



Overview of K-12 Education Laws Applicable to Correctional Facilities

Gillian Jones & Taylor Jenkins

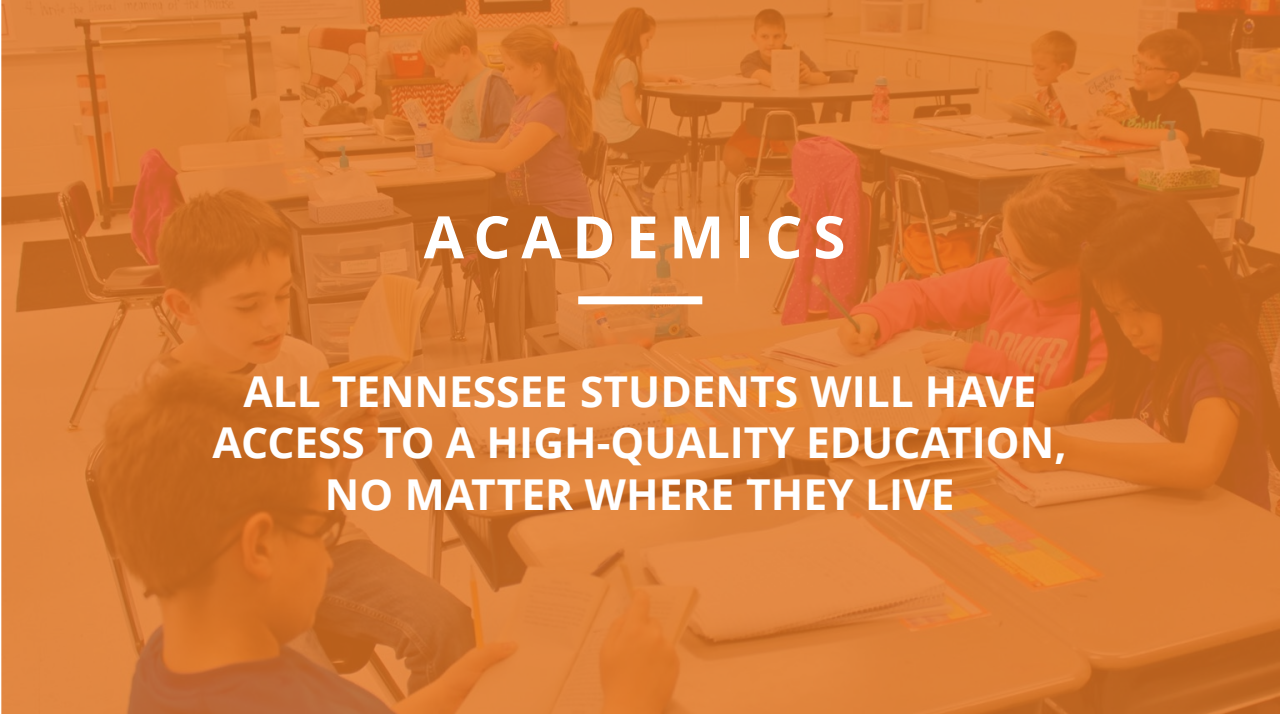
*Tennessee Department of Education
Office of General Counsel*





