



# The ABCs of Private School Regulations





## Introduction

Tennessee has long portrayed itself as a state that is business-friendly. “We’ve worked hard to create a business friendly climate in Tennessee,” then Governor Phil Bredesen stated in 2008.<sup>1</sup> Former Governor Bill Haslam wrote a national column touting how business-friendly Tennessee was during his time in office, and Governor Bill Lee has shared how business-friendly the state is, with low taxes, right to work laws, and a strong state financial position.<sup>2</sup> In addition to holding Tennessee up as one of the best places to start a business, former and current state leaders have made a point to prioritize education during their terms.<sup>3</sup>

Given this, it wouldn’t be a wild assumption to believe that Tennessee must be friendly to education entrepreneurs, yet reality is something different. State rules and regulations have built up a bureaucratic barrier, for both new education entrepreneurs as well as those currently running private schools or other nonpublic educational options.<sup>4</sup> Whether it’s licensing requirements, mandated subjects for curriculum, registrations and accreditations, testing, and even how many hours of instruction a child must receive each day, regulations on private education in Tennessee almost make it mirror public education instead of allowing for innovation and freedom for entrepreneurs, educators, and students. Even more troublesome, these rules and regulations often require entrepreneurs to operate, in many ways, similar to their public counterparts that are offered for free all across the state.

# By the Numbers, By the Rules

Public schools, supported by local, state, and federal tax dollars, can be found in every county in the state. State governed schools, county and city school systems, and other public options total over 1,800 schools in Tennessee, enrolling over 965,000 students.<sup>5</sup> Compare that to private education options, which face greater pressures from population size, density, and the lack of guaranteed tax revenue. Recent data shows 587 private schools operating, serving around 100,000

students.<sup>6</sup> Despite serving only one-tenth of the number of students, private schools in Tennessee have an incredible reach and can be found in 72 of the state's 95 counties.<sup>7</sup> While more populated counties have a larger concentration of private schools, these schools can be found in many rural areas as well. In fact, 94.5 percent of children aged 0-17 in Tennessee live within a county with a private school.<sup>8</sup>

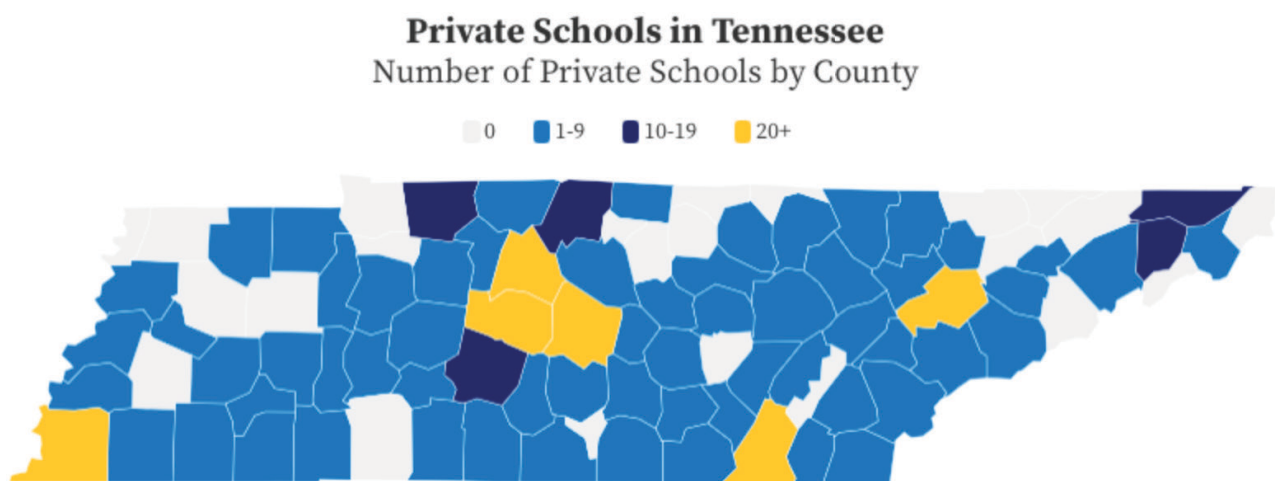


Figure 1. Private schools reach nearly every corner of the state, with nearly 600 schools in 72 counties.

