



BILL LEE
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
NINTH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

PENNY SCHWINN
COMMISSIONER

Via Electronic Mail

November 30, 2021

Leah Watkins, Director of Schools
Henry County Schools
217 Grove Boulevard
Paris, TN 38242

Re: Waiver Request for Physical Education Licensing Requirements

Dear Director Watkins:

I am in receipt of your October 4, 2021 request for a waiver of Tenn. Code Ann. §49-6-1021 and Tennessee State Board of Education Policy 4.206 both regarding the physical activity and physical education requirements for students in grades kindergarten through twelve. Tenn. Code Ann. §49-6-1021 (provided below) contains both instructional requirements and licensure requirements for educators providing instruction.

49-6-1021. Opportunities for physical activity.

- (a) *In accordance with § 49-6-1022, it shall be the duty of each LEA to integrate:*
- (1) *For elementary school students, a minimum of one hundred thirty (130) minutes of physical activity per full school week; and*
 - (2) *For middle and high school students, a minimum of ninety (90) minutes of physical activity per full school week.*
- (b) *Physical activity may include walking, jumping rope, playing volleyball, or other forms of physical activity that promote fitness and well-being; however, walking to and from class shall not be considered physical activity for purposes of this section. To satisfy the requirements of subdivision (a)(1), an LEA shall offer elementary students at least one fifteen-minute (15) minute period of physical activity per day.*
- (c) *The office of coordinated school health in the department of education shall provide an annual report by October 1, to the education committees of the house of representatives and the education committee of the senate on the implementation of subsection (a). The report shall contain at least the following information:*
- (1) *The percentage of public schools that integrate the required physical activity into the instructional school day in compliance with subsection (a);*
 - (2) *The types of physical activities that are used to meet the physical activity requirement;*
 - (3) *Any barriers that have limited full compliance with the physical activity requirement;*
 - (4) *Innovative methods that schools use to comply with the physical activity requirement;*
 - (5) *The ranking of Tennessee schools in providing physical activity and physical education as compared to other states;*
 - (6) *Relevant data or studies that link physical activity or physical education to academic performance in*

students;

- (7) *Relevant data or studies showing whether increased physical activity or physical education lead to better health outcomes;*
 - (8) *The annual percentage of increase or decrease in compliance with the physical activity requirement in school districts with average daily membership of twenty-five thousand (25,000) or more students; and*
 - (9) *An overall summary and a set of recommendations to promote active living in the youth of this state, including, but not limited to, suggestions for increasing compliance with the physical activity requirement that can be implemented with minimal cost.*
- (d) *Nothing in this section shall prevent an LEA from integrating more student physical activity for elementary, middle, and high school students during the school week than required in subsection (a). The requirements of subsection (a) may work in conjunction with the school's physical education program, but subsection (a) shall not replace the current physical education program in a school.*
- (e)
- (1) *In addition to the integration of physical activity into the instructional school day according to subsection (a), each LEA shall require each student in elementary school to participate in a physical education class that meets at least two (2) times per full school week during the school year. The total physical education class time each full school week shall be no less than sixty (60) minutes.*
 - (2) *The physical education class shall meet the needs of students of all physical ability levels, including students with disabilities who shall participate in moderate physical activity to the extent appropriate as determined by the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 701 et seq.), or the student's individualized education program. An accommodation or alternative physical activity shall be provided for children with disabilities, if necessary.*
 - (3) *The physical education class required by this subsection (e) shall be taught by a licensed teacher with an endorsement in physical education or by a specialist in physical education.*
 - (4) *A student shall be excused from a physical education class for medical reasons. The LEA may require a parent or legal guardian to provide documentation of a student's reason for being excused from the physical education class.*
 - (5)
 - (A) *This subsection (e) shall not apply to any county having a population of not less than thirty-eight thousand three hundred (38,300) nor more than thirty-eight thousand four hundred (38,400), according to the 2010 federal census or any subsequent federal census, until the 2021-2022 school year; and*
 - (B) *This subsection (e) shall not apply to any county having a population of not less than fifty-seven thousand four hundred (57,400) nor more than fifty-seven thousand five hundred (57,500), according to the 2010 federal census or any subsequent federal census, until the 2021-2022 school year.*
- (f) *Each LEA shall file an annual report with the commissioner of education verifying that the LEA has met the physical education requirements of this section.*
- (g) *Subsections (e) and (f) apply to the 2020-2021 school year and each school year thereafter.*

The department generally does not approve waivers of curriculum or instructional requirements in the law unless the LEA can demonstrate unique circumstances, beyond the LEA's control, that prevent the LEA from complying with the curriculum or instructional requirements. The department has never granted a waiver of the physical activity and physical education instructional requirements in the law. Even when the Tennessee General Assembly passed

Chapter 652 of the Public Acts of 2020 granting the commissioner of education the authority, upon approval of the State Board of Education, to waive state statutes and/or state board rules that inhibit or hinder an LEA's ability to meet the LEA's goals or comply with the LEA's mission due solely to the outbreak of COVID-19, the department and board declined to grant requests to waive the instructional requirements in Tenn. Code Ann. §49-6-1021.

