



Private-Pay ABA Providers in Schools FAQ

Tennessee enacted **Public Chapter 1112 of 2026** Tennessee General Assembly – SB 2055/HB 2327, codified at **Tenn. Code Ann. §§ 49-10-1501 through 49-10 1502**. The law requires local education agencies (LEAs) to allow qualifying private-pay providers access to eligible students during the school day to provide private-pay ABA services, when the statutory requirements are satisfied. The Tennessee Department of Education specifically states that access may include classrooms, cafeterias, playgrounds, hallways, assemblies, extracurricular activities, and other school-sponsored settings, depending upon the student's educational program and circumstances.

The services are private-pay services. The parent or an external entity is responsible for the provider's compensation. The Tennessee Department of Education specifically states that the LEA is not responsible for the costs of private-pay services.

MOU Protections and Non-Negotiables

- **Instructional Priority:** Private-pay ABA services cannot reduce access to general curriculum, disrupt the learning environment, or undermine the IEP or 504 requirements. The private-pay ABA services can be layered over Tier 1 instruction, IEP services, 504 services, or EL services, if the private-pay ABA provider is functioning like a one-on-one.
- **Provider Clearance:** MSCS must approve the (1) fingerprint background check through the TBI/FBI for any private-pay ABA provider that will be providing services in the school setting (2) verify the Tennessee license for each therapist before services begin, and (3) confirm that the private-pay ABA provider has met the minimum liability insurance requirements.
- **Privacy and Recording:** The provider must protect student information and may not record other students or MSCS staff.
- **Professional conduct:** The provider must follow district rules for visitors, vendors and volunteers, include the designated administrator in communications with the teachers or building staff, and may not solicit, recruit, market or cold call families they encounter in the school setting.
 - Private-Pay ABA providers are subject to all District policies. The policies for visitors, vendors, and volunteers directly apply to private-pay ABA providers related to expectations for conduct in a school setting.

Does this mean every student can have a private-pay ABA therapist in school?

Federal law prohibits the District from having a blanket policy excluding private-pay ABA therapy providers for students, regardless of the nature of their disability. For this reason, MSCS will allow entry to support all types of disabilities, when the private-pay ABA provider has completed all of the requirements. Tennessee law specifically addresses general education, special education and students with 504 plans, who have autism spectrum disorder or developmental delays.



Does the student have to have an IEP or 504 Plan to receive private pay ABA services?

No, if a student does not already have an IEP or 504 Plan, the school should still follow the process to allow the private pay provider in the school setting. The school **MUST** also refer the student for the SST process.

The parent may not want the student to proceed through the SST process, but the parent's decision should be documented as a part of the SST process.

The school need not wait for the SST process to start or be completed before allowing the private-pay ABA services, so long as the private-pay provider and parent have completed the required steps for starting these services.

For a student receiving special education or 504 services, the IEP or 504 Plan remains the governing educational document that the District remains legally responsible for implementing. The Private-pay ABA therapist is permitted to participate in the student's 504 meeting or IEP Team meeting, if the parent wants the private-pay ABA therapist to be involved in the team decision-making process. Private-pay ABA does not replace or modify the IEP or 504 simply because an outside provider is working with the student.

Does the therapist automatically get to stay in the classroom all day?

No, not automatically. The law provides access, but the access must be implemented in a way that does not disrupt instruction, interfere with the general curriculum, or consistently fragment the student's schedule in a manner that reduces access to the general education program or core curriculum.

Private-pay ABA therapy may use a combination of "push-in" or "pull-out" services, as determined by the private-pay ABA therapist. This is a medically prescribed therapy, so other than protecting core instruction, MSCS cannot dictate how the therapy is provided unless it is disruptive to classroom operations. MSCS is expected to collaborate with private-pay ABA therapists to find a workable solution.

Frequently, ABA therapy, particularly for students ages 3-6, is prescribed for 15-40 hours per week ("intensive services"). Intensive ABA services are typically provided using a "push-in" model where services are layered over a student's existing instructional programming. For the "push-in" model, the private-pay ABA provider shadows the student in the classroom setting, cafeteria, gym, or other location though out the school day and functions similarly to a one-on-one. The private-pay ABA provider may be shoulder-to-shoulder with the student or may be within a distance to conduct a visual observations and step-in when they deem therapeutically appropriate.

Private-pay ABA therapy may also be provided using a "pull-out" model. "Pull-out" services involve taking the student out of their classroom setting or natural learning environment and delivering the services one-on-one to the student in another area such as an empty classroom, empty office, or available physical space that is separate from their classmates or peers. These type of "pull-out" services should be scheduled to the extent possible during the school planning meeting to make sure that the student is still receiving necessary core instruction and required services under the student's IEP or 504 Plan.

