

## VIRTUAL SCHOOL PROGRAMS AND CYBER CHARTER SCHOOLS: WHAT YOU NEED TO KNOW

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During the COVID-19 pandemic, many students across Pennsylvania were exposed to “virtual learning” or “virtual school programs” for the first time. These are programs operated by a school district or charter school that offer an education program through computer-based or online programs and may also be referred to as “cyber” learning. This fact sheet discusses district virtual school programs and cyber charter schools. It also highlights important factors for students and families to consider, including a student’s rights if a school says the student must participate in a virtual program. This document also addresses how to evaluate virtual programs and cyber charter schools so that families can make informed decisions.

### What kind of virtual programs are there in PA? Are they available in all public schools?

Not all public schools offer virtual programs. There are a few different kinds of virtual programs in PA. Some, but not all, are offered through public schools. Examples of virtual programs in public schools include:

- **Cyber charter schools:** The first cyber charter school opened in Pennsylvania in 1998. Today there are 14 cyber charter schools serving over 57,000 students across the commonwealth.<sup>1</sup> Like all charter schools, cyber charters **are public schools**. They are authorized by the Pennsylvania Department of Education. A cyber charter’s application is subject to renewal every five years.<sup>2</sup>
- **Virtual programs operated by a school district:** Since the COVID-19 pandemic, many more school districts are now offering their own virtual programs. In some districts, a virtual program exists as its own separate school or as a program within the district. Any virtual program operated by a public school district is a public school.
- **Virtual programs in a residential placement for court-placed students:** Some of these programs are operated by a local educational agency such as a school district or intermediate unit (IU) under the legal obligation of that local educational agency (LEA) as a “host school district” or IU that contracts with the host district or residential placement. In these situations, the host school district or IU is the public entity that must provide a state-compliant education to students educated through its district- or IU-operated virtual program.<sup>3</sup>
- **Some virtual programs are not public schools:** There are virtual programs that are licensed private academic schools, nonlicensed nonpublic schools, and for-profit or nonprofit and/or religiously operated virtual programs. Such programs are **not** public schools. These programs are not required to comply with all public school curriculum requirements. However, if the

virtual program is offered for court-placed students in the dependency or delinquency system, a Pennsylvania public school district or intermediate unit will have important oversight responsibilities and must ensure that all students receive a certain level of education and that students with disabilities receive a free, appropriate public education (FAPE). A private residential facility that contracts with a school district or IU also agrees to provide a certain level of education. These programs must also comply with certain anti-discrimination laws, depending on their receipt of federal funding and religious status.

### **Are all virtual programs required to provide a free, appropriate public education to students with disabilities?**

Virtual programs operated or overseen by public schools—cyber charter schools or a school district or IU—are required to ensure that all students with disabilities are identified, evaluated, and receive a FAPE. In addition, if your child has an IEP in a public school and has been placed in a private virtual program through that IEP, your public school district is responsible for ensuring that you receive a FAPE. For more information, see our comprehensive parent’s guide to [The Right to Special Education in Pennsylvania](#). If you have questions about how the law applies to your specific situation, contact ELC’s [Helpline](#) or an attorney of your choice.

### **I’m thinking about going to a virtual school or program. What are some things I should consider?**

Our partner organization PA Schools Work, of which ELC is a founding member, has created a helpful acronym for five important things to “[C.H.E.C.K. before you choose](#)” a cyber charter school. This checklist also applies to virtual programs in other settings. These five factors are:

#### **Certified Teachers**

Although they are public schools, cyber charter schools may have different requirements for hiring certified teachers. According to PA Schools Work, up to 25% of teachers at each cyber charter can be uncertified, and sometimes teachers can be certified but not at the appropriate level. At other public schools, there is a requirement that 100% of teachers, including those teaching through a virtual program, be certified. Before enrolling in any school, you can ask about who the teachers are and ask about their certifications by subject, grade level, and special expertise such as special education or English as a Second Language (ESOL) certifications.

#### **Hours of Instruction and Type of Virtual Program**

Virtual programs vary widely when it comes to the number of hours and the format of instruction they provide. Before choosing a virtual program, you can ask whether it uses mainly live instruction or prerecorded learning.

