

## **OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

### **NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The State Superintendent of Education, pursuant to the authority set forth in Article II of “An Act to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes”, as amended, effective February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-201 et seq. (2012 Repl. & 2019 Supp.)); as amended by Section 302 of the “South Capitol Street Memorial Amendment Act of 2012”, effective June 7, 2012 (D.C. Law 19-141, 59 DCR 3083, D.C. Official Code §§ 38-201 et seq. (2012 Repl. & 209 Supp.)); Mayor’s Order No. 2012-116, dated July 26, 2012; Sections 3(b)(11), 3(b)(15) and 7c of the “State Education Office Establishment Act of 2000”, as amended, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(11), 2602(b)(15) and 2609(c)(2) (2012 Repl. & 2019 Supp.)); Section 403 of the “State Board of Education Establishment Act of 2007”, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-2652(a)(14) (2012 Repl.)), and the “Attendance Accountability Amendment Act of 2013”, effective September 19, 2013 (D.C. Law 20-17; D.C. Official Code § 38-2602(b)(19) hereby gives notice of her adoption, on an emergency basis, of amendments to Title 5 (Education), Subtitle A (Office of the State Superintendent of Education), Chapter 21 (Compulsory Education and School Attendance) of the District of Columbia Municipal Regulations (DCMR), including the replacing subsections 2101.4, 2101.5 and 2101.6 with new language for the 2020-20201 school year and renumbering the remaining subsections accordingly.

The purpose of the emergency and proposed rulemaking is to expand the current attendance regulations to accommodate the remote learning models that public schools in the District of Columbia have adopted to ensure the safety of students, families, and staff in response to the COVID-19 pandemic. Pursuant to D.C. Official Code §38-201, *et. seq.*, education is compulsory for children between the age of five (5) and eighteen (18) in the District of Columbia; schools are required to take, collect and report daily attendance, and make referrals to other District agencies when a defined number of unexcused absences is reached. The response to the COVID-19 pandemic necessitates social distancing procedures that will likely be in place for the 2020-21 school year. Due to the District of Columbia’s response to COVID-19, students will attend school in-person and via remote learning, when the student not physically present in-person in a traditional classroom environment. The existing regulations for attendance contemplate in-person school attendance only. For the 2020-2021 school year, this emergency and proposed rulemaking outlines how attendance is to be collected regardless of whether a student attends school in-person or remote. The new subsections apply specifically to the 2020-2021 school year and add definitions and requirements that are applicable to the remote learning environment.

Emergency rulemaking action is necessary for the immediate preservation of the public health, safety, welfare, to provide public schools in the District of Columbia with a safe and legal method of taking student attendance while students are engaged in a learning remotely posture necessitated by health and safety concerns related to the COVID-19 public health emergency. This emergency rulemaking was adopted on August 27, 2020 and became effective on that date. The emergency rulemaking will remain in effect for up to one hundred twenty (120) days after the date of adoption, expiring on December 25, 2020, or upon earlier amendment or repeal by the

State Superintendent of Education or publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The State Superintendent of Education also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register* and after approval by the Council of the District of Columbia, as specified in Section 501(a) of the Act (D.C. Official Code § 38-275.01(a)).

**Title 5, EDUCATION, Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, Chapter 21, COMPULSORY EDUCATION AND SCHOOL ATTENDANCE, of the DCMR is amended by repealing the regulation in its entirety and replacing it with the following provisions, including replacing subsections 2101.4, 2101.5 and 2101.6 and renumbering the remaining subsection to read as follows:**

**2101 ATTENDANCE RECORDS AND REPORTING**

2101.1 Each educational institution operating in the District of Columbia shall maintain an accurate, contemporaneous, and daily attendance record for each student who is enrolled in or who attends the educational institution.

2101.2 Records shall be maintained as follows:

- (a) The requirement to maintain an attendance record for a student who has completed the enrollment process for an educational institution shall begin on the educational institution's first (1st) official school day and continue throughout the school year, unless the student officially withdraws from the educational institution; fails to attend at least one (1) day of school in the first three (3) weeks of school without notification to the educational institution for such absence; or transfers to another educational institution; and
- (b) Expulsion or suspension of a student during the school year does not relieve the educational institution of the duty to record and report the student's daily attendance for the school year in which the expulsion or suspension occurred until such time as the student officially withdraws from or enrolls in another educational institution; or such time as the educational institution determines that, despite best efforts, it is unable to contact the parent or guardian.