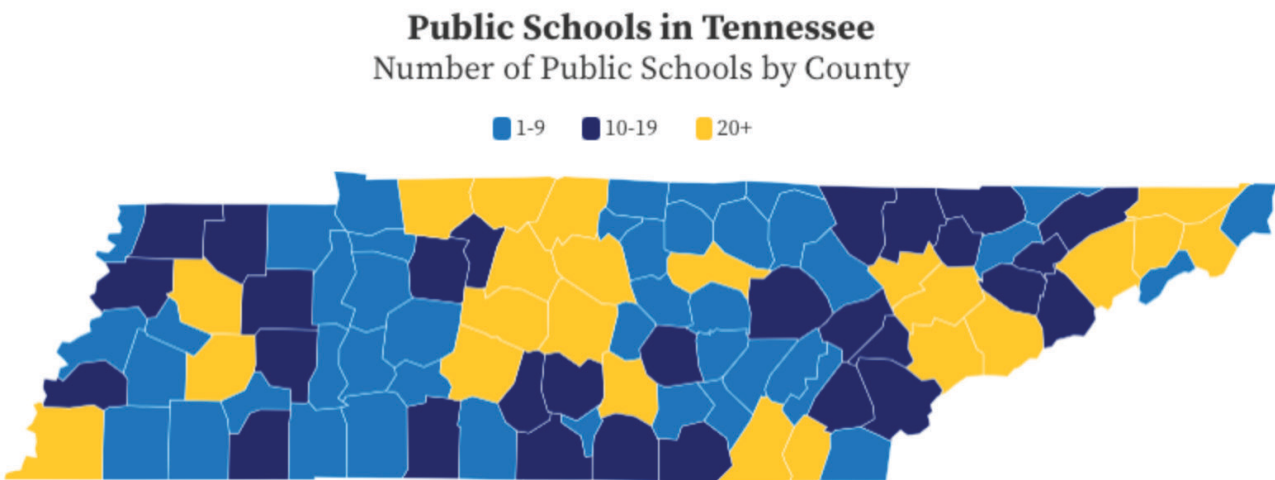


Figure 2. Public schools heavily outweigh private schools in sheer numbers, but similar to private schools, more schools are in densely populated areas.

The public school system's ability to support thousands of schools throughout the state come with regulations and rules in addition to dedicated tax dollars. However, private educational options are inherently independent because of their lack of built in revenue and students, but they are still dealt many of the same regulations the Tennessee public school system receives. Private schools are separate from public schools because they want autonomy and the freedom to offer a different educational experience. Yet, significant regulations are still piled on from the state government despite their independent status.

Some of these regulations can be understood for child safety, such as background checks for teachers and staff.<sup>9</sup> But some regulations seek to clearly make private education mirror public education in some areas. Tennessee, unlike the majority of states, has regulations around student testing and licensure of teachers in some private schools. The state requires the length of the school year and days be regulated similar to public schools, as well as curriculum to include mandated subjects.<sup>10</sup>

For an education entrepreneur looking to provide new educational options that are innovative and go outside the lines of the traditional six to seven hours in a desk in front of a whiteboard, Tennessee regulations on private schools clearly set up roadblocks. If private schools are designed to be innovative, autonomous, and free from government overreach, why has the state sought to make them similar to public schools in many aspects?

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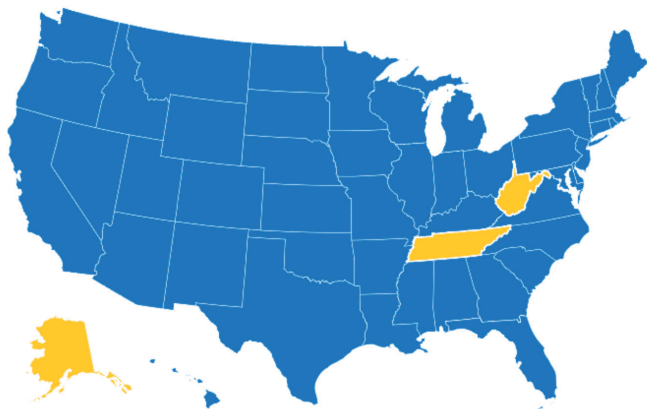




