



Virtual Instruction for Students within an Alternative Education Program Guidance Relative to PC111 of 2023

Tennessee Department of Education | October 2023

Virtual Instruction

The Tennessee State Board of Education (SBE) has provided local education agencies (LEAs) the flexibility to utilize a virtual education program to provide continuity of educational services for students enrolled in an alternative school or alternative program pursuant to [Tennessee State Board of Education \(SBE\) Rules 0520-01-02-.09](#) and [0520-01-03-.05\(2\)](#). Furthermore, [Chapter 111 of the Public Acts of 2023](#) (effective July 1, 2023), adds a new subsection to [Tennessee Code Annotated \(Tenn. Code Ann.\) § 49-6-3402\(i\)](#) that expands the flexibility of virtual education in Tennessee by explicitly permitting a public virtual school to provide virtual instruction to students enrolled in another LEA who have been suspended or expelled from the regular school program. Under this legislation, LEAs have expanded flexibility to ensure the continuity of learning for suspended or expelled students through the partnership with an established public virtual school.

Definition of Terms

- **Alternative Program:** Pursuant to [SBE Rule 0520-01-02-.09\(3\)](#), an alternative program is a short-term intervention program designed to provide educational services outside of the regular school program for students who have been suspended or expelled. Alternative programs may be located within the regular school or be a self-contained program within a school. Alternative programs include, but are not limited to, night schools or in-school suspension. These programs are designed to cater to the academic, behavioral, and social needs of students who are not thriving in the traditional school environment.
- **Alternative School:** Pursuant to [SBE Rule 0520-01-02-.09\(2\)](#), an alternative school is a short-term intervention program designed to provide educational services outside of the regular school program for students who have been suspended or expelled. Alternative schools are located in a separate facility from the regular school program.
- **Chapter 111 of the Public Acts of 2023 (PC111):** PC111 is a law that adds a new subsection to [Tenn. Code Ann. § 49-6-3402\(j\)](#), which highlights the ability of LEAs that do not currently operate a public virtual school to partner with an LEA that has an established virtual school to deliver virtual instruction to suspended or expelled students. An agreement entered pursuant to PC111 ([Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#)) must align with the requirements set forth for an alternative program pursuant to [SBE Rule 0520-01-02-.09](#).
- **Local Education Agency (LEA):** As specified in [Tenn. Code Ann. § 49-1-103\(2\)](#), an LEA means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the Tennessee general assembly.

- **Public Virtual School:** As specified in [Tenn. Code Ann. § 49-16-201 through 49-16-215](#), a public virtual school is a public school that uses technology to deliver a significant portion of instruction to its students via the internet in a virtual or remote setting.
- **Receiving LEA:** The LEA that has established the public virtual school in which an expelled or suspended student will receive virtual instruction pursuant to [Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#).
- **Sending LEA:** The LEA that holds the student's primary enrollment during the student's suspension from the regular school setting. While participating in virtual instruction pursuant to [Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#), the student will remain enrolled with the LEA that issued the student's suspension or expulsion.

Pathways to Utilize Virtual Education

The following Tennessee statutes and rules permit LEAs to provide virtual instruction to expelled or suspended students through the use of virtual education.

- [Chapter 111 of the Public Acts of 2023](#): Permits an LEA that has established a virtual school pursuant to [Tenn. Code Ann. §§ 49-16-201–215](#) and [SBE Rule 0520-01-03-.05\(1\)](#) to enter into an agreement with an LEA that has not established a virtual school. This agreement would allow the public virtual school to provide virtual instruction to students who have been suspended or expelled from a regular school program.
- [Tenn. Code Ann. § 49-6-3402\(i\)](#): Permits alternative schools and alternative programs to provide remote instruction to students attending the school or program. Under this statute, LEAs are permitted to leverage virtual education programs, pursuant to SBE Rule 0520-01-03-.05(2), to provide continuity of educational services to students participating within the LEA's alternative school or alternative program.
- [SBE Rule 0520-01-03-.05\(2\)](#): Permits LEAs to utilize virtual education programs to provide students a broader range of educational opportunities by using virtual instruction to provide continuity of educational service for students enrolled in an alternative school or alternative education program pursuant to [SBE Rule 0520-01-02-.09](#).