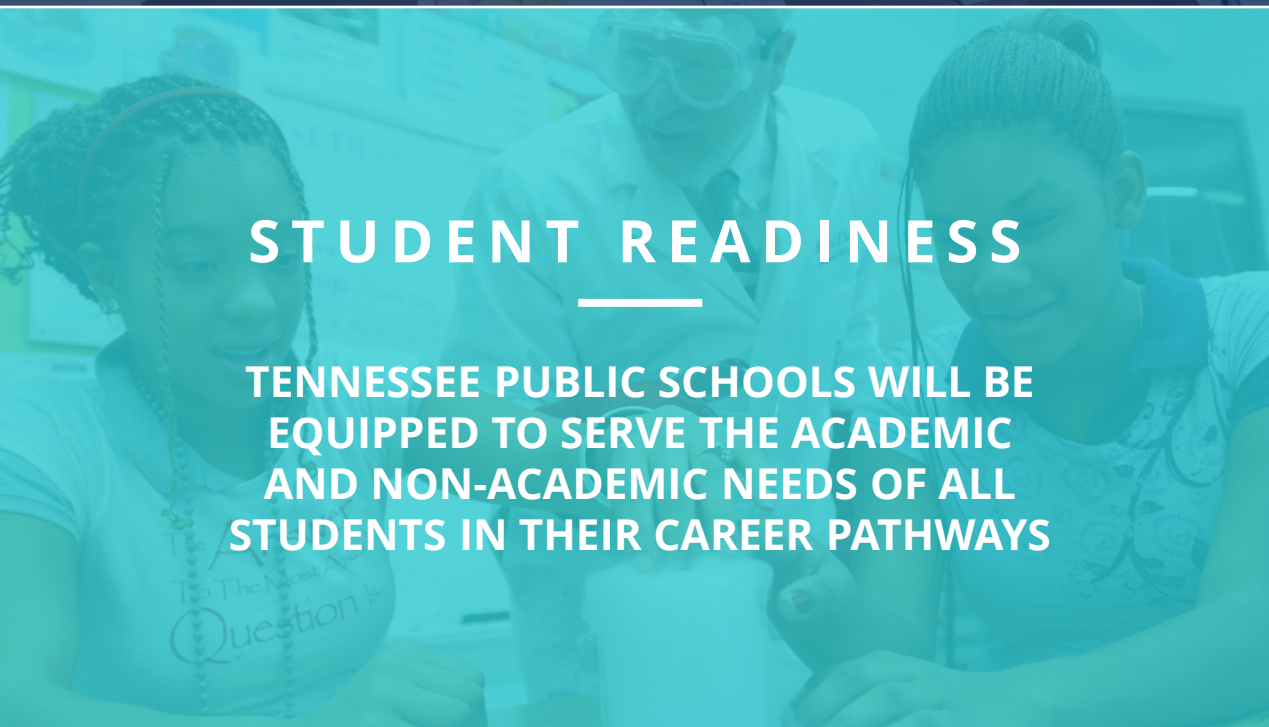
BEST FOR
ALL

We will set all students on a path to success.