"Pull-out" services may also occur as needed, if a student's behavior becomes escalated. The private-pay ABA therapist may utilize behavioral interventions such as taking a break, breathing exercises, or having the student take a walk in the hallway, while under the supervision of the therapist. This is permissible, but if



occurring regularly and in a manner that prevents the student from accessing instruction, then the IEP Team or 504 Team should hold a meeting to discuss aligning these types of interventions to a school behavioral intervention plan (BIP).

The “pull-out” model of services may also involve working with the student one-on-one in the back of the classroom, during small group instruction or breakout time. As long as this is aligned to the instruction or a student’s IEP goals, 504 plan, EL plan, or Individual Learning Plan(s), and is not disruptive to other students in the classroom, this is an acceptable way to provide the “pull-out” services.

Pull-out services are permitted, but they must occur in a manner that does not reduce access to Tier 1 instruction, including physical education and recess, needed Tier 2 and 3 intervention time, state mandated tutoring time, or other time used for special education services on a student’s IEP, including CLUE services for gifted students, any 504 services, or EL services. Generally speaking, this will mean that pull-out services will need to be provided during “specials” such as library, art, or music or lunch or in the classroom setting, but apart from the other students and aligned to the student’s individual instructional needs, as documented on an IEP, 504, EL, or ILP-D plan.

The private-pay ABA therapist is responsible for coordinating with the schools during the initial planning meeting about the therapy model and frequency of services.

A private-pay ABA provider must avoid disrupting the instructional setting or interfering with instructional time, regardless of whether the services are provided using a push-in, pull-out, or combination model. The Tennessee Department of Education (TDOE) further explains that schools retain responsibility for maintaining a safe, orderly, and effective learning environment for all students.

Can MSCS determine where and when the provider works with the student?

Yes, see above. MSCS cannot deny access because the provider is privately paid. However, the law and state guidance allow the school and provider to coordinate the location, schedule, communication procedures, safety expectations, and manner of service delivery. The purpose is to provide reasonable access while protecting instructional time and the educational environment.

MSCS is not permitted to charge a private-pay ABA therapy provider to use space at the school during the school day to provide private-pay ABA therapy services.

The private-pay ABA provider MOU explains that use of school space during the school day is subject to availability and school-based services or school functions will take priority. Private-pay ABA providers may have to meet with students in the school cafeteria, an empty office or classroom, auditorium, library, or in some cases in a semi-private area in the school such as a nook or corner. For schools where space is a premium, this should be discussed in the school-planning meeting.

Does the private ABA therapist replace an MSCS special education teacher, paraprofessional, behavior specialist, or related service provider?

The private-pay ABA therapist does not replace MSCS staff. Private-pay ABA services must supplement, not replace the student's educational program. They cannot be used to satisfy



services that MSCS is required to provide under the student's IEP or 504. MSCS remains responsible for providing free appropriate public education (FAPE) and implementing the IEP or 504.

If a parent asks for MSCS to provide ABA services, then the student's IEP team, 504 team, or school support team should be alerted to hold an appropriate meeting to discuss whether the student's team agrees whether District-provided ABA therapy services are necessary for a student to receive a FAPE.

MSCS remains responsible for educational services. A parent utilizing private-pay ABA therapy services does not transfer that responsibility to the ABA provider.

Can an ABA therapist give a MSCS employee a directive?

No, the private provider may collaborate with school personnel and provide behavioral recommendations within the scope of their professional role. However, the provider does not have educational authority over MSCS employees and cannot direct teachers, paraprofessionals, administrators, or related-service personnel.

The Tennessee Department of Education states that educational decisions remain under the authority of the LEA and IEP/504 team.

Additionally, the MOU that the private-pay ABA therapist, parent, and District sign explains that private-pay providers are required to conduct themselves in a professional manner and respond to and cooperate with the reasonable requests or directives of school administrators and teachers, as necessary to facilitate and effectuate the daily operations of the school and classroom.

This DOES NOT mean that school administrators or teachers may use private-pay ABA providers as classroom or school teaching assistants.

Can the ABA therapist change the student's IEP or 504 Plan?

No, the private provider may participate in an IEP or 504 meeting, if invited by the parent or MSCS, and may provide information or recommendations. However, the private provider cannot independently change the IEP. The IEP and 504 teams remains responsible for educational decisions, and the IEP and 504 plan must continue to be implemented by MSCS.

Can the ABA therapist remove the student from instruction?

Services must be coordinated with the school so that they do not disrupt instruction or reduce the students' access to the general curriculum. The location and scheduling of services should be addressed through the coordination process per the MOU. For more detail about "pull-out" model for services, please see the FAQ above.