Regarding your request for a waiver of the licensure requirements for educators found in § 49-6-1021(e)(3), endorsement exemptions are granted for individual educators on a case-by-case basis. Guidance for submitting endorsement exemption requests can be found under "Licensure Forms - Waivers and Permits" at the following link: <https://www.tn.gov/education/licensing/licensure-resources.html>.

While I can certainly appreciate the difficulties you have identified in your waiver request form in complying with the law, I must deny your waiver request at this time. I have copied Lori.Paisley@tn.gov, senior director for coordinated school health, and Judy.Spencer@tn.gov, senior director of choice on this communication. They stand ready to assist you by providing resources and technical assistance on how virtual schools may meet the physical activity and physical education requirements in the law.

Please feel free to reach out if you have any questions about this or wish to discuss.

Sincerely,

Dr. Penny Schwinn
Commissioner

cc: Judy Spencer, Senior Director of Choice
Lori Paisley, Senior Director of Coordinated School Health, District Operations



Local Education Agency Waiver Request

Pursuant to Tennessee Code Annotated § 49-1-201(d), upon application by the local education agency for one (1) or more of its schools, the commissioner of education may waive any state board rule or statute that inhibits or hinders the LEA's ability to meet its goals or comply with its mission. Please submit completed forms to Commissioner.Schwinn@tn.gov. Following review by the commissioner, the district will be notified in writing if the waiver request is approved or denied. Unless otherwise stated, all waivers granted by the commissioner shall be granted for one year terms.

Waivers may **not** be granted by the commissioner for regulatory or statutory requirements related to:

- (A) Federal and state civil rights;
- (B) Federal, state and local health and safety;
- (C) Federal and state public records;
- (D) Immunizations;
- (E) Possession of weapons on school grounds;
- (F) Background checks and fingerprinting of personnel;
- (G) Federal and state special education services;
- (H) Student due process;
- (I) Parental rights;
- (J) Federal and state student assessment and accountability;
- (K) Open meetings;
- (L) Educators' due process rights;
- (M) Reductions in teachers' salaries;
- (N) Employee rights, salaries and benefits; and
- (O) Licensure of employees.

Local Education Agency:

Henry County School System

School Information (if applicable):

School Name:
Henry County Virtual Academy

Street:
937 Pioneer Road

City: Henry Zip Code: 38231

Please list the statute(s) and/or state board rule(s) for which waiver is being requested:

This waiver is being requested for TCA 49-6-1021 and Tennessee State Board of Education Policy 4.206 both regarding Physical Activity and Physical Education for students in grades K-12.

Explanation of how the statute(s) and/or state board rule(s) inhibits or hinders the local education agency's ability to meet its goals or comply with its mission:

The Henry County Virtual Academy (HCVA) is in its second year of operation as a school in the Henry County School System. The HCVA currently serves about 130 students in grades K-12 utilizing the talents of three full-time teachers and a part-time principal. While the LEA understands the mandate of physical activity and physical education for all students, compliance at the HCVA is hindered at this time.

None of the three teachers at the HCVA have an endorsement in Physical Education. The LEA focused on having teachers with endorsements in elementary grades, middle grades, some high school EOC subjects and special populations. To date, physical education resources provided to teachers by the state, focus on in person learning only. The preparation of any teacher who instructs physical education in virtual classes must be able to provide academically sound instruction.

Instructional delivery at a community-wide destination presents transportation challenges. Online instructional delivery with videos raises concerns of participation evidence while delivery by zoom type meetings raises concerns about visibility to others, confidentiality of student needs, and physical activity dress code.

Last, the State Board of Education finalized revision of the physical activity policy near the end of July, only about a week before school started in Henry County. The details and expectations of the revised policy and more specifically as it applies to virtual learning is just being shared with LEAs. All budgetary and staffing needs were finalized long before the policy revision or clear communications of expectations.

Expected duration of the condition necessitating this waiver request:

The currently expected duration of the conditions necessitating this waiver is through the 2021-2022 and 2022-2023 school years at a minimum. The Henry County School System plans to use this time to look at endorsement options for current HCVA teachers to be able to comply with all physical activity and physical education state requirements of the students at the various grade levels and to consider any budgetary adjustments for an additional full or part-time position at HCVA that might be needed. Any teacher currently holding a Tennessee Educator's License with an endorsement in Physical Education K-12 and certainly any teacher who adds the endorsement by Praxis will need training for delivery of physical activity and physical education standards in the virtual environment. The LEA would use this time to research best practices and innovative instructional methods for physical activity and education in the virtual environment and provide the necessary training to future HCVA physical education teachers. In addition, the LEA would determine methods to capture proof of student compliance and data collection regarding student health and well-being in the virtual setting.

Director of Schools (Signature)



Print Name

Leah Watkins

Date

10/4/21

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