

STATE OF TENNESSEE

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Opinion No. 13-82

Virtual Public Schools Act

QUESTIONS

1. What requirements does a local education agency (“LEA”) have to fulfill to establish a virtual public school under the Virtual Public Schools Act, codified at Tenn. Code Ann. § 49-16-201 to -216 (hereinafter “the Act”)?
2. What are the obligations, if any, of the Tennessee Department of Education once an LEA has met the requirements of the Act?

OPINIONS

1. An LEA, in order to establish a virtual public school, must comply with all requirements set forth in the Act, including, but not limited to, ensuring that the virtual school has a physical administrative office in Tennessee, the school will not exceed 1,500 students subject to a narrow exception, and the school’s teachers are all qualified to teach in Tennessee.
2. The Commissioner of Education, pursuant to his duty to “see that the school laws . . . are faithfully executed,” must recognize and approve a virtual school established in accordance with the Act.

ANALYSIS

1. The Act provides a mechanism by which virtual schools can be established and operated for Tennessee students. Tenn. Code Ann. §§ 49-16-201 to -216.¹ The Act defines a virtual school as “a public school in which the school uses technology in order to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting.” Tenn. Code Ann. § 49-16-203. The Act permits only LEAs to establish virtual schools. *See* Tenn. Code Ann. § 49-16-204. Once established, a virtual school is a public school entitled to all resources that are available to other public schools. Tenn. Code Ann. § 49-16-204. An LEA may contract with a non-profit or for-profit company for services in the operation and management of a virtual public school. Tenn. Code Ann. § 49-16-214. Any Tennessee student who is eligible for

¹ The Act became effective on July 1, 2011, *see* 2011 Tenn. Pub. Acts ch. 288, § 2, and by its terms is repealed June 30, 2015. Tenn. Code Ann. § 49-16-216. The Act was recently amended by Chapter 404 of the 2013 Tennessee Public Acts.

enrollment in a Tennessee public school may enroll in the virtual school. Tenn. Code Ann. § 49-16-211(a). The establishing LEA may charge tuition to any virtual school student who was not previously enrolled in that LEA. *Id.*

Establishment of virtual schools is subject to a number of legal requirements. The virtual school must have an administrative office located in Tennessee. Tenn. Code Ann. § 49-16-210. Virtual schools established after January 1, 2013 cannot exceed 1,500 students unless the school demonstrates student growth at the level of “at expectations” as determined by the Tennessee Value-Added Assessment System. Tenn. Code Ann. § 49-16-211(b). *See also* 2013 Tenn. Pub. Acts ch. 104, § 1. Teachers at the virtual school must be qualified to teach in Tennessee. Tenn. Code Ann. § 49-16-208.

The Act provides the State Board of Education with authority to promulgate rules and regulations to effectuate the purposes of the Act. Tenn. Code Ann. § 49-16-215; 2013 Tenn. Pub. Acts ch. 104, § 3. The State Board has promulgated Rule 0520-01-03-.03, which provides in pertinent part:

(12) Public Virtual Schools.

- (a) Public virtual schools must comply with all applicable Tennessee State Board of Education policies and rules and regulations.
- (b) Public virtual schools shall:
 - 1. be approved by the local board of education;
 - 2. use technology to deliver a significant portion of instruction to its students via the Internet in a virtual or remote setting;
 - 3. review and provide access to a sequential curriculum that meets or exceeds the curriculum standards adopted by the Tennessee State Board of Education;
 - 4. meet the equivalent of the 180 days of instruction and 6.5 hours per day per academic year pursuant to T.C.A. § 49-6-3004;
 - 5. monitor participation and progress to ensure students meet participation requirements and make progress toward successful completion of courses;
 - 6. administer all state tests required of public school students to students enrolled in a virtual school in a proctored environment consistent with state test administration guidelines;

7. be evaluated annually and report the extent to which the school demonstrates increases in student achievement, along with academic, fiscal, and operational performance;
8. ensure that students with special needs, including students with disabilities and limited English proficiency are not excluded from enrolling and participating, further, the public virtual school is responsible for providing the services in the student's Individualized Education Program (IEP);
9. assign a highly qualified teacher to each student enrolled;
10. ensure that all teachers employed to provide services to the students are endorsed in their grade or course and qualified to teach in Tennessee;
11. ensure access to instructional materials, access to technology such as a computer and printer that may be necessary for participation in the program, and access to an Internet connection used for school work; and
12. meet class size standards established by T.C.A. § 49-1-104.

(c) Public virtual schools must comply with State Board Rule 0520-01-03-.03(11).

1. For a student who is currently enrolled or was enrolled the previous semester in a public school to transfer to a public virtual school after the open transfer time has lapsed:

a. the student must apply to and be approved for acceptance in the public virtual school; and

b. once acceptance has been determined, the public virtual school must obtain permission from the sending district before enrolling the student in the public virtual school. A public virtual school shall not be eligible for state education funds for students who are improperly enrolled.

2. Students not registered in a public school the previous semester but who were enrolled instead in a private school or a home school do not require approval from a sending district.

(d) Public virtual schools must comply with all compulsory attendance requirements including monitoring and reporting as required in TCA § 49-6-3007.

1. The district establishing the public virtual school is required to report truancy to the juvenile court having jurisdiction over that student.
2. On or before August 1 of each year the public virtual school shall notify all LEAs of the enrollment of students residing within the LEA's jurisdiction. LEAs shall be notified within two weeks when changes occur relative to students residing within the LEA's jurisdiction.
3. Once a non-resident student has been accepted and enrolled in a public virtual school, it shall be the responsibility of the LEA that has established the public virtual school to maintain enrollment of that student until such a time as the student is withdrawn by the parent or guardian. If the student is withdrawn by the parent or guardian, the public virtual school shall send transcripts and other student records to the receiving school in a timely manner.

Tenn. Comp. R. and Regs. 0520-01-03-.03.

An LEA may establish a virtual school if the virtual school complies with all of the statutory and regulatory requirements described above.

2. The Commissioner of Education has a duty to “see that the school laws and the regulations of the state board of education are faithfully executed.” Tenn. Code Ann. § 49-1-201(c)(5). The Act and State Board regulations provide a number of legal requirements for virtual public schools. Once an LEA moves forward to establish a new virtual public school, the Commissioner is charged with determining whether the proposed school complies or will comply with the Act and the regulations. *See* Tenn. Comp. R. and Regs. 0520-01-03-.01(2) (stating that “[e]ach school system shall be classified as approved or non-approved.”). If an LEA establishes a virtual public school that complies with the Act and the State Board regulations, the Commissioner of Education must recognize and approve the virtual school. *See* Tenn. Code Ann. § 49-1-201(c)(5). *See also* Tenn. Code Ann. § 49-16-204 (stating that a “virtual school shall be a public school and shall be provided resources as any other public school in the state”).

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