Assessments and Accountability

Pursuant to [SBE Rule 0520-01-02-.09\(9\)\(c\)](#), Tennessee students shall participate in all required state assessments at sites determined by the school officials of the Sending LEA and in accordance with established guidelines regarding student grade levels and eligibility. State assessment results shall be reported in the Sending LEA where the student was enrolled prior to his or her placement in the alternative school or alternative program.

Grades, Credits, and Attendance

Pursuant to [SBE Rule 0520-01-02-.09\(9\)\(b\)](#), all course work and credits earned shall be transferred and recorded in the Sending LEA, which shall grant credit earned and progress thereon as if earned in the school in which the student attended before placement into the Receiving LEA's virtual school. Pursuant to [Tenn. Code Ann. § 49-6-3402\(d\)](#), any student attending an alternative program will continue to earn state education funds in the Sending LEA and will be counted present for all school funding purposes by that LEA. Pursuant to [Tenn. Code Ann. § 49-6-3402\(d\)](#), any student attending an alternative program will continue to earn state education funds in the Sending LEA and will be counted present for all school funding purposes by that LEA.

EIS and Attendance Coding

LEAs should refer to the most current [Tennessee EIS Appendices document](#), [EIS Business Rules](#), and [Student Membership and Attendance Manual](#) to determine the correct coding and process to utilize when changing a student's placement to an alternative school or alternative program. LEAs should align to the following guidelines for student data and attendance practices in regard to students who are placed within an alternative school or alternative program pursuant to [Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#):

- The Sending LEA should maintain a student's primary enrollment while the student receives virtual instruction within a public virtual school pursuant to [Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#).
- The Sending LEA should report all student data required by the Tennessee Department of Education (the department) through the Sending LEA's student information system.
- The Sending LEA should use the appropriate education information system (EIS) discipline codes to report the student's change in placement to the department's EIS.
- The Sending LEA should count students present for attendance purposes provided that the Receiving LEA's virtual school confirms the student's attendance pursuant to [SBE Rule 0520-01-03-.05\(1\)\(c\)\(1\)](#).

LEA Agreements

LEAs that choose to collaborate pursuant to [Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#), are encouraged to develop a memorandum of agreement (MOA) relative to the instructional services rendered by an established public virtual school. It is recommended that the agreement should address, at minimum, the following topics:

- **Funding:** It is recommended that the agreement details how the Sending LEA will distribute funds to the Receiving LEA. Pursuant to [Tenn. Code Ann. § 49-6-3402\(d\)](#), any student attending an alternative program will continue to earn state education funds in the district the student was enrolled in prior to assignment to the alternative program (Sending LEA) and will be counted present for all school funding purposes by that district.
- **Attendance and Grade Tracking:** It is recommended that the agreement specifies how the Receiving LEA will determine, track, and communicate the daily attendance and grades earned by the students within the agreement's scope. The Sending LEA must report all required students' records through their student information system.
- **Student Removal Process:** It is recommended that the agreement includes the process by which either the Receiving LEA or Sending LEA may remove a student from the virtual school, aligning with [Tenn. Code Ann. § 49-6-3402\(c\)\(2\)\(B\)](#).
- **Scope of Services:** It is recommended that the agreement includes the scope of instructional services that the Receiving LEA will provide. Pursuant to [Tenn. Code Ann. § 49-6-3402\(i\)\(2\)](#), virtual instruction provided to expelled or suspended students must align to all [State Board Rules](#) and Policies that frame alternative programs and public virtual schools.
- **Special Education and EL (English Learners) Services:** All public virtual schools must comply with the requirements of the Individuals with Disabilities Education Act (IDEA), Section 504 requirements, Title II, and Title III requirements. Federal and state regulations related to students with disabilities and English Learners apply to students attending virtual schools to the same extent that they apply to students attending traditional brick-and-mortar schools. The Receiving LEA must provide all special education, special education related services, and English Language Learner services listed on a student's individualized education program (IEP) and individualized learning plan (ILP). Both the Sending LEA and Receiving LEA must ensure the provision of free appropriate public education (FAPE) to children with disabilities attending the public virtual school. It is recommended that the MOA outlines the division of responsibility held by both the Sending LEA and Receiving LEA regarding the requirements of the Individuals with Disabilities Education Act (IDEA), Section 504 requirements, Title II, and Title III requirements.

