



MODEL LEGISLATION

RELATED TO ONLINE LEARNING OPPORTUNITIES FOR STUDENTS IN PUBLIC ELEMENTARY AND SECONDARY EDUCATION SCHOOLS

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MODEL LEGISLATION RELATED TO ONLINE LEARNING OPPORTUNITIES FOR STUDENTS IN PUBLIC ELEMENTARY AND SECONDARY EDUCATION SCHOOLS

Justin Bathon, University of Kentucky

Introduction

Nearly all states have enacted legislation authorizing some form of online or virtual K-12 education. These state enactments vary greatly in their topical coverage as well as their specificity. This has created a great deal of variation among the states sometimes leading to the confusion and abuses documented earlier in this brief. Few states have addressed the issues of systemic integrity: reliability of budgets, authentication of student work, quality of instruction, fidelity of the virtual teaching staff, and clear, yet highly developed, state regulations. Thus, there is a need for a foundational approach to virtual school legislation that we hope this model provides.

The model legislation set out below is not meant to provide an all-encompassing policy on virtual schools. Rather it is meant to supplement existing virtual schools legislation and provide legislative clarity. Thus, parts of this model legislation may be applicable in some states but not in others. Legislators are encouraged to customize the model legislation for application in their own states within their own existing statutory frameworks.

To complete the model legislation, we reviewed all existing online and virtual school legislation in the United States. The annual Keeping Pace¹ report of virtual school policies and adoption provided a useful starting point in identifying this legislation, and large parts of this model legislation have been borrowed or adapted from existing legislation. In particular, Florida and Colorado provided useful models, along with elements of the Arizona, Idaho, Maine, Montana, Nebraska, Pennsylvania, South Carolina, Tennessee, Washington, and Wisconsin statutes on virtual schools. The authors would like to thank the unknown and unheralded authors of this previous legislative work. They have provided a useful base on which to continue the effort to build a sound framework for the operation of the rapidly evolving online education system in the United States.

¹ Watson, John; Murin, Amy; Vashaw, Lauren; Gemin, Butch & Rapp, Chris. (2010). *Keeping Pace with K-12 Online Learning: An Annual Review of State-Level Policy and Practice* (p. 28). Retrieved June 1, 2011, from http://www.kpk12.com/wp-content/uploads/KeepingPaceK12_2010.pdf.

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1 **An Act Ensuring High-Quality Online Learning Opportunities**
2 **for Students in Public Elementary and Secondary Education Schools**

3 Be it enacted by the Legislature of the State of ABC that Title XXX is
4 amended to include a new Article 123, which reads as follows:

5 **Article 123 – Establishing the Integrity of Online Education Options**
6 **for K-12 Students**

7 ***Section 101: Legislative Declarations and Findings***

8 The Legislature hereby finds, determines and declares that:

- 9 (a) Online education represents an approach to teaching and learning that is
10 appropriate for today's students;
- 11 (b) Technology and online education, including both full-time and
12 supplemental programs, are important tools to enhance educational
13 opportunities and improve educational outcomes;
- 14 (c) A student's access to educational opportunities should not be limited by
15 where the student lives or by the socioeconomic resources available to
16 the student;
- 17 (d) Through the use of technology and online education, the State can create
18 educational opportunities for students that may not exist otherwise;
- 19 (e) The growth of online education options is challenging existing education
20 policy, administration, and oversight;
- 21 (f) The expansion of technology and learning has produced a need for
22 legislation that will enable the growth and development of high-quality
23 online learning opportunities;
- 24 (g) The quality of education, properly regulated, can be maintained and/or
25 increased through the use of online learning options;
- 26 (h) Concerns surrounding the integrity of student academic work and the
27 prevention of cheating and plagiarism are different and are heightened in
28 online environments;
- 29 (i) Finding, training, and retaining high-quality instructional staff to provide
30 learning opportunities in online instructional environments present
31 unique challenges;
- 32 (j) The State Board of Education is a central and crucial body to provide
33 oversight and regulatory guidance to meet the various demands of
34 changing technology environments; and

1 (k) The State has a responsibility to ensure that online education options,
2 including supplemental online education offered by existing school
3 providers, is of high quality and meets the standards and accountability
4 requirements of local education providers.

