

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to 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.)); 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; 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. & 2013 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) codified at D.C. Official Code §§ 38-201 et seq. and §38-2602(b)(19), hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 21 (Compulsory Education and School Attendance), Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the emergency and proposed rulemaking is to regulate the process by which a student will be able to attend school remotely in the 2021-22 school year. As the District of Columbia recovers from the Coronavirus (COVID-19) pandemic that disrupted residents’ daily lives and caused schools to suspend in-person instruction from March 2020 until the end of the 2019-20 school year and through the entirety of the 2020-21 school year, in-person instruction will be the default method of attendance for the 2021-22 school year. However, students may have access to remote instruction delivered by their school in limited circumstances: 1) the completion and submission of a medical certification form to their LEA, 2) to comply with District of Columbia law, regulation, or executive action to implement public health measures, 3) in the instance of a temporary operational closure of the school in response to an outbreak or spread of COVID-19, or 4) in the instance of an approved distance/virtual learning program in a public charter school approved by the Public Charter School Board.

Further, due to the return of in-person learning as the default method of attendance for students in the District of Columbia, OSSE will return to its normal collection of daily attendance as outlined in 5-A DCMR §2101. From March 2020 until the end of the 2020-21 school year, OSSE stopped collecting daily attendance due to the need to move all students to remote learning in response to the pandemic. For the 2020-21 school year, OSSE promulgated final regulations that allowed for the daily collection of attendance in both in-person and remote settings. OSSE did not apply the definition of “present”, colloquially called the “80/20 Rule,” in the 2020-21 school year because of the diversity of daily instructional schedules across the District needed to respond to the pandemic. Further, OSSE codified a requirement that in remote instruction, the local education agency (LEA) had to write a policy determining sufficient authentication of a student’s identity along with a sufficient level of engagement for an instructional day needed to be counted present in remote learning. Those methods of collecting attendance were only applicable for the 2020-21

school year. For the 2021-22 school year, OSSE will return to its regular method of collecting daily attendance for both in-person and remote learning in accordance with 5-A DCMR §2101.

The emergency and proposed rulemaking also revises the definition of LEA to clarify that as used in this Chapter the term includes District of Columbia public charter schools.

Emergency rulemaking action, pursuant to Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 2, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), is necessary to guard against the spread of COVID-19 in public and public charter schools among children with significant documented health conditions. This emergency and proposed rulemaking is necessary to provide parameters on the use of remote learning. The best place for students to learn and thrive is through in-person instruction with well-trained teachers and their peers, yet due to the prevalence of COVID-19 in the community and the lack of an approved vaccine for COVID-19 for children of all ages, it is necessary to ensure that students most at risk have the ability to access remote instruction.

OSSE adopted the emergency rules on August 23, 2021 and they became effective on that date. The emergency rules shall remain in effect until December 21, 2021, one hundred twenty (120) days after the rules were adopted and made effective, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The State Superintendent of Education also gives notice of her intent to take final rulemaking action to adopt these amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 5, EDUCATION, Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, Chapter 21, COMPULSORY EDUCATION AND SCHOOL ATTENDANCE, is amended to read as follows:

Sections 2100.3 through 2100.5 are repealed in their entirety and replaced with the following:

2100.3 Unless otherwise approved by the Office of the State Superintendent of Education (OSSE), a school year for attendance purposes, whether in-person or remote, shall include a minimum of one hundred eighty (180) regular instructional days and the following requirements:

- (a) An instructional day shall be at least six (6) hours in length for students, including time allotted for lunch periods, recess, and class breaks;
- (b) The six (6)-hour minimum instructional day requirement shall not be applicable to an evening school program, prekindergarten program, or kindergarten program.

2100.4 In the 2021-22 school year, an educational institution:

(a) Shall provide remote instruction to a student with a medical certification form established by OSSE, submitted to and approved by the LEA of enrollment;

(b) May provide remote instruction:

- (i) To comply with District of Columbia laws, regulations, executive actions, or public health guidance requiring remote instruction;
- (ii) Due to a temporary closure of the school to protect the health or safety of all enrolled students; or
- (iii) If approved by the Public Charter School Board before August 23, 2021, to provide a remote program consistent with its authorizing powers.

2100.5 In-person and remote attendance shall be consistent with the reporting requirements in Section 2101.

2100.6 Daily attendance shall include participation in school-sponsored field trips; participation in an off-site school sponsored or approved activity during a regularly scheduled school day; in-school suspensions; and the number of days a student receives instructional services while expelled or while serving an out-of-school suspension.

Section 2101 is repealed in its entirety and replaced with the following:

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, the Court Social Services Division of the Superior Court of the District of Columbia; or the Office of the Attorney General 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) 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 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 with federal and District requirements. An attendance monitor shall:
- (a) Ensure timely submission of attendance in conformance with this chapter;
 - (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.
- 2101.5 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.
- 2101.6 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.
- 2101.7 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.
- 2101.8 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.
- 2101.9 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 unexcused absence.

2101.10 Upon notification from the educational institution under § 2101.9, OSSE shall provide the parent with a copy of the Truancy Prevention Resource Guide published by OSSE.

Section 2199 is amended by deleting the definition of “LEA” or “local education agency” in its entirety and replacing it as set forth below, and adding the following definitions for “In-Person” and “Remote”:

2199.1 **In-Person** -- Instruction that takes place when the student is physically present in the educational institution in which the student is enrolled.

LEA or Local Educational Agency -- The District of Columbia Public Schools or a District of Columbia public charter school.

Remote -- Instruction that takes place when the student is not physically present in the educational institution in which the student is enrolled.

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; or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Renee Lee, 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.