# Reading, Writing, & Regulatory Categories

Unlike most states, which generally treat private schools uniformly, Tennessee categorizes private schools into six groups:

- ▶ **Category I:** Schools approved through direct application to the Tennessee Department of Education.
- ▶ **Category I-SP:** Schools approved through the Department that provide education to students receiving short-term medical or transient care.
- ▶ **Category II:** Schools approved through accreditation by agencies authorized by the State Board of Education (SBE).
- ▶ **Category III:** Schools approved through accreditation by agencies authorized by the SBE as a regional accreditor.
- ▶ **Category IV:** Schools approved through membership in an agency under TN state law (church-related schools) or direct application to the SBE.
- ▶ **Category V:** Schools acknowledged for operation through direct application to the Tennessee Department of Education.<sup>11</sup>



*Figure 3. Tennessee's categorical system for private schools sets it apart from the rest of the nation.*

This complex categorization system, which is unique amongst the nation where the majority of states treat private schools equally, or religious vs. non-religious. In many states, private schools

are not required to have any accreditation, licensing, or registration. These hurdles impose additional regulatory burdens on private school founders. Differing categories create confusion and difficulty in changing regulations for different categories, and places further strain on new educational entrepreneurs. In contrast, states like South Carolina and Utah only have optional steps for approval or accreditation in order to start operations and in Florida, they have streamlined the process to be straightforward, regulating only in a handful of areas, mainly around safety and record keeping.<sup>12</sup>

Other states have proven that having a set of standard safety regulations in place for all schools is not controversial. Yet Tennessee's category system goes well beyond safety regulations, with varying regulations on nonpublic options, bringing them more or less in line with state regulations for public schools.

Regulations	CAT I & I-SP	CAT II	CAT III	CAT IV	CAT V
Teaching License or Bachelors Requirement	✓	DETERMINED BY ACCREDITING AGENCY	DETERMINED BY ACCREDITING AGENCY	✗	✓
Curriculum Requirements	✓	✓	✓	✗	MUST BE AVAILABLE TO PUBLIC UPON REQUEST
Testing Requirements	✓	✓	✓	✗	✓
Minimum Student Enrollment	✓	✓	✓	✗	✓
Minimum Instruction Days	✓	✓	✓	✓	✓
Minimum Daily Instruction Time	✓	✓	✓	✓	✓
Report Personal Information to Public School District Annually	✓	✓	✓	✓	✓
Annual Inspections	✓	✓	✓	✓	✓

Chart 1. Differing regulations on categories of schools creates confusion and is hardly business-friendly for education entrepreneurs.

As seen in Chart 1, the non-exhaustive list of requirements on private schools vary in Tennessee, with Category IV, or church-related schools, given the most leeway. Yet, even with the state not looking to interfere with curriculum or testing for those schools, the vast majority of private school categories have significant regulations. All private schools, even church-related schools, are held to instruction hours, days, and reporting requirements.

Tennessee is unique in its categorization of private schools. The vast majority of states treat private schools as a single operation. On the flip side, Alaska has a simplified categorical system, with private schools being “exempt” or “non-exempt”

depending on if they meet state requirements.<sup>13</sup> West Virginia has a similar “exempt” system, depending on if the private school is registered with the local school board or state.<sup>14</sup> Tennessee stands as an outlier when it comes to regulating private schools and has arguably the most complex categorization and differing rules for private schools in the nation.