2101.3 The attendance record for each student shall contain the following:

- (a) Dates of enrollment;
- (b) Daily legible or machine-readable records of daily attendance, noting the student as present or absent for a full or partial school day;

- (c) Determination of the nature of each absence as excused, unexcused; suspension-related; or expulsion-related;
- (d) Dates of withdrawal from the educational institution or confirmed transfer to another educational institution, including the name and location of the educational institution to which the student transferred and follow up notation(s) to confirm the child’s new placement;
- (e) Dates of each referral to the school-based student support team, the Child and Family Services Agency (“CFSA”), the Court Social Services Division of the Superior Court of the District of Columbia (“Court Social Services”); or the Office of the Attorney General Juvenile Section (“OAG-Juvenile Section”) related to absenteeism or truancy;
- (f) Dates of marking periods;
- (g) Dates on which a law enforcement officer enforcing compulsory attendance laws returns the student to the educational institution;
- (h) Daily late arrival time;
- (i) Dates and times of early dismissals from the school day, as authorized by the educational institution;
- (j) Dates and brief description of communications with student, parent(s) or guardian(s) with regard to school attendance and absences, including the record of or a cross-reference to the record documenting:
  - (1) Contact with parents, guardians, or other primary caregivers; and
  - (2) Interventions, services, and service referrals related to absences other than those listed in subparagraph (d);
- (k) Underlying causes for student’s absenteeism or truancy as determined by the school-based student support team;
- (l) Action plans and strategies implemented by the school-based student support team to eliminate unexcused absences; and
- (m) Services utilized by the student to reduce unexcused absences.

2101.4 For the school year 2020-21:

- (a) The following definitions shall apply notwithstanding definitions set forth in §2199.1

Absent- A student is considered absent when the student is not in attendance at expected periods of instruction at the educational institution in which the student was enrolled or in attendance at a school-approved activity.

In Person- Instruction that takes place when the student is physically present and is delivered by the school in which the student is enrolled.

One-on-one contact- Contact between the student's school of enrollment and a school official that authenticates the identity of the student when contact cannot otherwise be made in person.

Present- A student is considered present when the student is in attendance at expected periods of instruction at the educational institution in which the student was enrolled or in attendance at a school-approved activity.

Remote(ly)- Instruction that takes place with the student not physically present and delivered by the school in which the student is enrolled.

- (b) For school year 2020-21, the attendance record for each student shall contain:
  - (1) The contents of 2101.3 except (b); and
  - (2) Daily legible or machine-readable records of daily attendance, noting the student as present or absent when the student attends school in-person or remotely in accordance with the local education agency's policy on remote attendance prescribed in 2101.5.

2101.5 For school year 2020-21, an educational institution shall abide by its local education agency's policy defining whether a student is present or absent in a remote setting.

- (a) The local education agency's policy shall include the following:
  - (1) In the instance the educational institution is using a learning management system, the requirements the student must meet to authenticate the student's identity and the student's expected level of engagement using the learning management system to be considered present when attending school remotely; and/or
  - (2) In the instance the educational institution is not using a learning management system, the manner in which the educational institution will:

- (i) Make one-on-one contact with the student daily to authenticate presence;
- (ii) The medium(s) used to make one-on-one contact with the student daily to authenticate presence; and
- (iii) The required engagement to constitute present when attending school remotely.

2101.6 A local education agency must provide its policy defining whether a student is present or absent when attending school remotely when seeking any modification to the requirements for a school year prescribed in 2100.3 to the Office of the State Superintendent (OSSE) for approval.

2101.7 Prior to the beginning of each school year, an educational institution shall designate an attendance monitor(s) to be responsible for collecting, maintaining, and reporting the attendance data required for each student consistent federal and District requirements. An attendance monitor shall:

- (a) Ensure timely submission of attendance in conformance with this chapter; and
- (b) Submit corrected attendance records via an automated, electronic feed, or such other format; and provide any corrections to attendance records within fifteen (15) business days of submission; and
- (c) Timely respond to requests for clarification of submitted attendance records.

2101.8 The name and contact information of the designated attendance monitor shall be reported by the educational institution prior to the first (1st) official school day of each school year to OSSE and posted in a conspicuous space on the educational institution's website.

2101.9 Within sixty (60) days after the completion of each school year, an educational institution shall submit to OSSE the report described in D.C. Official Code § 38-203(i). Such report shall include attendance information in aggregate form, excluding individual student data.

2101.10 Prior to the beginning of each school year, OSSE shall issue a report including the following information:

- (a) Truancy rates for each educational institution;

- (b) Progress in improving attendance and reducing truancy for each educational institution; and
  - (c) Each educational institution's compliance with key attendance and truancy requirements.
- 2101.11 An educational institution shall maintain attendance records as part of the student's permanent record and for such periods of time as may be otherwise specified by applicable laws and regulations.
- 2101.12 Within two (2) business days after each occurrence of a student's tenth (10th) unexcused absence during a school year, the educational institution shall:
- (a) [REPEALED];
  - (b) Send the student's parent a letter, under signature of the Chief of the Metropolitan Police Department, notifying the parent that he or she may be in violation of the school attendance requirements and subject to prosecution under District of Columbia laws; and
  - (c) Notify OSSE of the student's ten (10) days of the unexcused absence.
- 2101.13 Upon notification from the educational institution under § 2101.12, OSSE shall provide the parent with a copy of the Truancy Prevention Resource Guide published by OSSE.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register via email addressed to: [osseccomments.proposedregulations@dc.gov](mailto:osseccomments.proposedregulations@dc.gov); or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Renee Lee re: Attendance Regulations, 1050 First Street, NE 3rd Floor, Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at [www.osse.dc.gov](http://www.osse.dc.gov).