5-O-B: SEAT TIME WAIVER

An intermediate school district, a local school district, or a public school academy seeking to offer pupils access to online learning options and seeking to offer the opportunity to continue working on a high school diploma or grade progression without physically attending at the school facility may choose to do so under a seat time waiver. The seat time waiver is a Department-approved alternative or innovative education program that removes the days, hours, and physical attendance requirements and lifts the cap on the number of online courses (if limited in administrative rule by course type) in which a pupil can enroll during the count period, as defined by Administrative Rule 340.11.

Section 101(9) of the State School Aid Act (MCL 388.1701) permits the State Superintendent to waive the required days and required hours of pupil instruction for alternative education programs or other innovative programs approved by the Department, including a four (4) day school week.

Section 1281 of the Revised School Code (MCL 380.1281) allows the State Superintendent to waive, for a limited time, an administrative rule if a district can demonstrate that it can address the intent of the rule in a more effective, efficient, and economical manner or that the waiver is necessary to stimulate improved pupil performance.

Administrative Rule 340.18 recognizes the authority of the State Superintendent to waive, for a limited time, pupil accounting administrative rules.

All seat time waivers, regardless of whether granted to an individual district or as part of a consortium agreement, are subject to termination by the State Superintendent at any time during the school year for any reason.

A) Requirements for Counting in Membership

The district must meet all of the following requirements to count pupils enrolled in a seat time waiver program for membership purposes:

1) The pupil must meet pupil membership eligibility requirements pursuant to Section 6(4) or 6(6) of the State School Aid Act (MCL 388.1606).

2) The pupil shall be enrolled and attending on the count day(s) pursuant to Section 6(8) and Section 6a of the State School Aid Act (MCL 388.1606 and MCL 388.1606a). These requirements shall be satisfied as described in A(3).

3) The pupil must meet both attendance and participation requirements as described below.

   a. Attendance shall be measured using one of the following methods:

   (i) The pupil is physically present for scheduled on-site instruction at the school site on count day or the first day after the count day that the pupil is scheduled for on-site instruction. The pupil must attend one period for each course scheduled under the seat time waiver, and each period must represent the amount of time required for the course if delivered traditionally. For a pupil who is absent on count day, the attendance requirement may be satisfied if the pupil returns to school within 10 school days of an unexcused absence or within 30 calendar days of an excused absence.

   (ii) The pupil logs into at least one program-sponsored online course shown on his or her class schedule on count day, and then logs into at least one program-sponsored online course shown on his or her class schedule on nine separate days during the 30-day count period, for a total of 10 logins on separate days. When using this method for meeting the attendance requirement, the pupil must log in on count day and nine (9) additional calendar days during the count period. For a pupil who has an
excused absence on count day, the pupil must complete a login on each of ten (10) days within 30 calendar days of count day.

The district may not claim any FTE for a pupil with less than ten (10) logins on separate days, including count day.

b. **Participation:** In order for a district to count a pupil in membership, two-way interaction between the teacher of record and pupil must occur at least one (1) time per week for each week of the four (4) week count period; no FTE shall be granted if the participation requirement is not met. The first week in which participation will be measured begins on count day (Wednesday), and continues through the following Tuesday. Each consecutive week will start on Wednesday and end on the following Tuesday, for a total of four (4) weeks including the week that began on count day. The district shall document and retain an online activity log detailing two-way interactions for each seat time waiver pupil.

The following demonstrates how this requirement translates into the separate weeks for each count period:

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1) Each **course shall count as one class** on the pupil’s class schedule and will generate that portion of an FTE membership that a comparable on-site course offered by the district would generate unless the course is determined to provide less instructional time, in which case the FTE would be prorated according to the number of instructional hours provided. The pupil must have a course-specific class schedule for the current count that includes all enrolled courses counted toward membership for the pupil.

2) The **teacher of record will also serve as the on-site mentor**. The teacher of record shall monitor the pupil’s progress and be available for assistance. The teacher of record shall be a Michigan certified teacher employed by the district.

3) Seat time waiver participants must meet the requirements defined for the specific programs or course types in which they are enrolled, including those in legislation, administrative rule, and this manual.

4) The district may adopt additional requirements for pupils enrolled in virtual learning, distance learning, or independent study. Further, a district may choose not to offer a seat time waiver program or to place greater restrictions on its pupils (e.g., eleventh and twelfth grade pupils only) or on the courses offered. This is the local school board’s prerogative.

5) **Additional documentation must be provided** if requested by the pupil membership auditor. The district must provide all documentation requested by the pupil membership auditor within five (5) business days of the request. This includes, but is not limited to,
documents such as activity logs used to demonstrate course logins, and activity logs and copies of email or text message exchanges detailing weekly two-way interactions between the pupil and teacher of record.