- Live instruction could also be referred to as “synchronous” or real-time learning, as distinct from “asynchronous” or prerecorded instruction.
- Live instruction typically means a teacher is present over Zoom or another video platform. According to PA Schools Work, an average 2nd grader in a cyber

charter school receives about 36 minutes of live instruction daily while children in brick-and-mortar schools receive five hours daily.

- Asynchronous learning could mean that the program uses prerecorded videos or other activities that students click through to learn about different topics, but there may not be a teacher available virtually in the moment to answer questions or help students to stay focused.

Before choosing a virtual program, you can ask **how many hours of live teaching** there are per day and what kind of activities are used to help students learn.

### Education Performance Rating

Another important consideration is academic success. Virtual programs may vary regarding how well their students perform on state standardized assessments. Cyber charter schools in particular consistently receive low ratings for academic performance, meaning students in cyber charter schools receive lower scores on the PSSA and Keystone exams compared with students in many public school districts. Some also have lower graduation rates, particularly for students with disabilities, who often struggle to learn virtually. You can see more information about academic performance on the [Future Ready PA database](#) and [PA Schools Work](#).

### Can I Come Back? (in-district vs. charter vs. nonpublic)

According to PA Schools Work, if you have a choice between an in-district virtual option and a cyber charter school, one advantage of choosing the in-district option is that it might lead to an easier transition back to in-person learning should you want to make that choice in the future. The ability to return to in-person school may be a factor that you want to ask about and consider regardless of what kind of virtual option you are looking into.

### Kid Time

Many virtual programs require parents or guardians to be available to help the student to stay on task and learn throughout the school day. According to PA Schools Work, the average parent of a K-5th grade student in a cyber charter school is expected to serve as a “learning coach” for their child for approximately five hours per day—25 hours per week. (For comparison, this is the **same** as the number of hours of instruction that in-person schools are required to provide.)

### **Will I still have all the same rights as in a regular school? What basic supports can I expect?**

Charter schools and in-district virtual programs are public schools. Just like any other public school, these programs must comply with state and federal laws, including curriculum requirements, and they must provide equal access to education. For more information, see our [annual Back-to-School Guide](#), which includes details on many important areas of rights such as enrollment, McKinney-Vento, Act 1, school discipline, and more.

Private and nonlicensed programs are similar to other private schools in that they do not have to follow all the same legal requirements as public schools, which receive federal and state funding. They are not required to follow state curriculum requirements or provide services and supports to students with disabilities and multilingual learners. However, many anti-discrimination laws apply to private schools that receive federal funding (or have nonprofit status) and are not religious schools.<sup>4</sup>

Most cyber schools or virtual programs provide each student with technology such as a laptop (as a loan while the student is in the program), but few programs provide internet connectivity.

### Do cyber charter schools serve students with IEPs and multilingual learners?

Yes. Cyber charter schools (and all charter schools) are public schools and are **required** under state and federal law to serve all students, including those with IEPs and multilingual students—but they may have limited experience, staff, and services to effectively address a child’s disability category. Moreover, there may be instances when a cyber school is unable to meet a student’s needs. In those cases, the cyber charter, like a school district, must provide an alternative school placement in a school setting that meets the child’s needs as determined by the child’s IEP team.

To find out whether a Pennsylvania cyber charter school has experience serving English learners, [click here](#), search for the school by name, and click on the tab labeled “School Fast Facts.”

To find out how many children a program currently serves with your child’s type of disability, [click here](#), scroll down to the name of the school, and click on the report for the most recent year.

Learn more about the rights of multilingual learners and students with IEPs in virtual programs in the Know Your Rights section below.

### Can cyber charters and virtual programs suspend and expel students in the same manner as in-person schools? Are there concerns about discriminatory use of exclusionary discipline by virtual programs?

