



Best Practices for Implementation of Private Pay Providers and Behavioral Services in Schools

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Overview

The purpose of this guidance document is to support Local Education Agencies (LEAs) and public charter schools in implementing Chapter 1112 of the Public Act of 2026, now codified at Tenn. Code Ann. §§ 49-10-1501 *et seq.*, governing student access to private pay providers for behavioral services during the school day. These guidelines are intended to promote collaboration, student access, and compliance with state and federal law while preserving the integrity of the educational environment.

The law recognizes that some students with autism spectrum disorder or developmental delays who have an individual education program (IEP) may receive privately funded behavioral services outside of the school setting and that continuity across environments may support student outcomes. The statute therefore establishes a framework under which private pay providers may access students during the school day in educational settings, including classrooms, while preserving the legal responsibilities of LEAs and public charter schools to provide a free appropriate public education (FAPE) to students with disabilities.

At the same time, implementation of this law requires careful planning. Schools must balance student access to services with instructional continuity and the educational rights of all students within the learning environment. This guidance is intended to help schools navigate those operational considerations in a manner that promotes collaboration and minimizes conflict.

Definitions

- **Family Educational Rights and Privacy Act (FERPA):** A federal law that protects the privacy of personally identifiable information in student educational records and gives parents and eligible students specific rights regarding access to and control over those records. *See* 34 C.F.R. §§ 99.1 *et seq.*
- **Free Appropriate Public Education (FAPE):** Under the Individuals with Disabilities Education Act (IDEA), FAPE means special education and related services that are provided at public expense, under public supervision and direction, meet state educational standards, include an appropriate preschool, elementary, or secondary school education, and are provided in conformity with an Individualized Education Program (IEP). *See* 34 C.F.R. § 300.17.
- **IEP:** A written education program for a student with a disability that is developed, reviewed, and revised pursuant to the Individuals with Disabilities Education Act (IDEA). *See* 34 C.F.R. § 300.22.
- **Least Restrictive Environment (LRE):** Under the Individuals with Disabilities Education Act, the LRE refers to the requirement that students with disabilities are educated with nondisabled peers to the maximum extent appropriate and are removed from regular educational environments only when the nature or severity of the disability prevents satisfactory education in general education settings, even with the use of supplementary aids and services. *See* 34 C.F.R. § 300.114(a)(2).
- **Local Education Agency (LEA):** A public board of education or other public authority legally constituted within a state for either administrative control or direction of public elementary schools or secondary schools within a specific geographic area. *See* 34 C.F.R. § 300.28(a); Tenn. Code Ann. § 49-1-103(2).
- **Private Pay Provider:** A licensed behavior analyst, licensed assistant behavior analyst, or registered behavior technician who is privately compensated and not employed or contracted by the LEA or public charter school.

- **Private Pay Behavioral Services:** Behavioral services provided by a private pay provider on school premises during the school day, which can include applied behavioral analysis, as defined in Tenn. Code Ann. § 63-11-302.
- **Private Pay Provider Supervision:** Ongoing, clinical supervision of behavioral private pay services delivered by qualified supervisors, in-person, and is the responsibility of the private pay provider.

Guiding Principles

Student-Centered Decision-Making

All implementation decisions should prioritize the educational, behavioral, and social-emotional needs of the student. Decisions regarding scheduling, location of services, communication protocols, and coordination procedures should be individualized and grounded in what allows the student to meaningfully access educational opportunities while receiving FAPE in the student's LRE.

For example, a student who experiences difficulty transitioning between settings may benefit from behavioral services delivered within the classroom environment rather than through repeated removals from instruction. Conversely, another student may require occasional access to quieter settings during periods of dysregulation. Schools and providers should collaboratively consider how the delivery of services affects the student's ability to participate in instruction, social interaction, and school routines.

The student's educational program must remain the central focus of all planning conversations. While private pay providers may contribute valuable insight regarding behavioral interventions and reinforcement systems, educational decisions related to the provision of a FAPE remain the responsibility of the IEP team.

Free Appropriate Public Education

Nothing within this law reduces an LEA's responsibility to provide FAPE under the IDEA. Private pay behavioral services may supplement school-based programming, but they cannot replace services, accommodations, or support required under a student's IEP. See Tenn. Code Ann. § 49-10-1502(c).

For example, an LEA may not reduce paraprofessional services, behavioral support, or specially designed instruction that are necessary for a student with a disability to receive FAPE because the student's parent has elected to obtain private pay behavioral services during the school day. Similarly, schools may not require parents to obtain private pay behavioral services in order for a student to access educational programming.

The specially designed instruction documented within the IEP and developed by the IEP team must continue to stand independently from the private pay provider's behavioral services as an appropriate program designed to provide educational benefit.

The responsibility to provide all services necessary for FAPE remains solely with the LEA and cannot be shifted to the parent or guardian or a privately funded provider.

Accordingly, while parents may voluntarily choose to utilize private insurance or privately funded behavioral services to supplement their child's educational program, an LEA or public charter school may not require nor pressure a parent or guardian to access private insurance, incur personal expense, or secure outside services in order for the student to receive the educational supports and services necessary to access FAPE under the Individuals with Disabilities Education Act (IDEA).