What happens if the private-pay ABA provider's services interfere with classroom instruction?

MSCS should address concerns through documented, collaborative problem-solving. The Tennessee guidance recommends reviewing objective observations/data with the parent, provider, and appropriate school personnel and considering adjustments such as scheduling, prompting strategies, seating, or communication procedures.

If a teacher or school administrator is concerned that private-pay ABA provider services are disruptive or interfering with the student receiving the services or the needs of other students in the classroom, these concerns should be brought to the attention of the School District contact for private-pay ABA provider services. These types of concerns can be emailed to mcs_privatebehaviorservices@scsk12.org

Can MSCS establish rules for the private-pay ABA therapist while on campus?

Yes, the provider must follow applicable school safety, confidentiality, visitors, emergency, and operational procedures. Providers must follow sign-in/sign-out, identification/badging, fire drills/lockdown procedures, confidentiality requirements, school conduct expectations, campus safety procedures, and appropriate interaction with other students, staff, teachers and administrators.

The MOU specifies that the private-pay ABA therapist must abide by the District's visitor, vendor, and volunteer policies. They must also maintain the confidentiality of the student for whom they are providing services *and* any student they encounter.

Who supervises the ABA provider?

Clinical supervision remains the responsibility of the private-pay provider and the appropriately licensed behavior analyst, not MSCS. The Tennessee Department of Education guidance states that private-pay behavioral services must be supervised by a licensed Board-Certified Behavior Analyst (BCBAs) consistent with applicable professional standards.

The District is not responsible for supervising students receiving private-pay ABA-therapy during pull-out services. If there is a concern that a private-pay ABA therapist is acting inappropriately with a student during pull-out services or at any other time, the school staff should alert the school principal and/or notify the District contact, Mr. Hickman, mcs_privatebehaviorservices@scsk12.org.

Tennessee allows for BCBAs, Licensed Behavior Analysts-Assistants (LBA-As), and Registered Behavioral Technicians (RBTs) to provide ABA therapy. LBA-As and RBTs must be supervised by BCBA at least five (5) percent of the time, similarly to how a nurse practitioner must be supervised a certain amount of time by a physician. The District is not responsible for ensuring that the appropriate supervision is occurring. If you have a concern that the person delivering the private-pay ABA therapy is not appropriately credentialed or is not supervised for a sufficient amount of time, please notify the District contact, Mr. Hickman, mcs_privatebehaviorservices@scsk12.org.



Can the ABA provider work with other students?

No, the provider's services are for the identified student. The state guidance says providers should limit interactions with other students. They should not provide behavioral services, collect data, or intervene with other students. ABA providers are prohibited from soliciting parents. Staff should not make referrals for ABA services to private-pay ABA providers.

Can an ABA company recruit other students or families while at an MSCS school?

No, private-pay providers may not use their presence at an MSCS school to solicit, recruit, market, cold-call, or attempt to obtain additional clients. A private provider cannot use the law as a mechanism to gain access to other students or provide services to other children simply because they attend the same school. The Tennessee Department of Education specifically addresses this prohibition.

What are the seven steps in the ABA therapy process, from completing the compliance packet to preparing for the MSCS school meeting?

- (1) The Provider must submit a complete a compliance packet. This takes place at the District level. The compliance packet for any student receiving private-pay ABA therapy services includes:
 - a. an MOU partially executed by the parent and the private-pay ABA provider;
 - b. proof of Tennessee license for any person who will providing the private-pay ABA services;
 - c. proof of professional liability insurance with District as a named insured;
 - d. completed background check approval letter from MSCS Safety and Security for any person who will be providing the private-pay ABA services.
- (2) Compliance packet is reviewed at the District-level.
- (3) Once the packet is reviewed and deemed complete, the MOU will be entered in contract portal by a District-level employee.
- (4) The MOU is routed for MSCS district-level signature.
- (5) The fully executed MOU is returned to the Provider by MSCS.
- (6) The Provider will obtain the private service provider identification badge , through MSCS Safety and Security.
- (7) The Provider will schedule the school meeting and supplies documentation of recommended services to be provided.

Who is responsible for conducting a Functional Behavioral Assessment (FBA) if warranted and the parent gives consent for an FBA?

The standards for a school-based FBA and Behavior Intervention Plan (BIP) have not changed. If MSCS staff believe that an FBA is necessary or required because of issued discipline, MSCS staff should review the student's needs, obtain relevant data, identify the target and function of the behavior, and use the results to develop or update appropriate behavioral supports and interventions. If necessary, MSCS may collaborate with the private-pay ABA provider, if data is relevant.

