December 11, 2015

MEMORANDUM

TO: City and County Superintendents of Education

FROM: Thomas R. Bice
       State Superintendent of Education

SUBJECT: Virtual Schools (and Programs)

As you know, Act 2015-89 requires each local education agency (LEA) to adopt a policy providing, at a minimum, a virtual education option for eligible students in Grades 9-12 before the 2016-2017 school year.

The LEAs have complete autonomy in and responsibility for the development and implementation of the virtual education option; however, please keep in mind that all public education programs are required to abide by federal education statutes, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act (ADA).

Please see the enclosed “Virtual Schools (and Programs) Guidance for Students with Disabilities” for additional information.

Should you need further assistance in this matter, please contact either Dr. DaLee Chambers or Mr. Joe Eiland at (334) 242-8114. You may also contact them by e-mail at dalcecr@alsde.edu or jeiland@alsde.edu.

TRB/DC/SR

Enclosure

cc: City and County Special Education Coordinators
    Mrs. Sherrill W. Parris
    Dr. Melinda Maddox
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    Dr. DaLee Chambers
    Mr. Joe Eiland

FY16-2023
Virtual Schools (and Programs)
Guidance for Students with Disabilities

Virtual public schools (and programs) are required to abide by all federal education statutes, including the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act (ADA).

Child Find Mandate
The IDEA requires each state to "have in effect policies and procedures to ensure that all children with disabilities residing in the state who are in need of special education and related services are identified, located, and evaluated." The requirement to identify, locate, and evaluate children with disabilities who are in need of special education and related services applies to all public schools, both traditional (i.e., brick and mortar) and virtual. Identifying, locating, and evaluating students who are in need of special education and related services is an affirmative duty that may not be ignored.

OCR Requirements for Virtual Schools
According to the United States Department of Education, Office for Civil Rights, virtual public schools must:

- Develop policies and procedures so that students with disabilities are appropriately identified, evaluated, and provided services to ensure they receive a Free Appropriate Public Education (FAPE).
- Ensure websites and on-line learning environments are accessible to individuals with disabilities, including students with visual, hearing, or print disabilities and those who otherwise require use of assistive technology to access the school's program.


Enrollment of Students with Disabilities in Virtual Schools (and Programs)
- All students, regardless of disability, must be provided equal opportunity to participate in and benefit from a virtual school or program. Discrimination (e.g., refusing to accept and/or counseling students out of applying) based on disability is prohibited by the ADA.
- LEA-Arranged Students. If the LEA of residence of a student with a disability contracts with another LEA to provide educational services through a virtual school, the LEA where the student resides is responsible for either providing the special education and related services or contracting those services for a student with a disability.
- Out-of-District Students. If a student with a disability applies and is accepted as an out-of-district enrollee, the LEA sponsoring the virtual school is responsible for the educational program and the special education and related services.
• LEAs that enroll students who reside outside of the local district must identify a means to complete the evaluation and/or reevaluation components of the IDEA.

• LEAs that enroll students who reside outside of the local district must ensure compliance with assessment and accountability requirements in whatever manner these requirements apply to students enrolled in virtual schools and programs.

**Availability and Accessibility of Virtual Schools (and Programs)**

• Virtual schools (and programs) must be wholly available to all students with disabilities.

• Virtual schools (and programs) may have admission criteria for all students. Virtual schools (and programs) may not, however, have separate requirements for students with disabilities.

• An IEP Team meeting should be held after a student with a disability applies to and meets criteria for admission in a virtual school (or program) to determine if the virtual setting is an appropriate placement for the student. The IEP Team should determine if the student can be successful in the virtual environment, with or without accommodations.

• The IEP Team must start with the presumption that the virtual setting is an appropriate environment and determine what special education and related services are needed in order for the student to participate in and benefit from the virtual school or program.

• Parents have a right to revoke consent for all special education services; however, revoking consent should never be a condition of application for a virtual school or program or a requirement for admission in a virtual school or program.

**REMININDER: Providing a Free Appropriate Public Education (FAPE) for Students with Disabilities**

• A Free Appropriate Public Education is required for students with disabilities.

• Local education agencies (LEAs) can fail to provide FAPE in a variety of ways:
  - Violation of Child Find provisions, failure to Identify, and NO services.
  - Failure to offer an appropriate IEP, **INAPPROPRIATE Services**, and services that do not meet the student’s unique needs.
  - Failure to implement an appropriate IEP, the **Right Services**, and NO Delivery.
  - Inappropriate implementation of an appropriate IEP, the **Right Services**, and **INCORRECT/INADEQUATE** delivery.