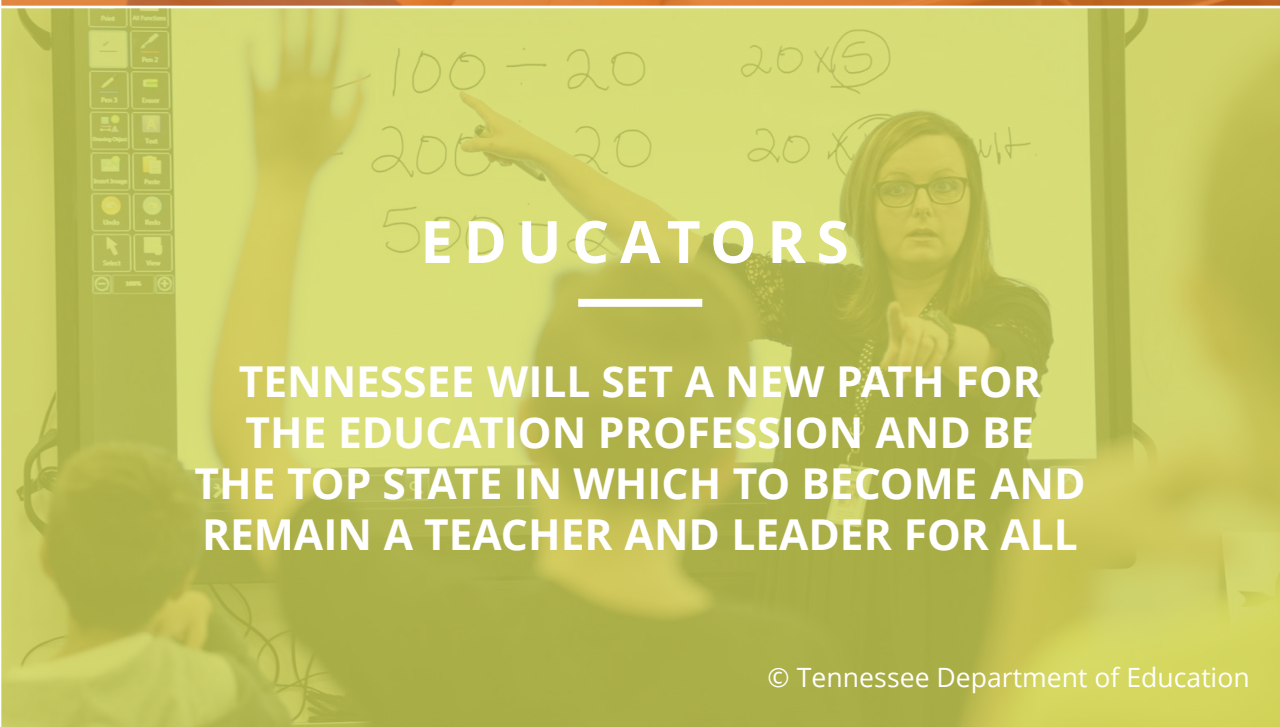
ACADEMICS

ALL TENNESSEE STUDENTS WILL HAVE ACCESS TO A HIGH-QUALITY EDUCATION, NO MATTER WHERE THEY LIVE



STUDENT READINESS

TENNESSEE PUBLIC SCHOOLS WILL BE EQUIPPED TO SERVE THE ACADEMIC AND NON-ACADEMIC NEEDS OF ALL STUDENTS IN THEIR CAREER PATHWAYS



EDUCATORS

TENNESSEE WILL SET A NEW PATH FOR THE EDUCATION PROFESSION AND BE THE TOP STATE IN WHICH TO BECOME AND REMAIN A TEACHER AND LEADER FOR ALL



Agenda

- Laws applicable to general education
- Laws applicable to special education



General Education

Tenn. Code Ann. § 49-6-3023

- *Students incarcerated in detention centers licensed by DCS are provided educational services by an LEA serving the county in which the detention center is located.*
- *Requirements of Tennessee Dept. of Education:*
 - *Develop Rules to be adopted by the TN State Board of Education*
 - *Monitor the educational services provided to students incarcerated in detention centers*
 - *Ensure compliance with Rules*



State Board of Education (SBE) Rule 0520-01-12

- *These rules shall apply to general education students only.*
 - LEA in which the Juvenile Detention Center is located provides educational services for general ed students. However, students remain enrolled in their home LEA.
 - Minimum Length of school day is **4 hours**
 - Instruction must be provided by a **teacher with a valid Tennessee teacher license**

Testing:

- The student must complete a nationally norm-referenced pre-test by the 5th instructional day
- The student must also complete a benchmark assessment at least every 4 weeks while incarcerated at the detention center
- The receiving LEA is responsible for ensuring the required tests are administered.



Notification and Transfer of Records

TIME	REQUIRED ACTION
72 hours after student arrives in detention center outside of home LEA	Notify, in writing, including student's name, location of incarceration and date of incarceration: (1) the home LEA, (2) the receiving LEA, and (3) TDOE
After 5 instructional days at the detention center	The Receiving LEA shall request the student's transcripts from the home LEA
No later than the 10th instructional day	The home LEA shall ensure the student's educational records are received by the receiving LEA
No later than the 15th instructional day	The receiving LEA shall work with the home LEA to develop an ESP for the student
No later than the 20th instructional day	The receiving LEA shall ensure the student begins receiving educational services in accordance with the ESP
Exiting	Return to home LEA: Receiving LEA return all educational records



Funding for student's education

Once a student is transferred out of a detention center, the detention center must notify TDOE and provide the number of instructional days the student was held.



TDOE calculates and transfers an amount equal to the per pupil state and local funds from the home LEA to the receiving LEA on a prorated daily basis for the length of the student's incarceration



Security of students and staff in the juvenile detention center

- The detention center is responsible for providing a secure educational setting
 - The classroom must be an adequate size and conducive to instruction for the number of students required to be educated.
 - The detention center must supply appropriate staff to ensure the safety of students and receiving LEA staff in the detention center.
 - All security decisions shall be made by the detention center's director or designee.



Additional Requirements of SBE Rule 0520-01-12

▪ Point of Contact

- TDOE, DCS, the receiving LEA and the home LEA must each establish a primary point of contact to resolve issues that arise under these rules.
- The LEAs' point of contact should be the person filling the Attendance Officer position unless the LEA designates another person
 - Any designations must be approved by the Commissioner.

▪ Monitoring

- DCS and TDOE must regularly monitor detention centers to ensure compliance with the Rule.
- TDOE must monitor the receiving LEA, the home LEA and the detention center to ensure appropriate educational services are being offered.



Privacy Rights

- **Family Educational Rights and Privacy Act (FERPA)** is a federal law which grants certain rights to parents regarding their student's education records, including:
 - The right to inspect and review their student's education records,
 - The right to seek to have the records amended, and
 - The right to non-disclosure of personally identifiable information from the education records, subject to certain exceptions. (20 U.S.C. § 1232g; 34 CFR Part 99)
- When a child turns 18 years old, the rights under FERPA transfer from the parent to the student.
 - A parent whose minor student is convicted as an adult or incarcerated in an adult correctional facility does not lose their FERPA rights over their student's records. The rights still transfer at 18 years old.