Private-pay ABA therapist also use assessment tools such as FBAs and similar assessments, but District employees are not responsible for collecting data for a private-pay ABA therapist. Requests for District data or District assessments must be treated as requests for educational records and must obtained through a FERPA release form signed by the parent.



What should a Principal do to prepare for the ABA services once a parent of ABA provider contacts the school to request a school meeting?

If a parent or private-pay ABA provider contacts the school about private-pay ABA services, the school principal or their designee should refer the parent or private-pay ABA provider to the District processes. See Understanding the Process of ABA Therapy: These Are the Steps.

After the parent and private-pay ABA provider has presented the school with a fully executed MOU, signed by the parent, private-pay ABA provider, and the District, then the principal or designee will schedule an agreeable time to meet with the provider and MSCS staff. The meeting should include the parents, ABA provider and appropriate school staff. This is not an IEP meeting or a Section 504 meeting because the private-pay ABA provider services a supplementary to the student's existing individualized plan.

During the planning meeting, the principal will obtain the signed MOU from the parent and provider. School expectations will be shared with the provider. The schedule will be reviewed and will provide protection for Tier I instruction, Physical Education, and all IEP/504/ELL requirements while confirming the logistics and scheduling of ABA therapy services.

When additional support is needed, please contact mscs_privatebehaviorservices@scsk12.org. For further assistance, please reach out to Ernest Hickman, Regional Manager of Exceptional Education, or in his absence Dr. Lori Meeks, Director I of Exceptional Education or Ms. Jlahna Timberson, Director I of Exceptional Education.

Ernest Hickman, Regional Manager

hickmanel@scsk12.org

901.416.0435

901.502.0075 work cell

If a private-pay ABA therapist is permitted to provide services in the school building, is the private-pay ABA therapist permitted to physically restrain a student?

A parent may give a private-pay ABA therapist permission to restrain a student while the student is receiving private-pay ABA services. The parent must give this permission during the planning meeting and permission must be signed in writing.

All physical restraints and isolation **by MSCS employees must be reported** using the standard procedures for reporting isolation or restraint of a student. Before an MSCS employee participates in or implements any restraint procedure, the MSCS staff will adhere to District's policies, applicable state and federal requirements, the required crisis-intervention training, and the student's IEP/BIP or safety plan.

Restraint by MSCS employees should only be utilized when there is an immediate safety concern requiring it, and when MSCS staff is appropriately trained and authorized.



What should schools do if a private-pay ABA provider wants to “observe” a student?

MSCS visitor policies allow parents and other professionals to observe students in their classroom settings, when doing so is not disruptive, as visitors. See Board Policy 7011 & 7011-1, available at <https://go.boarddocs.com/tn/scsk12/Board.nsf/Public?open&id=policies#>.

A private-pay ABA provider who has no plans to deliver services in the school setting may be admitted to observe a student one (1) time as a visitor. Visitors must sign-in on Raptor and cannot be left unsupervised. They must have written parent permission for the student who is being observed, and they must schedule an acceptable time for observation with the school.

If there is any doubt or concern that the private-pay ABA provider will be coming into the school building to observe or provide private-pay ABA therapy services more than one (1) time, then schools should refer the parent and provider to the Instructions for Private-Pay ABA Therapy Services.

Exceptions and escalation when the approved plan cannot proceed:

- **Missing MOU or Badge:** Pause provider access and contact Mr. Ernest Hickman for verification.
- **Schedule or Instructional Conflict:** Protect Tier I Instruction, Physical Education, IEP/504 requirements and reconvene the planning team to adjust logistics.
- **Privacy, Conduct or Safety concerns:** Follow school reporting procedures, preserve relevant information, and notify district contact immediately.
- **Student has no IEP or 504:** Begin the SST process while the private-pay ABA provider arrangement follows the district approval process. The SST process does not have to be completed *before* the private-pay ABA therapy services begin.

MSCS may require the removal of a private-pay ABA provider if the private-pay ABA provider does not adhere to District rules or the terms of the MOU.



Private ABA Provider

Provides privately funded ABA

Works under private clinical supervision

May provide behavioral recommendations

Must follow school procedures

Must protect confidentiality

Must minimize disruption

Cannot replace IEP/ 504 services

Cannot direct MSCS employees

Prohibited from solicitation of other students

MSCS/IEP Team/504/ELL

Provides FAPE

Implements the IEP

Makes educational/ behavioral decisions

Maintains educational authority

Maintains student records/privacy

Controls instructional environment

Remains responsible for IEP/ 504 services

Supervises/assigns MSCS personnel

Maintains school environment for
all students

This distinction is consistent with the Tennessee Department of Education's July 2026 guidance, which emphasizes that private-pay services supplement rather than replace the educational program and that FAPE remains the LEA's responsibility.