School districts and cyber charters have the same authority to discipline, suspend, or expel students. Unfortunately, exclusionary discipline has been used disproportionately to push students of color, students with disabilities, and LGBTQ+ students out of the classroom. This is deeply concerning, and it occurs in virtual programs just as in other schools. Scholars Thalia González, Alexis Etow, and Cesar De La Vega shared some examples in their article [“School Discipline is a Public Health Crisis”](#):

*Even the online classrooms that COVID-19 has necessitated are not immune to the racialized nature of exclusionary discipline. In Colorado, a 12-year-old Black student was suspended and referred to law enforcement for [playing with a toy gun during a virtual art class](#). In Michigan, a [15-year-old Black student was incarcerated for violating probation when she did not complete online coursework after her school transitioned to remote learning](#). Both of these students have attention deficit hyperactivity disorder (ADHD), a fact that affirms longstanding data illustrating the [vulnerability](#) and [disparate](#) impact of punitive discipline policies on students with [intersectional identities](#).*

Keep reading below for more information on your rights if you are facing exclusionary discipline (suspension or expulsion) in a virtual program—or if you are being sent to a virtual program as a form of discipline from an in-person school.

### **My (virtual) school is disciplining me for something that they saw on-camera in my home. What are my rights?**

If your virtual program is a public school (such as a virtual option within your public school district, or a cyber charter school), you have all the same rights as if you were being disciplined by an in-person public school. For more information about these rights, see ELC’s [Suspensions fact sheet](#) and [Suspension & Expulsion Toolkit](#).

There are some important exceptions. For example, although the law provides that schools may punish students for possessing a weapon “in school,” you cannot be disciplined under this same law for possessing a weapon in your home when learning virtually. These rules are aimed at keeping guns and weapons off school campuses and away from school-sponsored activities.

While this issue has not been litigated in Pennsylvania, other state jurisdictions have rejected the extension of zero-tolerance weapons policies to virtual learning. For example, in Louisiana, after a 4<sup>th</sup> grade student was suspended for having a BB gun at home during virtual learning, the state passed a law protecting students’ privacy rights and requiring schools to develop better discipline policies for online learning.<sup>5</sup> For more information, see ELC’s [fact sheet on Act 26](#).

### **I attend a regular school but was told I have to attend class virtually because of a discipline incident. What are my rights?**

Recently, many schools have begun to exclude students from school by forcing them to participate “virtually only” rather than coming to school in person. For example, a parent might be told to pick their child up from school and then advised them that the child must complete the rest of the school week online.

**Any time a school is excluding you from the school building constitutes an out-of-school suspension or expulsion**, depending on the number of school days involved. Under Pennsylvania law, suspension is defined as the denial to a student of the right to attend school for any period of up to 10 days. When this occurs, you have all the same rights as if you were suspended without access to virtual learning. Like other suspensions or expulsions, a school’s directive to engage in a virtual program is governed by certain notification and due process requirements:

To suspend a student for up to three days, the school must tell the student the reasons for the suspension and give the student a chance to tell their side of the story.

To suspend a student for more than three days, the school must provide the student an informal hearing including written notice to the student and parent(s) or guardian regarding the reasons for the proposed suspension; notice of the informal hearing allowing a reasonable time to prepare for it; the right to question witnesses; and the student’s right to speak and present witnesses and other evidence.

An exclusion of 10 days or more is an expulsion, which requires a formal hearing.

For detailed information about these rights, see ELC's [Suspensions fact sheet](#) and [Suspension & Expulsion Tool kit](#).

### **I currently attend an alternative school because of a discipline incident, and I have access only to virtual instruction. What are my rights?**

An alternative school that provides access only to virtual instruction may not be an approved Alternative Education for Disruptive Youth (AEDY) program. If you attend an alternative school because of a discipline incident, your school has most likely sent you to an AEDY program. All AEDY programs are disciplinary placements and must be approved by the state and subject to specific requirements. However, many districts and charter schools operate alternative education programs that have not been formally approved. It is sometimes hard to tell if a program is approved or not. However, if most classroom time is spent on computers, this could be an indicator that the program has not been approved. PDE maintains a list of approved private programs available at [http://www.leaderservices.com/\\_aedy/approved\\_providers\\_list.aspx](http://www.leaderservices.com/_aedy/approved_providers_list.aspx). This list is not always up to date, so the best way to tell if your program is approved is by contacting the State AEDY Team Office at 717-736-7708 or [ra-edaedy@pa.gov](mailto:ra-edaedy@pa.gov). For more information on AEDY programs and how to file an AEDY complaint, see ELC's [fact sheet on AEDY](#).