5 ***Section 102: Definitions***

6 For purposes of this Act, unless the context otherwise requires, the below
7 terms are defined as follows.

8 (a) "Assessment Center" means a private for-profit, non-profit or public
9 facility that provides administration of multiple standardized
10 examinations as a component of the enterprise.

11 (b) "Local Education Provider" means the local school district within which
12 the online student resides.

13 (c) "Proctored Environment" means a student assessment location that
14 ensures the integrity of the student work. The student work must be
15 proctored under the supervision of a licensed teacher or higher education
16 instructor. These environments shall include:

- 17 (1) a private assessment center as defined in this Act;
18 (2) a higher education institution such as a local community college
19 or university within the state where the child is domiciled ; or
20 (3) a local elementary or secondary school.

21 (d) "Supplemental Online Instruction" means instruction provided for
22 course credit by a local school district or a subsidiary. This instruction
23 may be for credit-recovery for required courses or for advanced courses
24 beyond the minimum requirements. A course shall be deemed as
25 supplemental online instruction, and thus subject to this Act, if more
26 than fifty percent of all course activity takes place in an online or
27 distance learning environment.

28 (e) "Virtual School" means a stand-alone, full-time public charter school
29 governed by an independent governing board of education offering
30 course credit to students within the State. A Virtual School shall function
31 independently from existing local school districts. A Virtual School may
32 be a new, multi-district collaboration, a non-profit charter school, a
33 university or college sponsored program, or other alternative granted the
34 ability to enter into a charter agreement under State law.

35 ***Section 201: Accreditation of Virtual Schools***

36 (a) All virtual schools shall be accredited by an organization approved by the
37 State Department of Education based on a demonstration that the

organization's accreditation process is rigorous and aligned with State policy. Each organization that is approved for accreditation shall annually report to the State Department of Education on any changes to its accreditation process. The State Department of Education shall annually reapprove or remove the approval of the organization, after due consideration of any concerns or complaints arising during the year.

- (b) The State Board of Education may prohibit the use of a particular accreditation body for a specific Virtual School upon a showing of:
- (1) a conflict of interest;
 - (2) previous, persistent quality concerns; or
 - (3) other good and just cause.

Section 202: Approval of Virtual Schooling Providers

The State Board of Education shall annually evaluate applications for Virtual Schools. The criteria for evaluation of applications shall be determined by the State Board of Education. The criteria shall include, but are not limited to, the following.

- (a) The applicant school must
 - (1) be a not-for-profit entity, incorporated and with an administrative office in the state;
 - (2) contract with other entities for no more than 30% of the school budget;
 - (3) be nonsectarian in its programs, admissions, employment practices, and operations;
 - (4) contract only with other entities that are also nonsectarian in their programs, employment practices and operations;
 - (5) comply with all anti-discrimination provisions;
 - (6) provide accommodations and services as required by the Individuals with Disabilities Education Act to meet the needs of students with special needs;
 - (7) provide accommodations and services as required by the Equal Educational Opportunities Act of 1974 to meet the needs of students who are English learners;
 - (8) require no tuition, student registration fee, or other fees;
 - (9) show that all members of the instructional staff are educators certified to teach in the state; and

- (10) ensure that no instructional or grading functions are outsourced to people or companies outside the United States.
 - (b) The applicant school must provide for review and public inspection
 - (1) its mission, vision, and goals;
 - (2) its organizational structure and governance, including governing board and school policies and procedures;
 - (3) a detailed curriculum plan, including a curriculum map to the state content standards, showing how the course content meets state requirements;
 - (4) a technology utilization and training plan for students and faculty;
 - (5) a plan for providing access to and training on library and digital media for all students and staff;
 - (6) a detailed assessment plan, including:
 - (A) management of student records;
 - (B) data analysis and reporting; and
 - (C) how the school will address the assessment integrity issues addressed in Section 401 of this Act;
 - (7) student admissions policies;
 - (8) policies for the verification of student attendance;
 - (9) human resources management policies;
 - (10) its marketing plan;
 - (11) its communication plan for parents, including how the school will provide for language accessibility for non-native speakers; and
 - (12) a detailed financial plan for each year of probationary operation as set forth in section 203 of this Act. Based on estimated enrollment trends, the financial plan must specify projected revenues and expenses. Further, the plan must specify all financial controls that will safeguard the received public funds.