Frequently Asked Questions

- 1. Are public virtual schools required to follow SBE rules that frame both virtual schooling and alternative programs when they serve expelled or suspended students pursuant to Tenn. Code Ann. § 49-6-3402(i)(3)?**

Yes, a public virtual school must adhere to all requirements set forth in [SBE Rule 0520-01-03-.05\(1\)](#) for each student who the virtual school serves. However, [SBE Rule 0520-01-02-.09](#) and [SBE Policy 2.302](#) related to alternative programs are only applicable to the expelled or suspended students that the virtual school serves.

- Requirements of Public Virtual Schools are framed in [SBE Rule 0520-01-03-.05\(1\)](#).
- Requirements of Alternative Programs are framed in [SBE Rule 0520-01-02-.09](#) and [SBE Policy 2.302](#).

- 2. Can an agreement pursuant to Tenn. Code Ann. § 49-6-3402(i)(3) fulfill the requirement for an LEA to establish at least one (1) alternative school for students in grades seven (7) through twelve (12) who have been suspended or expelled?**

Yes, an agreement between LEAs pursuant to Chapter 111 of the Public Acts of 2023 ([Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#)) can serve to fulfill requirements for an LEA to establish at least one (1) alternative school or alternative program for students in grades seven (7) through twelve (12) who have been suspended or expelled.

- 3. Are suspended/expelled students allowed to attend synchronous virtual classes with other students who are enrolled in the virtual school?**

LEAs may choose to allow expelled or suspended students to attend synchronous virtual classes with other students who are enrolled in the virtual school. LEAs partnering through [Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#) may choose to outline these options and issue guidelines within their agreement or MOA. Furthermore, pursuant to [Tenn. Code Ann. § 49-6-3402\(c\)\(2\)\(B\)](#), the director of schools, or the director's designee, of the LEA providing virtual instruction to expelled or suspended students may remove a student from the alternative school or alternative program.

- 4. What is the difference between an alternative school and an alternative program?**

A main difference between an alternative school and an alternative program is the physical location in which educational services are provided. Pursuant to [SBE Rule 0520-01-02-.09](#), alternative schools are located in a separate facility from the regular school program; whereas, may be located within the regular school or be a self-contained program within a school.

Sample Memorandum of Agreement

LEAs may use the following Memorandum of Agreement (hereafter "MOA") as an example to facilitate collaboration with a public virtual school. The purpose of this collaboration is to provide virtual instruction to students who have been suspended or expelled, in accordance with [Tenn. Code Ann. § 49-6-3402\(i\)\(3\)](#). LEAs must edit and tailor the contents of the following MOA example to align with their specific needs.

The information contained herein is provided by the Tennessee Department of Education (TDOE) for general informational purposes only and does not constitute legal advice. Please consult your own legal counsel or local board attorney. TDOE does not make any representations or warranties, express or implied, concerning the accuracy, adequacy, validity, reliability, availability, or completeness of the information contained in this sample MOA.

The use of the following MOA example, or reliance on any information provided, is solely at the risk of the LEA utilizing the example. TDOE shall bear no liability for any loss or damage of any kind incurred as a result of the use or reliance on this example or any information provided herein.

MEMORANDUM OF AGREEMENT EXAMPLE

Attention: LEAs must edit and tailor the contents of this example MOA to align with their specific needs. The use of this MOA example, or reliance on any information provided, is solely at the risk of the LEA utilizing the example. The TDOE does not make any representations or warranties, express or implied, concerning the accuracy, adequacy, validity, reliability, availability, or completeness of the information contained in this example. Furthermore, the TDOE shall bear no liability for any loss or damage of any kind incurred as a result of the use or reliance on this example or any information provided herein.

BETWEEN

[Local Education Agency A], hereinafter referred to as the "Sending LEA,"

AND

[Local Education Agency B or Virtual School], hereinafter referred to as the "Receiving LEA."

The Sending LEA and the Receiving LEA, collectively "the Parties," enter into this Memorandum of Agreement (hereafter "Agreement") for the purpose of ensuring the continuity of educational services in alignment with Tennessee Code Annotated § 49-6-3402(i)(3) for students who have been suspended or expelled from the regular school program.

The Sending LEA is responsible for ensuring that students who have been suspended or expelled continue to receive appropriate educational services, as mandated by the State of Tennessee. Tennessee Code Annotated § 49-6-3402(i)(3) provides a framework for Local Education Agencies (LEAs) to collaborate and utilize virtual education programs to fulfill this responsibility. This Agreement sets forth the responsibilities of each entity, outlines areas of cooperation, and provides guidance for local collaboration pursuant to Tennessee Code Annotated § 49-6-3402(i)(3) between the Parties.