Collaboration and Shared Communication

Effective implementation requires collaborative communication among families, school staff, administrators, and private pay providers. The law anticipates ongoing coordination between schools and providers to ensure that services are integrated effectively into the school day.

Collaboration should be structured, professional, and student-focused. Productive collaboration often includes:

- Scheduled communication procedures;
- Clear points of contact;
- Shared understanding of school routines and expectations; and
- Joint problem-solving when concerns arise.

For example, a provider supporting a student during classroom transitions may need to coordinate with the classroom teacher regarding schedule changes, testing days, assemblies, or field trips. Without proactive communication, even well-intended services may inadvertently disrupt instruction or create confusion.

Least Restrictive Environment

Services should support student participation within natural educational environments whenever appropriate. The law specifically references access within educational settings that provide the least restrictive environment, including classroom settings. *See* Tenn. Code Ann. § 49-10-1502(a), (b).

Implementation should avoid unnecessarily isolating students from peers or instructional opportunities. Whenever feasible, services should support student engagement within ongoing classroom routines, peer interactions, and instructional activities.

For example, a private pay provider may assist a student with behavior regulation during small-group instruction rather than removing the student from the classroom for the entirety of the instructional block.

Local Education Agency (LEA) Obligations

Maintaining Responsibility for FAPE

LEAs and public charter schools remain fully responsible for implementing all components of a student's IEP. This includes specially designed instruction, related services, supplementary aids and services, accommodations and modifications, behavior intervention plans, and progress monitoring.

Private pay behavioral services must supplement, not supplant, the educational program.

For example, if a student's IEP requires specially designed instruction in social communication, the LEA remains responsible for providing those services regardless of whether the student also receives private pay behavioral services focusing on the same or similar skill.

Schools should carefully avoid language suggesting that private pay providers are responsible for ensuring educational progress, as that obligation rests solely with the LEA.

LEAs are encouraged to clearly distinguish school-based services from private pay behavioral services in written documentation. Additionally, LEAs should consider training faculty and staff regarding the continued obligation to implement all IEP services as agreed upon, and if the team at any time has concerns related to the provision of FAPE, an IEP meeting should be convened immediately.

Providing Reasonable Access

The law requires LEAs and public charter schools to provide reasonable accommodations necessary for private pay providers to deliver services during the school day. *See* Tenn. Code Ann. § 49-10-1502(f). At the same time, those services must be implemented in a manner that preserves the integrity of the educational environment and minimizes disruption to instruction, student learning, and school operations. *See* Tenn. Code Ann. § 49-10-1502(b)(1).

Reasonable access may include access to common educational environments such as cafeterias, playgrounds, hallways, assemblies, extracurricular activities, and other school-sponsored settings. Depending on the IEP team's agreed upon LRE for the student, reasonable access may also include participation within general education or special

education classrooms. The purpose of such access is to support the student's ability to participate meaningfully in educational activities while maintaining continuity between the student's educational programming and private pay behavioral services.

However, the requirement to provide reasonable access does not diminish an LEA's authority or responsibility to maintain safe, orderly, and effective learning environments for all students. Schools retain the ability to establish reasonable operational expectations and may determine that certain private pay provider practices are disruptive when they interfere with instruction, distract other students, or impede the educational process. For example, a provider who repeatedly interrupts classroom instruction with loud vocal prompting, engages in ongoing side conversations during teacher-led instruction, or physically positions themselves in a manner that obstructs instruction may significantly disrupt the classroom environment.

Private pay services should therefore be delivered in a manner that is minimally intrusive and designed to support both the individual student and the broader learning environment. Private pay providers working within classrooms or shared educational settings should make reasonable efforts to avoid disrupting instruction, drawing unnecessary attention to the student, or interfering with peer learning opportunities. For example, if a provider is supporting a student seated among peers in a general education classroom, the provider should implement interventions discreetly and in a manner that does not negatively affect the concentration, participation, or instructional access of surrounding students.

When concerns arise regarding disruption, LEAs and public charter schools are encouraged to utilize collaborative problem-solving approaches before considering more restrictive actions. If the LEA or public charter school has objective data or documented observations indicating that the delivery of private pay services is substantially interfering with instruction, student engagement, or classroom management, the LEA or public charter school should convene a meeting with the parents/guardians, designated school personnel, and the private pay provider to discuss the concerns, review relevant data, and identify possible adjustments to the service delivery model. Such adjustments may include modifications to prompting strategies, scheduling changes, alternate seating arrangements, environmental accommodations, or revised communication procedures designed to reduce disruption while continuing to support the student's needs.

Additionally, schools may continue to enforce reasonable campus-wide operational and safety procedures applicable to all visitors and service providers. These procedures may include visitor sign-in requirements, identification badges, restrictions during emergency drills or lockdowns, confidentiality requirements under FERPA, compliance with campus safety procedures, and adherence to district or school policies governing conduct on school property.

To support consistent implementation, LEAs and public charter schools are encouraged to establish comprehensive procedures for onboarding private pay providers, including designated district or building-level points of contact, standardized visitor expectations, communication protocols, emergency procedures, and clearly defined operational expectations regarding classroom participation and collaboration with school staff.