While state law does describe what a private or nonpublic school is and that it satisfies compulsory attendance for a child, very few sections of the law mention private schools, except for the right for the state to regulate them.<sup>15</sup> The majority of regulations and even the category system is from rulemaking from the State Board of Education.<sup>16</sup>

These regulations, implemented by non-elected voting members, govern many aspects of how private schools can open and operate, in less of a public view than the state house. In addition, there is a nine-member Advisory Council for Nonpublic Schools that advises the Department of Education.<sup>17</sup> The meetings of the Advisory Council are not open to the public, leading to even less transparency in the rulemaking process around private schools.<sup>18</sup> Despite few mentions in state law, private, church-related schools are legally required to have the “same length of term as public schools,” regulating their school calendar and the duration of academic year.<sup>19</sup>

Despite being considered ‘usual suspects’ for having poor business environments, California and New Jersey are surprisingly friendly to education entrepreneurs. Unlike Tennessee, these states do not regulate the length of the school year or instruction hours for private schools. These states are joined by many others that have none or optional requirements for accreditation, registration, licensing, or state approval.<sup>20</sup> Teacher licenses and certifications are also optional or not required, as is annual testing for students in many states.<sup>21</sup> In the simplest terms, other states realize private schools only survive if they serve students and families well. Heavy handed state regulations to make private schools more in line with public schools seem not to raise the quality of private schools or a child’s education. If that were the case, teacher licenses, mandatory curriculum, and instructional days would be the norm; however, it’s the opposite. Private schools do not succeed or fail based on how well they follow bureaucratic rules but on how well they serve their students.

With private schools’ mission to offer an education that is different from what is freely offered, innovation is something that should be welcomed, not hampered by regulations. For example, microschools, small learning environments with limited students usually of different ages, grew immensely during the pandemic and continue to thrive today. These innovative schools do not follow the traditional school model but in many cases have unique curriculum for the school, have classes in different environments, or have hybrid programs of home learning and at-school

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days. Rigid state regulations requiring schools to have mandatory instruction hours each day or required subjects for curriculum could prevent these schools from operating altogether. Potential microschools that focus on farming, sports, or niche interests would likely not pass Tennessee’s stiff regulations and be able to operate as a private school, yet such schools are blossoming all across the nation.<sup>22</sup>

Private school regulations that mirror public schools do little to serve students when the very reason parents are choosing another educational option is because they want freedom, autonomy, and the schools’ standards, not the state’s. Heavy handed regulations stifle innovation and limit the opportunities students have to experience a new educational opportunity.

# Private School Landscape in Tennessee

One of the largest unseen effects of heavy handed regulations on private schools is the hindrance of new schools launching. Federal data shows Tennessee beats the national average for the number of students in private schools in relation to population.<sup>23</sup> However, the number of private schools per capita is below the national average.

## Tennessee Private School Participation vs. Number of Schools Per Capita

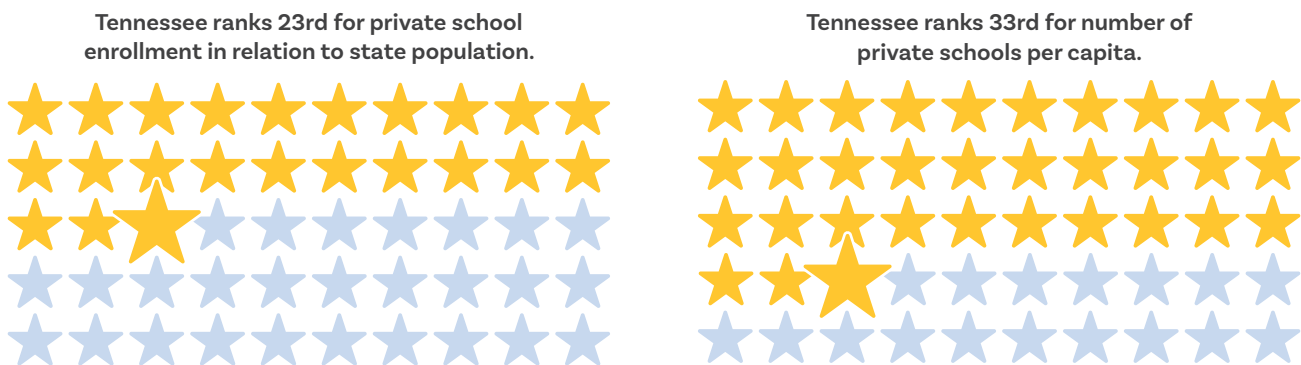


Figure 4. Despite exceeding the national average for how many students are attending private schools, Tennessee lags in the number of private schools per capita.