- I. **Principles:** This agreement is based on the following principles upon which the parties agree:
 - A. This agreement is necessary to ensure that students who have been suspended or expelled receive continuity of educational services.

- B. This agreement is in no way intended to modify the responsibilities or authority delegated to the Parties by federal and state law, regulations, and rules.
 - C. Collaboration and joint utilization of resources will be maximized to avoid duplication of efforts in the provision of virtual education services to suspended or expelled students.
 - D. Communication among the parties must occur to ensure that suspended or expelled students receive the services necessary for their continued education.
 - E. The sharing of information necessary to provide all required services to students will be done in compliance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.
- II. **Purpose:** This MOA establishes the terms and conditions under which the Receiving LEA will provide remote instruction to students from the Sending LEA who have been suspended or expelled from the regular school program.
- III. **Duration:** This MOA shall commence on [Start Date] and shall terminate on [End Date], unless otherwise extended by mutual agreement of the Parties.
- IV. **Extension:** The Parties may, by mutual written agreement, extend the term of this MOA beyond the Initial Term for additional term(s) of [e.g., one (1) year] each (“Renewal Term”), under the same terms and conditions herein, unless otherwise amended by mutual agreement in writing.
- V. **Attendance:** Attendance for students receiving remote instruction shall be tracked and reported in accordance with the guidelines established in Tennessee State Board of Education Rule 0520-01-03-.05(1)(c).
- VI. **Accountability:** The results of student grades, assessments, and other accountability measures for courses taken as part of the alternative program will be attributed to the Sending school.
- VII. **Data Sharing:** Both districts agree to share relevant student data, including academic performance and attendance, to ensure the success of the program in accordance with both parties’ data sharing policies and procedures and in accordance with all state and federal data privacy laws. *[Include any additional information specific to the LEA’s security protocol].*
- VIII. **Funding:** In accordance with Tennessee Code Annotated § 49-6-3402, the Sending LEA acknowledges that any student attending an alternative program will continue to earn state education funds within the Sending LEA. Therefore, the Sending LEA agrees to compensate the Receiving LEA for the provision of virtual education services.

The compensation model will be based on a per pupil, per duration basis. The agreed amount will be [amount per pupil per duration (e.g., week, month, semester)], which will be paid by the Sending LEA to the Receiving LEA. This amount will cover the cost of virtual education services provided for the specified duration.

The Sending LEA will ensure timely payment to the Receiving LEA following the receipt of an invoice detailing the number of students served and the duration of services provided. The Receiving LEA will issue this invoice on a [monthly/quarterly/annual] basis.

IX. **Duration of Services:** The duration of services will be determined on a case-by-case basis, taking into account the individual needs and circumstances of each student. The Receiving LEA will provide virtual education services to the student for the duration of the suspension or expulsion period, or until the student is otherwise removed from the Receiving LEA's virtual school by the Sending LEA. The Sending LEA and the Receiving LEA will communicate regularly to ensure the appropriate duration of services is provided for each student. Any changes to the duration of services will be communicated promptly and adjustments to funding will be made accordingly.

X. **Responsibilities:**

A. The Sending LEA agrees to do the following:

1. Identify students eligible for remote instruction pursuant to Tennessee Code Annotated § 49-6-3402(i)(3) and Tennessee State Board of Education Rule 0520-01-03-.05 and notify the Receiving LEA in a timely manner.
2. Maintain the primary enrollment of the student who receives virtual instruction from the Receiving LEA.
3. To implement the Sending LEA's progressive truancy intervention plan, as required by Tennessee Code Annotated § 49-6-3009 and Tennessee State Board of Education Rule 0520-01-02-.17, and report truancy to the juvenile court having jurisdiction over that student in compliance with state law.
4. To report the daily attendance for students receiving virtual instruction from the Receiving LEA. The daily attendance must be reported through the Sending LEA's student information system utilizing the attendance codes set by the Tennessee Department of Education.
5. To report grades and credits earned by students who participate in virtual instruction pursuant to Tennessee Code Annotated § 49-6-3402(i)(3).
6. Administer all state tests required of public school students to students participating in virtual instruction pursuant to Tennessee Code Annotated § 49-6-3402(i)(3) in a proctored environment consistent with state test administration guidelines.
7. Ensure that students with special needs, including students with disabilities and limited English proficiency who participate in virtual instruction pursuant to Tennessee Code Annotated § 49-6-3402(i)(3), receive all services required by the student's Individualized Education Program (IEP), Section 504 Plan, or Individual Learning Plan (ILP).
8. [Include additional responsibilities specific to the Sending LEA.]