Coordination and Collaboration

The law requires coordination between private pay providers and school personnel before services begin. *See* Tenn. Code Ann. § 49-10-1502(b).

Prior to the initiation of any private pay behavioral services during the school day, the parent or legal guardian should submit a written request to the LEA or public charter school identifying the desire to access privately funded behavioral services within the educational setting. *See* Tenn. Code Ann. § 49-10-1502(d). The LEA or public charter school is encouraged to set up a meeting to coordinate and collaborate on this request prior to the implementation of the services.

Coordination meetings are strongly recommended prior to implementation, and these may occur in person or virtually. The coordination meetings may include parents/guardians, private pay providers, general education teacher(s), special education teacher(s), school administrators, and related service providers.

The coordination meeting team should consider discussing: Scheduling, service locations, emergency procedures, and communication expectations. For example, if a student experiences escalated behavior during transitions between activities, the team may

collaboratively establish procedures clarifying who responds, where the student may go, and how instructional disruption will be minimized.

Schools should maintain clear professional boundaries regarding educational authority. Private pay providers may offer recommendations and collaborate regarding behavioral supports, but they may not independently direct educational staff nor modify IEP services.

Memorandum of Understanding (MOU)

A Memorandum of Understanding (MOU) between the LEA or public charter school and the private pay provider is a critical component of the successful implementation of private pay behavioral services within school settings. The purpose of the MOU is to establish a clear operational framework that outlines expectations, responsibilities, procedures, and boundaries before services begin. By clarifying expectations in advance, schools and private pay providers are better positioned to support the student.

An effective MOU should clearly define the scope of the private pay provider's access to school premises and educational settings. This includes identifying where services may occur, when providers may be present on campus, and under what conditions services may be delivered. For example, an MOU may specify that a provider may accompany a student within the general education classroom during designated instructional periods, assist during transitions, or support the student in common areas such as the cafeteria, playground, assemblies, or school-sponsored activities. At the same time, the MOU may also identify areas where access is restricted, such as when the student is receiving speech and language therapy.

Because private pay providers may work alongside school personnel during the instructional day, the MOU should clearly establish supervision expectations and communication protocols. If registered behavioral technicians (RBTs) will be providing any of the private pay services, the agreement should identify the supervising licensed behavior analyst responsible for clinical oversight and clarify how communication between the private pay provider and school staff will occur. For example, the MOU may specify that providers communicate through a designated school contact, such as the special education case manager or building administrator, rather than the classroom teacher.

As determined by the LEA, clinical supervision provided by the licensed behavior analyst should occur in person within the school environment to ensure appropriate oversight of service implementation and direct observation of provider practices. Sole reliance on virtual or remote supervision models is discouraged for services delivered on school premises, as in-person supervision is necessary to adequately monitor fidelity of implementation, assess the impact of interventions within the educational environment, and address operational or implementation concerns in real time.

Confidentiality requirements are another essential component of the MOU. Providers operating within school settings may observe or encounter information regarding multiple students throughout the school day. Accordingly, the MOU should clearly state that providers must comply with the Family Educational Rights and Privacy Act (FERPA), district or school confidentiality procedures, and all applicable ethical and professional obligations. For example, providers should be prohibited from collecting any data from students other than the identified student or discussing confidential student information with anyone. Private pay providers should also be prohibited from soliciting, recruiting, or attempting to obtain additional clients while on school premises or during school-sponsored activities; attempts to recruit students or families for private pay services may violate the MOU and result in immediate termination of the provider's access to school property and referral to the appropriate licensing or certifying authority if warranted.

The MOU should additionally require proof of professional liability insurance, licensure and/or certification, and compliance with all applicable background check requirements prior to the initiation of services. The agreement may also specify that the private pay provider's insurance policy must identify the LEA or public charter school as an additional insured party, consistent with the requirements established under Tennessee law.

Emergency procedures should also be addressed within the MOU to ensure that providers understand school safety expectations and crisis response protocols. For example, the agreement should clarify expectations during lockdowns, fire drills, weather emergencies, evacuations, or behavioral crises involving the student. Schools may require private pay providers to participate in safety orientations or review building-specific emergency procedures before services begin. Clarifying these procedures in advance helps ensure consistent responses during emergencies and reduces confusion during high-stress situations.

The MOU should further identify grounds for discontinuation or termination of provider access. Examples may include repeated disruption to instruction, violations of school policies, failure to maintain required credentials or insurance, breaches of confidentiality, safety concerns, or failure to comply with agreed-upon procedures. Whenever feasible, schools are encouraged to utilize problem-solving approaches before terminating services, including meetings, written notices, and opportunities for corrective action.

Finally, the MOU should include dispute resolution procedures designed to address disagreements in a collaborative and structured manner. Disputes may arise regarding scheduling, service locations, communication concerns, or perceived disruptions to the learning environment. The MOU should outline how concerns will be reported, who will participate in problem-solving meetings, and how decisions will be communicated.

LEAs and public charter schools are encouraged to utilize standardized MOU templates whenever available and to review MOUs annually to ensure ongoing compliance with current laws, district or school procedures, and student needs.