Section 203: Approved and Probationary Status

- (a) Upon successful application, each Virtual School approved to operate in the state shall either be classified as a probationary or approved provider. All new providers, including those providers that had been previously approved in the state, shall be classified as probationary. The probationary period shall last for three years. Upon a satisfactory determination in the third subsequent year, as determined by the State Board of Education, the provider shall be deemed an approved provider and subsequently thereafter. The approved provider shall be issued a two

1 year, renewable contract. The approved provider shall be subject to
2 biennial reviews by the State Board of Education and biennial
3 independent financial audits as specified in Section 206 of this Act. The
4 approved provider shall continue to submit the annual performance
5 report as provided in Section 204 of this Act and the annual operations
6 report as provided in section 205 of this Act.

- 7 (b) If, as determined by the State Board of Education in consideration of the
8 reports provided for in this Act and any other relevant information, the
9 provider does not meet the performance or operations goals the provider
10 shall be removed from the approved provider list and be placed back into
11 probationary status, to once again complete a three year probationary
12 period. If, at the end of this probationary period, the provider has met
13 the performance or operation goals as determined by the State Board of
14 Education, the provider shall be returned to approved provider status. If,
15 at the end of this three year probationary period, the provider has not
16 met the performance or operation goals as determined by the State Board
17 of Education, the provider shall be closed and the charter or contract
18 with the non-profit enterprise shall be terminated and shall not be
19 permitted to apply again for a minimal period of three years.
- 20 (c) Nothing in this section shall be interpreted to limit the ability of the State
21 Board of Education or the Legislature to terminate the charter or
22 contract of a Virtual School provider at any time for a showing of just
23 cause.

24 ***Section 204: Annual Performance Report***

- 25 (a) The governing body of any Virtual School shall annually submit to the
26 State Board of Education a complete and detailed performance report
27 setting forth:
- 28 (1) the student achievement levels and growth that the school
29 demonstrates on all academic standards, as measured by [insert
30 reference to state assessment here];
- 31 (2) average student daily attendance, as measured by participation in
32 the instructional program;
- 33 (3) graduation rates, as applicable;
- 34 (4) enrollment of special needs students and students who are
35 English language learners; and
- 36 (5) academic activities and programs designed to serve diverse
37 students;
- 38 (6) the academic and disciplinary policies in effect for the previous
39 year, including a copy of the student handbook;

- (7) all student disciplinary incidents and punishments, aggregated by each student, and the response of the school to each, including all incidents of cheating or plagiarism, as detailed in Section 401 of this Act;
 - (8) the utilization of specific learning management and delivery tools;
 - (9) the teacher evaluation plan in effect;
 - (10) the name and certification status of all instructional staff, including the state of residence of all instructional staff; and
 - (11) the name and state of residence of all non-certified personnel employed by the Virtual School, including any personnel involved in the assessment of student work.

(b) The Virtual School shall comply with all reporting and data submission requirements required of other schools.

(c) With the exception of the disciplinary data in (a)(4) of this Section, the annual performance report shall be treated as a public record and be available to the public.

Section 205: Annual Operations Report

The governing body of any Virtual School shall annually submit to the State Board of Education a complete and detailed operations report, which shall be treated as a public record and be available to the public, setting forth:

- (a) the accomplishments of the Virtual School;
 - (b) efforts made to improve the programs and the delivery of instruction, including new technologies examined or implemented;
 - (c) the marketing and operational plan for the Virtual School, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technologies;
 - (d) the financial assets and liabilities of the Virtual School at the end of each fiscal year;
 - (e) the sufficiency of the funding received;
 - (f) the purpose, monetary amount, and quality assurance mechanisms for all contracts with any outside entities accumulating to over \$10,000; and
 - (g) any other details deemed by the governing body of the Virtual School to be relevant to the successful operation of the Virtual School.