B. The Receiving LEA agrees to do the following:

1. Use technology to deliver a significant portion of instruction to students who participate in virtual instruction pursuant to Tennessee Code Annotated § 49-6-3402(i)(3) and Tennessee State Board of Education Rule 0520-01-03-.05(1).
2. Provide access to a sequential curriculum that meets or exceeds the academic standards adopted by the State Board utilizing state-approved textbooks and instructional materials unless a waiver has been granted to the Receiving LEA in accordance with Tennessee Code Annotated § 49-6-2206 and Tennessee State Board of Education Rule 0520-01-18.
3. Meet the equivalent of the one hundred and eighty (180) days of instruction per academic year and six and one-half (6½) hours of instructional time per day pursuant to Tennessee Code Annotated § 49-6-3004, provided, however, that a student, at the student's own pace, may demonstrate mastery or completion of a course or subject area and be given credit for the course or subject area.
4. Ensure that students with special needs, including students with disabilities and limited English proficiency, receive all services required by the student's Individualized Education Program (IEP), Section 504 Plan, or Individual Learning Plan (ILP).
5. Ensure that each virtual school course has an assigned teacher of record who is properly endorsed and licensed to teach in Tennessee in compliance with state law, Tennessee State Board of Education Rules 0520-02-03, and Tennessee State Board of Education Policy 5.502.
6. Monitor and report students' progress toward mastery of the Tennessee Academic Standards.
7. Reports student's daily attendance pursuant to Tennessee State Board of Education Rule 0520-01-03.05(1)(c) and course grades to the Sending LEA.
8. Ensure students have access to instructional materials, technology such as a computer and printer that may be necessary for participation in the virtual school, and an internet connection used for schoolwork.
9. Ensure that each employed individual, including those serving as a teacher, that shall have proximity or close interaction with students under this agreement shall comply with all state laws regarding background check requirements, including Tenn. Code Ann. § 49-5-413.
10. [Include additional responsibilities specific to the Receiving LEA.]

- C. The parties shall adhere to all federal and state laws, rules and policies including, but not limited to, the guidelines set forth in Tennessee State Board of Education Rules 0520-01-02-.09, 0520-01-03-.05, and Tennessee State Board of Education Policy 2.302.

XI. **Student Removal Process:** In alignment with Tennessee Code Annotated § 49-6-3402(c)(2), the Receiving LEA may remove a student from the virtual school under certain circumstances. The specific process for student removal will be as follows:

- A. The Receiving LEA will notify the Sending LEA of any concerns or issues that may warrant the removal of a student from the virtual school.
- B. The Sending LEA will be given an opportunity to address these concerns or issues before a final decision on removal is made.
- C. If one Party decides to remove a student from the virtual school, that Party must provide written notice to the other, detailing the reasons for the removal.
- D. [Include additional steps specific to the Receiving LEA's removal process.]

XII. **Scope of Services:** The Receiving LEA will provide a comprehensive range of instructional services to students enrolled in the virtual school. These services will include, but are not limited to:

- A. Delivery of instruction aligned with the Tennessee Academic Standards.
- B. Regular assessment of student progress.
- C. Provision of academic support and intervention services as needed.
- D. Regular communication with the Sending LEA regarding student progress and any issues or concerns that may arise.
- E. [Include additional instructional services provided by the Receiving LEA.]

XIII. **Special Education and EL Services:** The Receiving LEA acknowledges its responsibility to adhere to all requirements of a student's Individualized Education Program (IEP), 504 plan, and/or Individual Language Plan (ILP) when providing instructional services to Tennessee students.

XIV. **Termination:** Either party may terminate this MOA for convenience and without cause with [X days/weeks/months] written notice.

XV. **Amendments:** Any amendments to this MOA must be in writing and shall not be effective until signed by both Parties.

XVI. **Governing Law:** This MOA shall be governed by and construed in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the Parties hereto have executed this MOA as of the date first written above.

Name of Authorized Official [School District A]

Date

Name of Authorized Official [School District B]

Date

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