Prohibited Actions

The law prohibits LEAs and public charter schools from charging fees or imposing unnecessary barriers that hinder access to private pay behavioral services. *See* Tenn. Code Ann. § 49-10-1502(g).

For example, if a student with a disability receives private pay provider behavioral services, the LEA or public charter school should not require excessive documentation beyond what is necessary, as it may impact the private pay providers' ability to serve the student.

Schools may also not discriminate against students receiving private pay behavioral services or retaliate against parents seeking services.

For example, LEAs and public charter schools should be cautious to deny participation to a student with a disability at a school-sponsored event because the student is receiving private pay provider behavioral services.

Private Pay Provider Obligations

Private Pay Provider Responsibilities

Private pay providers entering school settings must recognize that schools are educational environments governed by federal and state education laws, student privacy requirements, and operational procedures designed to support all students.

Before providing services on school premises, private pay providers, including those providing clinical supervision, must complete required background checks at their own expense, provide proof of licensure or certification to the LEA, maintain professional liability insurance and provide a copy of their insurance to the LEA, execute and agree to the LEA's memorandum of understanding and, follow all school procedures and safety protocols.

Private pay providers should understand that all educational programming and decisions remain under the authority of the LEA and the IEP team. The private pay provider is not considered a required member of a student's IEP team, but may be invited by either the LEA or the student's parents if the provider has specialized knowledge regarding the student's needs.

Private pay providers are encouraged to participate and attend onboarding and school orientation activities, learn building-specific procedures, maintain professional boundaries, coordinate proactively with teachers and administrators, and always minimize disruption to the classroom instruction.

Service Delivery Expectations

Private pay behavioral services should support student participation within the educational environment while minimizing disruption to instruction.

Private pay providers should make reasonable efforts to align implementation with classroom expectations, instructional schedules, and school routines.

For example, if a classroom is engaged in direct whole-group instruction, private pay providers should avoid interventions that significantly interrupt instructional flow unless necessary for student safety.

Similarly, schools should consider how services can be integrated in ways that preserve student dignity and participation.

Private pay providers are encouraged to maintain a low-profile presence in the classrooms, respect teacher authority within the classroom, avoid engaging other students beyond incidental interactions or contradicting school personnel in the presence of students, and limit interruptions during instruction.

Failure of a private pay provider to adhere to established service delivery expectations may result in corrective action by the LEA or public charter school to preserve the safety and operation of the educational environment. While LEAs and public charter schools are encouraged to utilize collaborative problem-solving approaches whenever possible, repeated or significant noncompliance with established expectations may warrant restriction, suspension, or termination of private pay provider access to school premises.

Interactions with Other Students

The law permits LEAs and public charter schools to establish policies governing private pay provider interactions with students other than the identified student.

Generally, private pay providers should limit interactions with other students to incidental or naturally occurring interactions that support implementation of services.

For example, a provider supporting peer interaction during cooperative learning activities may naturally engage with peers participating in the activity. However, providers should not independently provide behavioral services, collect data, or intervene with students other than the identified student unless specifically authorized. Additionally, private pay providers should not share any confidential information regarding other students with anyone.

Parent-Initiated Services and Prohibition of Solicitation

Private pay providers or provider entities/agencies shall not engage in solicitation, marketing, cold calling, direct outreach, or other recruitment efforts directed toward schools, school personnel, students, or families for the purpose of initiating private pay services or obtaining clients on school premises or at school-sponsored activities.

Initiation of private pay services within the school setting must originate from the parent or legal guardian through a written request to the LEA or public charter school.

Any attempt by a private pay provider or entity to independently recruit students or families, market services through school personnel, distribute promotional materials without authorization, or otherwise solicit clients within the educational environment may result in denial or termination of access to school property and may be referred to the appropriate licensing or regulatory authority when appropriate.

Supervision and Clinical Oversight

The law requires private pay behavioral services delivered during the school day to be supervised by a licensed behavior analyst consistent with national certification standards.

Schools should understand that clinical supervision remains the responsibility of the private pay provider and supervising behavior analyst, not the LEA or public charter school.

Private pay providers should ensure adequate clinical supervision, fidelity of intervention implementation, and compliance with ethical and professional standards.

Any supervisor providing the required clinical supervision occurring during the school day and on school premises should adhere to the requirements listed above in the private pay provider responsibilities section.

Private Pay Entity Agreement

In addition to the private pay provider Memoranda of Understanding (MOUs), LEAs and public charter schools are strongly encouraged to establish separate overarching agreements with private pay provider entities or agencies whose employees or contractors may regularly access school premises to provide private pay behavioral services. Establishing entity-level agreements promotes consistency and accountability by outlining district-wide expectations applicable to all providers affiliated with the organization. These agreements may help reduce repetitive onboarding procedures, clarify organizational responsibilities, and establish uniform expectations regarding private pay provider conduct, communication, supervision, and compliance with district or

school procedures. Such agreements are particularly important when multiple private pay providers from the same entity serve students across multiple schools within the district.

