)**

**Convene into Executive Session Approved**

Board Member Lakin made a motion to convene into Executive Session at 2:35 p.m. and Board Member Baxter seconded the motion. The motion carried with the following votes: Mr. Lakin, yes; Ms. Ford, yes; Ms. Shdeed, yes; Mr. Hayden, yes; Gen. Baxter, yes; and Mr. Price, yes.

**Return to Open Session Approved**

Board Members reconvened to Open Session at 3:05 p.m. Superintendent Barresi said no action was taken during Executive Session.

**ADJOURNMENT**

There being no further business the meeting adjourned at 3:15 p.m. Board Member Shdeed made a motion to adjourn and Board Member Lakin seconded the motion. The motion passed unanimously.

The next regular meeting of the State Board of Education will be held on Thursday, December 15, 2011, at 1:00 p.m. The meeting will convene at the State Department of Education, 2500 North Lincoln Blvd., Oklahoma City, Oklahoma.

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Janet Barresi, Chairperson of the Board

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Connie Holland, Chief Executive Secretary