1 ***Section 206: Independent Financial Audits***

2 Each Virtual School operating in the state shall submit an independent audit
3 to the State Board in accordance with Section 203 of this Act.

4 (a) The audits shall:

- 5 (1) be conducted annually for the first 3 years of operation of the
6 Virtual School within the State;
- 7 (2) be conducted thereafter every two years, beginning with the fifth
8 year of operation of the Virtual School within the State;
- 9 (3) be conducted by an independent certified public accountant in
10 accordance with the rules adopted by the Office of the State
11 Auditor; and
- 12 (4) shall not be administered by any audit provider who has a conflict
13 of interest.

14 (b) The audit shall include, but not be limited to:

- 15 (1) a detailed account of all revenue and expenses deemed
16 instructional;
- 17 (2) a detailed account of all instructional related contracts with
18 outside entities;
- 19 (3) a detailed account of all revenue and expenses deemed non-
20 instructional;
- 21 (4) a detailed account of all non-instructional related contracts with
22 outside entities;
- 23 (5) detailed information on all courses provided in the period under
24 review, including:
25 (A) the name(s) of the teacher of record and any other
26 instructional personnel;
27 (B) the number of students enrolled;
28 (C) the average daily attendance of each course, as measured by
29 student participation in the instructional program;
30 (D) how the school is measuring and keeping accurate records of
31 average daily attendance;
32 (E) the state funding reimbursement generated by each course;
33 (6) the assets and liabilities of the Virtual School at the end of the
34 fiscal year;

- (7) a detailed account of all donations, grants, and other income received by the Virtual School and its parent company during the fiscal year; and
 - (8) any other information on the financial health and welfare commonly reported in accordance with the rules adopted by the Office of the State Auditor.

(c) The State Board of Education shall use the annual financial audits from all probationary and approved providers in determining the annual funding reimbursement rate for providers.

(d) The annual financial audits shall be treated as public records and be available to the public.

Section 207: Virtual Teachers and Staff

- (a) To be a teacher in a Virtual School responsible for student instruction, a teacher must:
 - (1) be a certified teacher in the state, including teachers who gained certification through alternative routes;
 - (2) hold a content specialization for the subject(s) taught; and
 - (3) possess documented completion of a state-approved program providing knowledge and skills in online instruction.
 - (b) The Virtual School must:
 - (1) conduct a criminal background check on all employees;
 - (2) provide all instructional staff with a contract detailing their salary, fringe benefits, other conditions of employment and responsibilities, including responsibilities regarding online instruction and digital tools;
 - (3) maintain a confidential personnel record on all employees;
 - (4) provide annual professional development to all employees, including professional development on the use of virtual education technology;
 - (5) provide an experienced mentor teacher, with online instruction expertise, for the first year of instruction of all new instructional staff hired by the Virtual School; and
 - (6) comply with all other state public teacher and public employment law.
 - (c) Teachers in a Virtual School shall:
 - (1) be subject to evaluation as provided in [cite state evaluation law];

- 1 (2) be subject to termination as provided in [cite state termination
2 law];
- 3 (3) be provided terms and conditions of employment comparable to
4 other public school teachers including, but not limited to, tenure
5 or due process protections, leaves of absence, sabbaticals,
6 remuneration, collective bargaining and other provisions to the
7 extent such employment terms and conditions are not
8 inconsistent with other state law [if appropriate, reference to the
9 state charter statute]; and
- 10 (4) be provided employee benefits, including health coverage and
11 participation in the state [Teachers' Retirement System] as
12 provided in [cite teachers' retirement statute].

13 ***Section 301: Accreditation of Supplemental Online Instruction***

14 The State Board of Education shall ensure that supplemental online
15 instruction options offered by local education providers are included in
16 school and district accreditation decisions, including, but not limited to, the
17 accreditation decisions made by regional accreditation providers.