B) **Types of Seat Time Waiver Programs**

100% Online Seat Time Waiver: This type of waiver allows the district to deliver all of a pupil’s instruction online, with no requirement for the pupil to attend instruction physically on-site. Districts may choose to include a drop-in lab component with courses, as needed. A district may enroll up to twenty-five percent of its pupils in grades 6-12. However, if a public school academy that is chartered by the intermediate district operates the program, the program is limited to enrolling ten percent of the ISD regionally combined pupil population in grades 6-12.

Blended Learning Seat Time Waiver: This type of waiver is a hybrid of instruction that takes place in part at a supervised school facility (or a location agreed upon by the district and pupil) and in part through a computer-based or internet-connected learning environment that provides pupils with some degree of control over time, location, and pace of instruction. There is no limit on the percentage of the district pupil population in grades 6-12 who may participate. Pupils must receive at least fifty percent of the course instructional time through on-site face-to-face instruction.

C) **Intermediate District, Local District, and Public School Academy Requirements**

Districts shall agree to operate under the requirements of the seat time waiver as well as the requirements identified in this section. Participation in a seat time waiver program is optional.

The Department allows districts to use direct or facilitated instruction for the delivery of course content. Direct instruction occurs when a certified (and where appropriate a highly qualified) teacher is directly leading and responsible for delivering and assessing content. Alternatively, facilitated instruction occurs when an appropriate grade level certified teacher is responsible for aiding in the delivery of content. Content should be developed and vetted by a certified (and where appropriate a highly qualified) teacher at the appropriate grade level in the content area. If the course content is delivered through facilitated instruction, pupils must have access to an appropriately certified or highly qualified teacher of record. Districts are responsible for determining the most effective method on a course-by-course basis. The intermediate school district’s board of education, the local school district’s board of education, or the public school academy’s board of directors must approve the program if the district will award credit according to the requirements of the Michigan Merit Curriculum.

Based upon satisfactory completion of courses or other credit-earning activities, the credits earned through the seat time waiver online courses and activities shall be comparable to credits earned for a high school diploma or grade progression in the district’s traditional program setting.

In addition, all of the following are required components (unless otherwise noted) for district seat time waiver programs:

1) **Instructional Components**

   **Teacher of Record:** The teacher of record may provide instruction, tests and quizzes, evaluate pupil performance, and assign a grade. The teacher of record is also the on-site mentor for seat time waiver programs. As the on-site mentor, the teacher of record must be available to the pupil for general course assistance, as well as to monitor the pupil’s progress through the duration of the seat time waiver course.

   **Two-way Interaction:** Two-way interaction is the communication that occurs between the
pupil and teacher of record, where one party initiates communication and a response from the other party follows that communication. Responses must be to the communication initiated by the teacher of record, and not some other action taken. This interaction may occur through, but is not limited to, means such as email, telephone, instant messaging, or face-to-face conversation. All two-way interaction must be documented and available to the pupil accounting auditor upon request. Interaction must be relevant to the course content.

**Online Activity Report (Activity Log):** An online activity report is a summary of online learning activities, such as daily logins, examples of coursework completions, two-way interaction logs, or other information that demonstrates pupil participation in the seat time waiver program.

2) **Class Schedules**

A pupil enrolled through a seat time waiver program shall develop a class schedule with the help of the teacher of record or school counselor that details the credits that the pupil will earn over the school year.

The class schedule shall reflect all courses scheduled for the pupil for the semester. This includes pupils who utilize a sequential learning schedule where the pupil must complete one or some of the scheduled courses before proceeding to the next scheduled course.

Districts shall update class schedules within four (4) weeks of each count day. If the district modifies the class schedule following count day, the district must update the class schedule to reflect the actual enrollment before the end of the current school year (June 30).

3) **Instructional Time Requirements and Waiver Renewal**

Pursuant to Section 101(9)(b) and (c) of the State School Aid Act (MCL 388.1701), seat time waivers must adhere to the following instructional time and renewal requirements:

a. **Blended learning seat time waivers** granted for the 2011-2012 fiscal year or a subsequent fiscal year remain in effect unless revoked by the State Superintendent. Blended learning pupils must receive at least 549 hours of on-site instruction in reaching the 1,098-hour requirement.

b. **100% online seat time waivers** granted for the 2011-2012 fiscal year or a subsequent fiscal year remain in effect, unless revoked by the State Superintendent, if educational services are available to pupils for at least 1,098 hours during a school year and each pupil participates in the program for at least 1,098 hours during a school year.

c. A **waiver not described by (a) or (b) above** remains effective for one (1) fiscal year unless the State Superintendent revokes the waiver. The district must request renewal of a waiver in this category annually if the district plans to provide the program in subsequent years.