Entity-level agreements should clearly identify the responsibilities of both the LEA or public charter school and the provider organization and should establish minimum expectations for all affiliated staff accessing school campuses. Agreements should address requirements related to licensure and certification verification, criminal background checks, professional liability insurance, supervision by appropriately licensed personnel, compliance with FERPA and confidentiality requirements, adherence to district or school safety procedures, and expectations regarding provider conduct within educational settings. Additionally, agreements should establish expectations regarding staff training, communication procedures, visitor protocols, emergency response procedures, data privacy protections, and procedures for addressing concerns related to provider performance or operational disruptions. LEAs and public charter schools may also require provider entities to identify a designated organizational point of contact responsible for coordinating with district or school personnel regarding staffing changes, scheduling concerns, supervision issues, or complaints.

The agreement should further outline the circumstances under which the LEA or public charter school may restrict, suspend, or terminate access for individual providers or the provider entity as a whole. Examples may include failure to maintain required credentials or insurance, repeated violations of school procedures, breaches of confidentiality, attempts to recruit additional clients on school premises, significant disruption to the educational environment, or failure to adequately supervise affiliated staff. By creating comprehensive entity-level agreements in addition to specific private pay provider MOUs, LEAs and public charter schools can strengthen operational consistency, reduce implementation conflicts, and better support safe and collaborative service delivery within Tennessee schools.

Restraint and Isolation

Private pay providers shall not utilize restraint or isolation procedures while providing services on school premises. The Tennessee Special Education Behavioral Supports Act (SEBSA) applies to authorized school personnel and establishes specific requirements, limitations, training obligations, documentation procedures, and oversight responsibilities

applicable to school employees and local educational agencies. *See* Tenn. Code Ann. §§ 49-10-1301 *et seq.* Because private pay providers are not employees, agents, or contractors of the LEA or public charter school for purposes of educational service delivery, they are not authorized to independently implement restraint or isolation procedures within the school setting.

If an emergency or crisis arises requiring emergency intervention, private pay providers must immediately notify appropriate school personnel and defer to trained school staff responsible for implementing district or school safety procedures and applicable legal requirements. Private pay providers may not direct nor initiate restraint or isolation procedures involving students on school property. Any violation of this requirement may result in immediate removal from campus, termination of provider access, and referral to appropriate licensing, certifying, or regulatory authorities, as appropriate.

Appeals and Dispute Resolution

Discontinuation or Termination of Services

LEAs and public charter schools should establish procedures for discontinuing or terminating private pay provider or private pay entity access when necessary.

Examples of conduct that may constitute a justification to discontinue or terminate private pay services include, but are not limited to:

- Repeatedly interrupting classroom instruction or interfering with teacher-led activities;
- Failing to follow agreed-upon communication or scheduling procedures;
- Engaging in interactions with other students beyond incidental interactions or authorized involvement;
- Directing, supervising, or contradicting school personnel in the presence of students;
- Implementing behavioral interventions in a manner that substantially disrupts the learning environment;
- Failing to comply with school safety procedures, confidentiality requirements, visitor procedures, or emergency protocols;
- Creating conditions that compromise student safety, dignity, or access to instruction; or
- Failing to maintain required licensure, certification, supervision, or insurance documentation.

When concerns regarding provider conduct or service implementation arise, the LEA or public charter school is encouraged to document the concerns and convene a meeting with the private pay provider, parent/guardian, and appropriate school personnel to review the concerns and discuss corrective actions. Corrective actions may include additional training, modification of service delivery practices, revised scheduling arrangements, changes in service location, or implementation of additional operational expectations designed to reduce disruption and support successful collaboration.

If concerns persist despite reasonable corrective efforts, or if the provider's conduct presents an immediate risk to student safety, confidentiality, instruction, or school operations, the LEA or public charter school may restrict, suspend, or terminate the provider's or entity's access to school premises. The LEA or public charter school should provide written notice outlining the basis for the action taken, the relevant policy or procedural violations, and any applicable process for review or appeal.

Nothing in this guidance shall be interpreted to prevent an LEA or public charter school from taking immediate action when necessary to address urgent safety concerns, serious operational disruptions, violations of law, or conduct that materially interferes with the educational rights of students or the functioning of the school environment.

Appeals

LEAs and public charter schools are required to establish a local appeal process through which a student's parent may seek resolution when disagreements arise regarding the implementation or continuation of private pay behavioral services during the school day.

LEAs and public charter schools are encouraged to establish appeal procedures that are clearly defined, consistently implemented, and easily accessible to families. At a minimum, local appeal procedures should include clearly established timelines for submitting concerns, responding to complaints, convening meetings, and issuing determinations. For example, districts and schools may establish procedures requiring acknowledgment of a complaint within a specified number of business days and issuance of a written determination within a reasonable timeframe following review.

Appeal procedures should also identify designated personnel responsible for reviewing disputes and issuing determinations. Depending on the nature of the concern, the designated personnel may include building administrators, special education supervisors, district-level administrators, or other designated personnel with authority to review implementation concerns and coordinate resolution efforts.

Written determinations should be provided to the parent/guardian following review of disputes to document the concerns raised, the information considered, the findings reached, and any resulting actions or required corrective measures.