### **I am in a residential facility (detention center, residential placement, or hospital) and I only have access to virtual instruction. What are my rights?**

Some students in residential placements, including students in foster care, the juvenile justice system, or a therapeutic mental health facility, are provided with very limited education or only virtual education. However, you should know that if you are in a residential facility, you have the right to attend public school in the district where you live (where the facility is located) unless a court order prohibits this or you are a student with a disability and another placement has been determined by your IEP team.<sup>6</sup>

You have the right (and duty) to attend school if you are in a short-term setting such as a detention center or partial hospitalization day treatment program. In these cases, the district where the facility is located is responsible for providing your education or, if you are in a day treatment program, you may continue to be educated by your home school district. For more information, see ELC's fact sheets on the [Rights of Students in Foster Care; Rights of Students in the Juvenile Justice System; Model Policies & Practices to Support Students in Foster Care and Juvenile Justice](#); and ELC's new fact sheet, [Student Rights in Partial Hospitalization or Day Treatment Programs](#). If you are in foster care, the juvenile justice system, or have experienced homelessness and have changed school districts one or more times due to educational instability such as a court-ordered placement or being incarcerated, you are also protected by Act 1, which should help to ensure you have additional support in school and a path to graduation.<sup>7</sup> For more information, see ELC's [fact sheet on Act 1](#).

## **I was encouraged to choose a virtual school because I am experiencing housing instability. What are my rights?**

Sometimes students who are experiencing housing instability are “encouraged” to enroll in virtual programs. However, you should know that you have rights and protections to ensure that you can continue to access an in-person public school even if your housing situation changes. You have the right to stay in your prior public school while experiencing homelessness and have the right to remain there until the end of the year even if you become permanently housed midyear. Your right to school stability includes the right to receive transportation back to your prior school, or to enroll immediately in a new school where you are now located.<sup>8</sup> You have a right to attend and fully participate in school, including extracurriculars, without fines and fees.<sup>9</sup> For information on all of the protections that you are entitled to, see ELC’s fact sheet on the [Rights of Students Experiencing Homelessness](#).

## **I have an IEP or suspect that I might have a disability that is impeding my progress at school, and I’m not sure if virtual instruction is meeting my education needs. What are my rights?**

You have the right to ask for an evaluation at any time to determine if you are eligible for special education.<sup>10</sup> If eligible, you have the right to a free, appropriate public education that is individualized to help you make progress toward your objective, measurable goals.<sup>11</sup> You have the right to be educated in the least restrictive environment, meaning a setting along with nondisabled peers.<sup>12</sup> For complete information on your rights as a student with an IEP, see ELC’s parent’s guide to [The Right to Special Education](#).

Virtual programs sometimes fail to provide legally compliant special education services. Here are some specific examples of issues to watch out for:

- Virtual programs should not categorically deny enrollment to students with disabilities. This is discrimination.
- Virtual programs must provide differentiated instruction tailored to meet your individual needs identified in your evaluation and IEP.
- Virtual programs should not change the special education and related services and supports in your IEP after you enroll based on their typical practice or staffing.
- The decision about what services are in your IEP must be based on **your** needs and IEP goals, not on the virtual program or limitations of staff or instruction modality.
- If your IEP includes services that you have normally received in person that would not be the same online (e.g., social skills or in-person hand-over-hand prompting), you should ask the virtual program how this will be addressed so that you are still able to receive all the services necessary for you to make progress on your IEP goals.
- If disabilities are affecting your ability to log on, attend, or focus during a virtual program, these issues should be addressed with an IEP or Section 504 team meeting in addition to being addressed through the typical way that schools respond when students have barriers to attendance or accessing the curriculum.

## I am learning English, and I'm not sure if virtual instruction is meeting my education needs. What are my rights?

You have the right to receive effective English language instruction and support from qualified ESL teachers and subject teachers to understand and participate in your classes and successfully access the curriculum, whether those classes are virtual or in-person.<sup>13</sup> Families and students who need interpretation and translation services also have the right to have those services provided by the school, whether virtual or in-person.<sup>14</sup> For more information, see ELC's fact sheet on the [Rights of Multilingual and Culturally Diverse Students and Families](#).