4) **Program Effectiveness**

The district and Department shall measure seat time waiver program effectiveness using academic benchmarks, such as those derived from the Department-required grade-appropriate assessments, or through other measures identified by the Department. Pupils enrolled in a seat time waiver program must participate in the grade-appropriate state assessment exams.

Districts must assess each pupil to determine academic progress at regular intervals and must use the results from these assessments to develop an education plan that leads to a high school diploma. Districts must maintain the results of these assessments in the pupil’s education plan.
As determined by the Department, a variety of benchmarks and measures are used to monitor program effectiveness and to make determinations regarding the continuation of program waivers.

5) Costs, Tuition, and Fees

When electing to operate a seat time waiver program, the district agrees to incur costs associated with operating the program.

Additionally, the district is required to pay any associated tuition charges, costs, and fees for the seat time waiver course(s) and other online activities on behalf of the eligible pupil, including:

- **The costs associated with providing the pupil with a computer.** The district must offer to provide a computer for each pupil enrolled under an approved seat time waiver. The computer must include Internet capacity and appropriate software configuration for use by the pupil at home while enrolled in the seat time waiver program.

- **The costs associated with providing the pupil with broadband Internet access.** The district must offer to provide broadband Internet for a pupil enrolled in a seat time waiver program for the duration of the pupil’s enrollment in a seat time waiver program. The broadband Internet capacity shall provide at least 3 Mbps download and 1 Mbps upload speeds.

6) Programs Requiring Additional Approval

**The district must receive approval from the Department in cases where limited broadband Internet access requires that the computer-based course be delivered through alternative means.** The district must receive approval of the requested alternative delivery method from the intermediate district auditor before submitting the request to the Department for approval of an “offline” computer-based delivery model. The implementation plan for the courses must include provisions regarding how the pupil will satisfy the requirements for counting the pupil in membership.

**The district must receive approval from the Department in cases where the district wishes to provide self-scheduled, project-based learning courses that have no online or computer-based component.** The district must receive approval of the self-scheduled, project-based learning course from the intermediate district auditor before submitting its implementation plan to the Department for approval. The implementation plan for the course must include provisions regarding how the pupil will satisfy the requirements for counting the pupil in membership.

D) Statutory and Other References

- **State School Aid Act:**
  - MCL 388.1606
  - MCL 388.1701

- **Revised School Code:**
  - MCL 380.1281

- **Administrative Rules:**
  - R 340.11
  - R 340.18

- **Appellate Court Decision:**

E) Question and Answer

**Q #1** How will the State of Michigan track seat time waiver pupils?
A #1 The district will report through MSDS that the pupil is an alternative education program using Participation Code 9220 and Participation Code 9229, which will indicate that the pupil is enrolled through a seat time waiver program.

Q #2 If a pupil cannot log in on count day due to an illness, will he or she meet the attendance requirement?

A #2 A pupil with an excused absence who logs into at least one online course on at least 10 separate days during the 30 calendar-day count period is still eligible to meet the attendance requirement.

Q #3 May the district claim partial FTE for a seat time waiver pupil who failed to meet the attendance requirement?

A #3 No. A seat time waiver pupil who logs in less than one time on each of ten (10) days during the 30-day count period is ineligible for membership.

Q #4 If a seat time waiver pupil fails to participate in two-way interaction during each week of the count period, may the district claim a partial FTE for the pupil?

A #4 No. The district cannot count FTE for a pupil who did not satisfy both the participation and the attendance requirements.

Q #5 If a pupil completes the equivalent of a year of courses before the supplemental count day, can the district count the pupil in the supplemental count without having the pupil enrolled in any courses during the supplemental count?

A #5 No. Section 6(8) of the State School Aid Act (MCL 388.1606) requires that a pupil be enrolled and in attendance on the count day in order to be counted for membership purposes.

Q #6 When a pupil takes courses in a sequential format, such as only three courses over one nine-week period and the number of courses over the semester equal to a traditional pupil’s schedule, how should that be documented?

A #6 Every pupil under a seat time waiver, including a sequential learner, must have a course schedule that reflects all courses in which the pupil is enrolled and which the pupil attended during the semester. The district will use the course schedule to determine the amount of FTE for the pupil.

Q #7 May the district count a seat time waiver pupil for both general education FTE and special education FTE?

A #7 The district may count a seat time waiver pupil with a current IEP for special education FTE for that portion of time the pupil is in the classroom with a special education teacher and for general education FTE for that portion of time that the pupil is participating in the seat time waiver program. The sum of the special education FTE and the general education FTE cannot exceed 1.0.

Q #8 Can a homebound/hospitalized pupil enroll and attend through a seat time waiver or does the pupil require the minimum two weekly 45-minute visits by a certified teacher?