These numbers may suggest that the regulatory framework around private schools allows larger, well-established private schools to comply with state regulations, while the creation of new schools may be hindered as potential school founders face restricting, anti-competitive rules. With these regulations, it's no wonder why Tennessee tied for second-to-last place in a study on the freedom of education entrepreneurs.<sup>24</sup> These regulations also come with a cost of compliance. A recent report covered discussions with multiple private schools and found varied school-level costs for compliance. One estimate from a school administrator placed compliance costs around \$100,000 a year.<sup>25</sup>

The limiting effects of excess regulations on private schools makes education entrepreneurship more difficult. Rural private schools struggle with lower populations, and excessive regulations at

the state level can result in a one-two punch to potential school founders. Even if education entrepreneurs try to respond to market demand, regulations can limit their ability to create a school due to government hurdles placed in the way. Though private schools exist in rural areas across the state, reforming regulations could allow microschools to operate in the most rural of areas, providing a unique and low-cost alternative to families who are looking for another educational option.<sup>26</sup>

By aligning state regulations with nearly every other state and treating private schools as different educational options, not simply a different educational option with some public school regulations, Tennessee policymakers can allow education entrepreneurs to provide new educational options to rural areas where options would be welcomed.



# Coi's Story

## Rising Above Regulation

Coi Morefield is a mother and the founder of the Lab School of Memphis, a microschool in Shelby County. Founded in 2021, the Lab School's mission is far different from a traditional school. Tests are not part of the curriculum. Students split time between classes and projects, forests, and farms. The Lab School offers an education that looks nothing like a traditional public school, or even many private schools, and that is why parents have chosen and in many instances, sacrificed, to send their children to a school that meets their unique needs.

One Shelby County student who now attends the Lab School was zoned for a public school that had struggling achievement for students. In addition to poor academic performance of his public school, he experienced educational trauma due to bullying and poor teacher experiences. His time at public school made him defensive to students and teachers, made him quiet, and left him severely struggling in math and reading. Upon entering the Lab School, the teachers, called "guides," were able to build structure and incorporate activities that required critical thinking and creativity. The student went from being afraid to answer questions to being one of the most confident learners, leading to an over 20 point increase in his reading and math assessments. He has shared with his family and with Lab School staff that he is happy to learn and feels at home when at the Lab School.

Coi's school was founded before the State Board of Education brought in a new rule for her school category that requires schools to have a minimum of 10 enrolled students.<sup>27</sup> Most microschools are started by current or former teachers, or parents seeking another option because their public schools aren't working for their child. Most are not professional entrepreneurs or school founders



with the backing of large capital and marketing to enroll students before their first day operating. While the Lab School now has dozens of students and a second satellite campus, if the state rules for minimum enrollment had been placed just a year or two earlier, the Lab School would likely not exist today.

Coi recognizes Tennessee is a pro-business state, but says that the state "is pro-business, until you want to offer something in the government's business, like education." Policymakers should recognize the heavy handed government regulations placed on education entrepreneurs and work with these entrepreneurs to allow the market to flourish in Tennessee.

# Conclusion

While Tennessee has positioned itself as a pro-business state, its heavy handed regulation of private schools and education entrepreneurs have a limiting effect, particularly in a sector that desperately needs innovation. Tennessee's complex and burdensome regulations on private schools create unnecessary barriers to entry for education entrepreneurs, potentially limiting educational options for students. By increasing transparency and aligning private school regulations with simpler and more common-sense rules, Tennessee can foster a more innovative and competitive education landscape.

To empower education entrepreneurs, provide more choices for students, and cultivate a more innovative education space, Tennessee policymakers should consider reducing, simplifying, and streamlining private school regulations. Potential policy reforms should include:

- ▶ Removing the category system to reduce confusion and differing regulations.
- ▶ Removing student enrollment minimums to welcome more microschools and educational options, especially for rural students.
- ▶ Reforming rules around instruction hours and days to allow for more flexible and innovative schools.
- ▶ Making annual testing optional instead of mandatory.

By addressing these issues, removing the complexity of the category system, and implementing reforms dozens of other states have adopted, Tennessee can create a more vibrant and competitive education landscape, benefiting students, entrepreneurs, and the state's economy.



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