18 ***Section 302: Approval of Supplemental Online Instruction***

19 The approval and oversight of supplemental online instruction shall remain
20 with the local board of education. The local board of education shall ensure:

- 21 (a) the curriculum and assessments comply with state content standards;
- 22 (b) instructional personnel meet the qualification criteria found in Section
23 207(a) of this Act;
- 24 (c) appropriate disciplinary procedures, including student due process
25 protections, are followed;
- 26 (d) students are provided instruction on the use of the technology tools;
- 27 (e) students are provided the school's policies on cheating and plagiarism
28 prior to beginning the coursework;
- 29 (f) final examinations are administered in a proctored environment, as
30 defined by Section 401 of this Act;
- 31 (g) any outside private or public entities contracted for instructional
32 purposes must meet all above provisions and must also:
- 33 (1) be on the state-approved providers list;
- 34 (2) be nonsectarian in its programs, admissions, employment
35 practices, and operations;

- (3) comply with all anti-discrimination provisions;
 - (4) provide accommodations and services as required by the Individuals with Disabilities Education Act to meet the needs of students with special needs;
 - (5) require no tuition, student registration fee, or other fees;
 - (6) show that all members of the instructional staff are educators certified to teach in the state; and
 - (7) ensure that no instructional or grading functions are outsourced to people or companies outside the United States.

Section 303: Reporting of Supplemental Online Instruction

A local board of education engaging in supplemental online instruction, including credit-recovery courses, shall annually submit a report to the State. The State Board of Education shall determine the requirements and deadlines of the report, which shall be treated as a public record and be available to the public. The report shall include, but not necessarily be limited to:

- (a) the courses offered in the supplemental online instruction;
 - (b) the number of student participants for each course;
 - (c) the number of student credit hours attempted for credit recovery;
 - (d) the number of student credit hours obtained for credit recovery;
 - (e) the number of student credit hours attempted for advanced placement credit;
 - (f) the number of student credit hours obtained for advanced placement credit;
 - (g) the number of student credit hours attempted in conjunction with a community college program;
 - (h) the number of student credit hours obtained in conjunction with a community college program;
 - (i) the cost associated with each course;
 - (j) the usage of any outside private or public entities for instruction, including:
 - (1) the name of the provider;
 - (2) the content or courses provided;

- (3) the monetary amount of the contract; and,
 - (4) the mechanisms used to assure quality.

Section 401: Integrity of Student Learning and Assessment

Students in virtual learning environments shall be held to the same standards prohibiting cheating and plagiarism as students in traditional classroom environments. To ensure that students are learning and appropriately demonstrating their knowledge, each Virtual School and supplemental online instruction program shall ensure:

- (a) that the compulsory attendance requirements in [cite compulsory attendance statute] are met by each student;
 - (b) that for every credit-bearing course, each student shall take any final examination or at least one exam or assignment in a proctored environment, as defined by Section 102(c) of this Act;
 - (c) all students participating in the state-mandated accountability measures [cite statutory location of state testing programs] shall take the examination with their peers at their local education provider. A Virtual School shall notify local school districts of participating students within those districts' attendance boundaries and the level at which the students are to be assessed no later than October 1. Each school district shall ensure that virtual education students are permitted to take the mandated assessments with their traditional classroom peers;
 - (d) that for every credit-bearing course, students are provided multiple synchronous learning opportunities with their teachers in which the students are required to participate and share their knowledge;
 - (e) that each student is provided with a policy prohibiting cheating and plagiarism for each course;
 - (f) that each student is provided instruction on avoiding cheating and plagiarism prior to enrolling in a course in each academic year; and
 - (g) that each instance of identified cheating or plagiarism is disciplined in accordance with appropriate due process procedures and reported to the State Board of Education in accordance with Section 204 of this Act.

Section 501: Promulgation of Rules & Regulations

The State Board of Education shall promulgate rules establishing the standards for online programs pursuant to this Act. The rules shall include, but are not limited to, the establishment of quality standards in the following areas:

- 1 (3) technology capacity and support;
- 2 (4) sound financial and accounting practices and resources;
- 3 (5) program evaluation and improvement;
- 4 (6) details of the annual review process;
- 5 (7) approval of private or public outside contractors with public
- 6 school districts for supplemental online instruction;
- 7 (8) approved private or public proctor options;
- 8 (9) appeal procedures for probationary status and contract
- 9 termination determinations; and
- 10 (10) professional development support mechanisms.