The local appeal process established pursuant to this policy is intended solely to provide parents or guardians with an opportunity to seek resolution of disputes regarding the implementation of private pay services affecting their child. **Private pay providers, provider entities, or agencies shall not possess independent standing to initiate, request, or pursue appeals under the LEA's or public charter school's dispute resolution procedures.**

Nothing in this policy shall be interpreted to grant private pay providers or provider entities decision-making authority regarding a student's educational program, placement, access to educational settings, or operational procedures within the school environment. The LEA or public charter school retains final authority over school operations, campus access, instructional environments, and implementation of educational services related to the provision of a free, appropriate public education.

Contact Information

If you have any questions, please contact Dr. April Ebbinger, Director of Psychological and Behavioral Services at April.Ebbinger@tn.gov or 615-626-5102, or Julie Lane, Ed.S., Senior Manager of Complex Behavior at Julie.Lane@tn.gov or 423-646-0861.

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Appendix A

This Model Memorandum of Understanding is provided to local education agencies ("LEAs") and public charter schools to be used for the implementation of Chapter 1112 of the Public Acts of 2026, now codified at Tenn. Code Ann. § 49-10-1501 et. seq.

Model Memorandum of Understanding [Insert Public Agency Name] & [Insert Private Provider Name]

This Memorandum of Understanding ("MOU") is made and entered into by and between _____ ("Public Agency"), a Tennessee local educational agency or public charter school that is a party to this Memorandum of Understanding, as applicable, and [insert Therapy Agency Name] ("Private Provider"), a Tennessee entity whose principal office is located at [insert Private Provider's address], to establish the terms, conditions, and operational parameters under which the Private Provider's licensed or registered professionals may be granted physical access to Public Agency's schools during the school day to provide privately funded behavioral therapy or developmental services to eligible students, in compliance with Tenn. Code Ann. § 49-10-1501 et seq.

Whereas, the Private Provider is a medical services provider for children who can be hired directly by the parents/guardians of a Public Agency student to provide private pay therapy services during the school day ("Private Services");

Whereas, whether hired directly by parents/guardians or paid for by TennCare/Medicaid or a private health insurer, the Private Provider's access to a Public Agency student during the school day does not constitute an admission by Public Agency that Public Agency believes the student requires any private services at school under Title II of the Americans with Disabilities Act of 1990 ("ADA") (42 U.S.C. §§ 12131–12134), Section 504 of the Rehabilitation Act of 1973 ("Section 504") (29 U.S.C. § 794), or the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C. §§ 1401–1419);

Whereas, nothing should be read or inferred within this MOU to require Public Agency to assume any financial responsibility whatsoever in relation to compensating Private Provider;

Whereas, at all times relevant to this MOU, Public Agency maintains sole discretion to approve, deny, limit, suspend, or revoke access of any Private Provider representative to enter or access Public Agency schools;

Therefore, in consideration of the mutual promises and covenants contained in this MOU, the parties agree as follows:

- 1. Duties of the Private Provider:** At all times during the Term, the Private Provider shall:
 - a. Ensure each Private Provider therapist providing services to a Public Agency student during the school day is licensed with the appropriate Tennessee regulatory board/agency;
 - b. Provide a written description of each Private Provider therapist to Public Agency, including, but not limited to, full name, cellular phone number, and a basic description of the private services to be provided to any Public Agency student during the school day;
 - c. Ensure each Private Provider therapist, and any other agent or employee of Private Provider, who will be on school property while children are present or who could come in direct contact with a Public Agency student, have completed all required TBI and FBI fingerprint background checks in compliance with Tenn. Code Ann. § 49-5-413, with all such background checks being performed at the Private Provider's expense;
 - d. Ensure that each Private Provider therapist providing services pursuant to this MOU is not listed on the Tennessee Sex Offender or Abuse Registry or a National Sex Offender or Abuse Registry;
 - e. Ensure that each Private Provider therapist is properly trained on how to protect and keep strictly confidential all information related to any Public Agency students under their care or in their case load, including but not limited to medical and educational information, as neither the Private Provider nor its agents or employees may share or discuss confidential Public Agency student information with any person or entity outside of appropriate Public Agency personnel;
 - i. *Notwithstanding the foregoing, when providing services pursuant to this MOU to a Public Agency student, the Private Provider and its agents and employees may communicate with that student's parents or guardians regarding the student's services and related information, as permitted by applicable federal and State law.*
 - ii. *Under no circumstances shall the Private Provider, or its agents or employees, disclose, collect, share, or communicate confidential information concerning any other Public Agency student not under their care to a parent, guardian, third party, or other unauthorized individual.*