## I am experiencing barriers to attendance in my virtual program, and I'm not sure if I am at risk of being prosecuted for truancy. What are my rights?

Virtual programs may create different barriers to attendance than in-person programs, but your rights are the same. For information on your rights when attendance barriers arise and for more information on truancy, see ELC's [fact sheet addressing attendance barriers and truancy](#).

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

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<sup>1</sup> See 2022-2023 List of Charter and Cyber Charter Schools, PENNSYLVANIA DEPARTMENT OF EDUCATION, <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/default.aspx> (click on 2022-2023 List of Charter and Cyber Charter Schools under Resources in the gray box on the right) (last visited July 5, 2023); Public School Enrollments 2022-2023 V1, PENNSYLVANIA DEPARTMENT OF EDUCATION, <https://www.education.pa.gov/DataAndReporting/Enrollment/Pages/PublicSchEnrReports.aspx> (click on Public School Enrollments 2022-2023 V1 at the top of the list of links) (last visited July 5, 2023)

<sup>2</sup> Charter Schools, PENNSYLVANIA DEPARTMENT OF EDUCATION, <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/CharterSchools.aspx> (last updated March 31, 2020)

<sup>3</sup> See 24 P.S. 13-1306

<sup>4</sup> See E. A. Gjelten, *Can Private Schools Discriminate Against Students?*, LAWYERS.COM (June 15, 2023), <https://www.lawyers.com/legal-info/research/education-law/can-private-schools-discriminate-against-students.html>; see also Michael J. Petrilli, *Are Private Schools Allowed to Discriminate?*, EDUCATION NEXT, <https://www.educationnext.org/private-schools-allowed-discriminate/> (last updated June 5, 2017).

For more information, see our [Back-to-School Guide](#), including [The Right to Be Free from Racism at School](#); [Challenging Sex or Gender-Based Harassment](#); and other fact sheets.

<sup>5</sup> Greg Hilburn, *BB gun bill to redefine virtual school discipline policies gains momentum in Louisiana*, MONROE NEWS-STAR (Oct. 19, 2020), <https://www.thenewsstar.com/story/news/2020/10/19/bb-gun-bill-redefine-virtual-school-discipline-policies-gains-momentum/3708841001/>; H.B. 83, 2020 Second Extraordinary Session, La. 2020, <https://legis.la.gov/legis/BillInfo.aspx?s=202ES&b=HB83&sbi=y> (click on Text, then HB83 Act)

<sup>6</sup> *Educational Programs for Students in Non-Educational Placements*, PENNSYLVANIA DEPARTMENT OF EDUCATION, <https://www.education.pa.gov/Policy-Funding/BECS/PACode/Pages/NonEducationalPlacements.aspx> (last reviewed January 2018); see also *Educational Programs for Students in Noneducational Placements*, PATTAN (2018), <https://www.pattan.net/assets/PaTTAN/07/07936445-f0e6-4e26-ad43-df3243ca4fd8.pdf>.



<sup>7</sup> *Act 1 of 2022 - Assisting Students Experiencing Education Instability*, PENNSYLVANIA DEPARTMENT OF EDUCATION (August 1, 2022), <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/Act1of2022AssistingStudentsExperiencingEducationInstability-.aspx>

<sup>8</sup> *Education for Homeless Youth*, PENNSYLVANIA DEPARTMENT OF EDUCATION, <https://www.education.pa.gov/Policy-Funding/BECS/uscode/Pages/EducationforHomelessYouth.aspx> (last reviewed December 10, 2016)

<sup>9</sup> *Id.*

<sup>10</sup> See 22 Pa. Code § 14.123(c)

<sup>11</sup> See 34 CFR § 300.101

<sup>12</sup> See 34 CFR § 300.114

<sup>13</sup> See 22 Pa. Code § 4.26

<sup>14</sup> *Educating English Learners (ELs)*, PENNSYLVANIA DEPARTMENT OF EDUCATION, <https://www.education.pa.gov/Policy-Funding/BECS/PACode/Pages/EducatingELs.aspx> (last reviewed July 1, 2017)