A #8 The district must provide one-on-one instruction with a certified teacher in order to count a pupil using the homebound/hospitalized requirements (See Section 5-D of this manual). Virtual courses would be optional and in addition to the one-on-one instruction.

Alternatively, the district could choose to count the pupil under a seat time waiver...
rather than using homebound/hospitalized services; the pupil’s class schedule would then determine the amount of FTE claimed.

Q #9  When a pupil is permanently expelled under Sections 1311 or 1311a of the Revised School Code (state mandated expulsion), can the pupil receive instruction through a seat time waiver, or is the district required to provide the minimum two weekly one-hour visits by a certified teacher if it wishes to count the pupil in membership?

A #9  Under Sections 1311 and 1311a of the Revised School Code, the district must provide the pupil with two weekly one-hour individualized instructional visits with a certified teacher in order to count the pupil for a full FTE. Another option under those sections would be for the district to operate an alternative education program for permanently suspended or expelled pupils using a seat time waiver as the method of providing the pupil instruction. If the district chooses to enroll the pupil in a seat time waiver program and does not provide the one-on-one individualized instruction twice a week, the district would calculate the FTE using the requirements for counting pupils in membership as provided in this section.

Q #10  Must a district request a seat time waiver for any pupil taking online courses off-site?

A #10  A pupil who takes one or two courses off-site does not require a seat time waiver. A pupil who takes more than two online courses off-site requires the district to have a seat time waiver or the district must be participating through its ISD seat time waiver.

Q #11  Must the district provide a computer and broadband access to a pupil enrolled in a seat time waiver program part-time?

A #11  Families of enrolled seat time pupils may refuse the computer or broadband access offered by the district, but the district must notify the families of the opportunity regardless of the pupil enrolling as full-time or part-time.

Q #12  What are the requirements for a district with a mid-winter break during the 30-day count period?

A #12  If the winter break is 4 school days or longer, the requirement for weekly two-way interaction does not apply for that week. This does not change the 10-login requirement during the 30-day count period. If the break is 3 school days or fewer, the requirement for a weekly two-way interaction between the teacher of record and pupil applies.

Q #13  Is there a specific amount of time that a pupil must log into a course for it to count toward the 10-login requirement?

A #13  No specific amount of login time is required.

Q #14  Is the teacher of record limited to a certain number of pupils?

A #14  There is no limit on the number of pupils assigned to the teacher of record.

Q #15  How does a school document the weekly two-way interaction between the teacher of record and pupil?

A #15  The teacher of record must maintain an activity log for each pupil documenting his or her two-way interaction. The district may print e-mail exchanges and discussion board conversations, or the teacher of record may take notes from a telephone or face-to-face conversations that include details of the conversation and date.
Q #16 Are seat time waiver pupils required to participate in assessments required by the Department?

A #16 Pupils enrolled in grade 11 (or grade 12 if the pupil did not participate in the assessment previously) must participate in the Michigan Merit Exam (MME) or Department-required career and college readiness assessment as scheduled by the Department. Participation in Department-required grade-appropriate assessments is a legislative requirement.

Q #17 If the teacher of record initiates contact with the pupil and the pupil responds by completing a task (such as turning in an assignment) rather than responding to the teacher of record directly, does this count as two-way interaction?

A #17 No. While a teacher’s initiation of contact could lead to some form of action by the pupil, such as completing an assignment, such action cannot be the only result of the teacher’s initiation of contact for the purpose of establishing participation. The described action by the pupil provides no additional information to the teacher of record regarding the pupil’s progress in the course. The two-way interactions should provide both the teacher of record and the pupil a better understanding of the pupil’s experience and progress and should provide a forum for any other course-related needs that must be resolved in order for the pupil to complete the course successfully.

Q #18 Can the district enroll pupils in courses that have no online or computer-based component under a seat time waiver?

A #18 The district must receive approval from the Department in cases where the district wishes to provide self-scheduled, project-based learning (PBL) courses that have no online or computer-based component. The district must receive approval of the self-scheduled, project-based learning course from the intermediate district auditor before submitting its implementation plan to the Department for approval. The implementation plan for the course must include provisions regarding how the pupil will satisfy the attendance and participation requirements.

PBL refers to any programmatic or instructional approach that utilizes multifaceted projects as a central organizing strategy for educating pupils in essential or core content. When engaged in project-based learning, pupils will be assigned a project or series of projects that require them to use diverse skills—such as researching, writing, interviewing, collaborating, or public speaking—to produce various work products, such as research papers, scientific studies, public policy proposals, multimedia presentations, video documentaries, art installations, or musical and theatrical performances. Unlike many tests, homework assignments, and other more traditional forms of academic coursework, the execution and completion of a project may take several weeks or months, or it may even unfold over the course of a semester or year. The district must maintain a log of two-way interaction between the teacher of record and pupil to satisfy the participation requirement.