- f. Confirm that each Private Provider therapist will refrain from, in any way, interfering with or disrupting the delivery of classroom instruction, or other services or accommodations, provided by Public Agency personnel;
- g. Ensure that each Private Provider therapist will comply with all applicable laws, regulations, and Public Agency policies and procedures, including, but not limited to, notice and check-in procedures, harassment policies, discrimination policies, retaliation policies, codes of conduct, school handbooks, laws mandating the reporting of abuse and/or neglect, the use of cellular phone while in the presence of students, and the like;
- h. Confirm that Private Provider, at all times relevant, shall remain the exclusive employer and supervisor of its agents and employees, and, similarly, that Public Agency shall not act as an employer, representative, or a joint employer of any of the Private Provider's therapists or other agents/employees;
- i. Acknowledge that the Public Agency retains sole responsibility for providing students with a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Education Act (IDEA) and applicable Tennessee laws. Nothing contained in this Agreement shall be interpreted as transferring, delegating, or diminishing the Public Agency's legal responsibility to provide educational services;
- j. Ensure that Private Provider services are intended solely to supplement the student's educational program and shall not replace, reduce, or satisfy any services required by the student's Individualized Education Program (IEP), Behavior Intervention Plan (BIP), or other educational supports unless specifically agreed upon by the parent and permitted by applicable law. The Private Provider acknowledges that educational programming, instructional decisions, placement determinations, accommodations, modifications, discipline, and implementation of the IEP remain solely under the authority of the Public Agency and the student's IEP Team; and
- k. Designate a supervising Registered Behavior Technician ("RBT") or organizational representative responsible for communication with Public Agency personnel.

2. Duties of Public Agency: At all times during the Term, Public Agency shall:

- a. Communicate the provisions and requirements of this MOU to school administrators and relevant school support personnel;
- b. Public Agency administrators, after obtaining written consent from parents/guardians, will coordinate with each Private Provider therapist to identify agreeable scheduling and location options that are compatible with the student's educational program and school operations for the performance of any private services;

- c. Communicate with the Private Provider regarding any issues and/or concerns related to it or its therapists and/or supervisors (e.g., unprofessional conduct; inappropriate behavior; neglect of duty; repeated tardiness or absenteeism; etc.), and, if possible and within its discretion, work with the Private Provider to ensure such issues or concerns are addressed;
 - i. *If the Private Provider fails to take reasonable and timely steps to address issues and/or concerns related to a therapist and/or a supervisor, then Public Agency retains the unilateral right to provide ten (10) days written notice to the Private Provider before revoking or suspending school property access to any such therapist and/or supervisor. In cases of emergency involving possible student safety, such access can be revoked or suspended by Public Agency without prior notice at the Public Agency's discretion.*
- d. Ensure Public Agency administrators and other personnel do not ask or require the Private Provider's therapists and/or supervisors to perform or assist with school-related activities, including, but not limited to, academics, extracurriculars, etc.;
- e. Refer all human resource-related questions and/or complaints from the Private Provider's therapists and/or supervisors back to the Private Provider, including, but not limited to, questions or complaints regarding pay, breaks, leave, vacation, etc.; and
- f. Designate a building administrator or other Public Agency employee to serve as the Private Provider's primary point of contact. Routine communication shall occur through these designated representatives unless otherwise authorized.

3. Term:

- a. This MOU shall stand effective as of _____, 2026, and shall continue through [EXPERATION DATE], unless otherwise properly amended or terminated.

4. Scope of Services & General Conditions

- a. *Parental Authorization Required:* The Private Provider shall not deploy any provider to a Public Agency school until the Public Agency has confirmed receipt of a fully executed Parental Consent and Liability Release Form from the student's parent or legal guardian. Receipt of a parental consent form does not constitute final approval and access. Public Agency retains final approval to grant access to schools for Private Provider representatives, subject to this MOU, applicable law, and operational considerations.

- b. *No Public Agency Cost:* The Public Agency is not a party to any financial agreement between a parent or guardian and the Private Provider. The Private Provider agrees that no fees, billing, or financial obligations shall be sought from or levied against the Public Agency for services rendered under this MOU.

5. Zero-Disruption & Instructional Integrity Standards

- a. Private Provider personnel shall support the student's participation within the least restrictive educational environment whenever appropriate. Services should be delivered in a manner that promotes the student's meaningful participation in classroom instruction, peer interactions, and school activities, while minimizing unnecessary removal from instructional settings.
- b. The Private Provider explicitly acknowledges that the Public Agency's primary statutory obligations are to maintain a safe, orderly learning environment and to deliver core academic instruction. The Private Provider agrees to the following operational guardrails:
 - i. *Non-Intrusive Presence:* Private Provider staff must maintain a non-intrusive presence in the classroom. Private Provider staff shall not modify classroom spaces; direct or correct Public Agency personnel; or introduce materials, tokens, or equipment that may cause physical, visual, or auditory distractions to other students.
 - ii. *Non-Interference with Educational Goals:* Private Provider services must strictly supplement, and shall not contradict, alter, override, or undermine, the student's Individualized Education Program (IEP), 504 Plan, or general education instructional objectives. If a Public Agency teacher or administrator determines that a Private Provider intervention conflicts with the Public Agency's curriculum or instructional strategies, the Public Agency's plan takes absolute precedence.
 - iii. *Administrative Control of Scheduling:* To prevent academic fragmentation, the school principal, or their designee, retains final authority over the timing, frequency, and duration of the Private Provider's sessions.

6. Personnel Requirements & Security Compliance

- a. *Background Check Verification:* Prior to entering any Public Agency facility, the Private Provider must ensure and provide proof that its personnel have cleared a State and national fingerprint-based criminal history check, as well as State sex offender and vulnerable person registries, in strict compliance with Tenn. Code Ann. § 49-5-413.
- b. *Provider Credentials:* The Private Provider shall maintain current licensure and certification for all personnel providing services under this MOU and shall

immediately notify the Public Agency of any lapse, suspension, investigation, or disciplinary action affecting a provider's credentials.

- c. *Registered Behavior Technicians*: If Registered Behavior Technicians (RBTs) provide services pursuant to this MOU, the Private Provider shall identify the supervising Licensed Behavior Analyst responsible for clinical oversight. The Public Agency may require that clinical supervision occurring on school premises be conducted in person to ensure appropriate oversight of services delivered within the educational environment.
- d. *Identification & Building Safety*: Private Provider personnel must strictly adhere to all school security protocols, including but not limited to checking in/out via the front office's visitor management system and visibly wearing a Public Agency-issued or approved identification badge while on school property.
- e. *Strict Student Limits*: Private Provider personnel are only authorized to interact with and collect data on the specific student(s) for whom they have parental and Public Agency clearance. Interacting with, evaluating, or recording other students in the classroom is strictly prohibited.
- f. *Code of Conduct*: Private Provider personnel must adhere to all applicable Public Agency and school codes of conduct related to visitors at the schools. Private Provider personnel shall also conduct themselves professionally and shall abide by any dress code or code of professional conduct established by the local school board or building-level administration.

7. Student Privacy & Confidentiality

- a. The Private Provider and its staff shall comply with the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g). Private Provider staff may have access to students' personally identifiable information only to the extent permitted by the parent's written release and shall not access, or attempt to access, records of any other Public Agency student.
- b. Private Provider personnel shall not photograph, video record, audio record, livestream, or otherwise electronically capture any Public Agency student, Public Agency curriculum or activities, or Public Agency student confidential information without prior written authorization from the Public Agency and any legally required parental consent.
- c. Records created and maintained by the Private Provider shall remain exclusive Private Provider records unless otherwise required by law and shall not be considered Public Agency Records.

8. Immediate Termination for Breach

- a. The Public Agency reserves the right to immediately suspend or permanently terminate this MOU or revoke individual access privileges of any Private Provider employee or agent, for cause and without prior notice, if a material breach occurs. A breach includes, but is not limited to:
 - i. Any disruption to the classroom environment, instruction, or school operations;
 - ii. Failure to maintain professional licensure, credentials, supervision, or insurance;
 - iii. Violation of building safety protocol or failure to maintain compliant background checks;
 - iv. Conduct that interferes with the Public Agency's ability to provide FAPE in the student's LRE;
 - v. Breach of FERPA or other statutory or Public Agency specific confidentiality obligations;
 - vi. Conduct creating an unsafe educational environment;
 - vii. Unauthorized interaction with, or data collection related to, other Public Agency students, including, but not limited to, use of any audio/visual device that captures, in whole or in part, the sound or image of any other Public Agency student; or
 - viii. Failure to comply with this MOU.

9. Dispute Resolution and Internal Appeal

- a. *Building-Level Resolution:* Any concerns regarding classroom disruption or service coordination shall first be addressed between the building principal and the Private Provider's supervising coordinator.
- b. *Appeal to Chief Administrator:* In the event that a building-level decision results in a denial or permanent termination of access to school property, the Private Provider or the respective student's parent or guardian may file a written Request for Reconsideration with the chief executive officer, director of schools, or other chief administrative official of the Public Agency, as applicable, within ten (10) business days of the notice.
- c. *Final Authority:* The decision of the chief executive officer, director of schools, or other chief administrative official of the Public Agency regarding physical access to Public Agency property shall be final, binding, and non-appealable.

10. Indemnification and Insurance

- a. The Private Provider agrees to protect, defend, indemnify, and hold harmless the Public Agency, its board members, officers, employees, and agents from any and all claims, damages, liabilities, or demands arising out of or related to the

negligent acts, omissions, or willful misconduct of the Private Provider or its agents and employees.

- b. Before the commencement of any services on Public Agency property, the Private Provider must provide proof of the following insurance coverage and policy limits:
- i. Commercial General Liability Insurance. The Private Provider shall maintain single limits not less than \$AMOUNT per occurrence and name the Public Agency as an additionally insured party on this policy. Supplemental policies related to sexual abuse or misconduct may be required if such are excluded from the general liability policy.
 - ii. Sexual Abuse and Molestation Insurance. The Private Provider shall maintain sexual abuse and molestation insurance written on either an occurrence or a claims-made basis. Any sexual abuse and molestation insurance policy shall have a limit not less than \$AMOUNT per occurrence and \$AMOUNT in the aggregate .

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding.

PRIVATE PROVIDER:

PRIVATE PROVIDER SIGNATURE

DATE

PRINTED NAME AND TITLE OF PRIVATE PROVIDER SIGNATORY

PUBLIC AGENCY:

PUBLIC AGENCY SIGNATURE

DATE

PRINTED NAME AND TITLE OF PUBLIC AGENCY SIGNATORY