Juvenile Transfer to Adult Court

- Transfer and education for general education students
 - **Tenn. Code Ann. § 37-1-134(i)**: ...Similar regulations and policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.



Special Education

Special Education in Correctional Facilities

- Absent a specific exception, **all protections listed in the Individuals with Disabilities Education Act (IDEA) and state special education law apply to students with disabilities in correctional facilities, including:**
 - Child find
 - Comparable services for transfer students
 - Individualized Education Program (IEP) development, revision, and implementation
 - Free appropriate public education (FAPE)
 - Least restrictive environment
 - Disciplinary protections
 - Teacher qualifications

See U.S. Dep't of Educ., [*Dear Colleague Letter*](#) (Dec. 5, 2014)

A young boy with blonde hair and a girl with dark hair and a pink headband are looking at a book together. The boy is on the left, wearing a red and white striped shirt. The girl is on the right, wearing a purple top. They are both looking down at the book with interest. The background is slightly blurred, showing what appears to be a classroom setting with colorful posters on the wall.

Who is Responsible for Providing FAPE?

If a student with a disability is placed in...

- A **juvenile detention center**, the LEA in which the center is located is responsible for enrolling and serving the student. *See* Tenn. Code Ann. § 49-6-3023.
- A **county/city jail**, the LEA in which the jail is located is responsible for enrolling and serving the student. *See* [Tennessee IDEA Interagency Agreement](#).
- A **youth development center**, the Tennessee Department of Children's Services is responsible for serving the student.
- A **state correctional complex**, the Tennessee Department of Corrections is responsible for serving the student.
- A **federal correctional complex**, the United States Department of Justice is responsible for serving the student.



Incarceration Outside of Residential LEA

When a student with a disability is incarcerated in a correctional facility outside the boundaries of the student's Home LEA:

1. The correctional facility **notifies** the Home LEA and the Receiving LEA that the student has been detained.
2. The Receiving LEA **requests the student's education records** from the Home LEA after the student has been incarcerated for more than 72 hours, and the Home LEA shares the records as soon as possible thereafter.
3. The Home LEA unenrolls the student and the Receiving LEA **enrolls the student.**
4. The Receiving LEA **provides comparable services** to the student until the Receiving LEA **adopts the student's existing IEP or develops and implements a new IEP.**



Child Find

- LEAs have an **affirmative, ongoing obligation to identify, locate, and evaluate** all students with disabilities residing within the jurisdiction who are in need of special education and related services. See 34 C.F.R. § 300.111(a)(1).
- Students suspected of having a disability must be evaluated in a timely manner, **even if the student will not be in the facility long enough to complete the evaluation.** See U.S. Dep't of Educ., [*Dear Colleague Letter*](#) (Dec. 5, 2014).
- The Home LEA and Receiving LEA **may need to collaborate** to ensure that evaluations and reevaluations are conducted in a comprehensive and timely manner.

Comparable Services

- If a student with an IEP moves to a new LEA in the same state within the same school year, the new LEA **must provide comparable services to those the student received in the old LEA** until the new LEA adopts the existing IEP or develops a new IEP. *See 34 C.F.R. § 300.323(e).*
- Comparable services do not need to be identical, but they **must be similar**.
- LEAs cannot avoid the obligation to provide comparable services by agreeing to a temporarily “reduced” IEP. *See Tenn. Dep’t of Educ., Williamson Cnty. Schs. (Oct. 20, 2010).*
- If you cannot provide comparable services, **document** the services missed and **plan** for how you will provide **compensatory education and services**.



IEP Development and Revision

- **IEPs must be developed in accordance with the IDEA regulations and state special education law.** All IEP content requirements apply to students with disabilities in correctional facilities, including statements on:
 - The student's present levels of academic achievement and functional performance.
 - The measurable annual academic and functional goals.
 - The special the special education, related services, and supplementary aids and services that will be provided to the student to enable the student to advance appropriately toward attaining IEP goals and to be involved in and make progress in the general education curriculum.
- The services included in the student's IEP **should not be based on the services available at the correctional facility.**
- Again, if you cannot provide appropriate services, **document** the services missed and **plan** for how you will provide **compensatory education and services.**

FAPE and IEP Implementation

- Students with disabilities are still entitled to an educational program that “is reasonably calculated to enable [the] child to make **progress appropriate in light of the child’s circumstances.**” *Endrew F. v. Douglas Cnty. Sch. Dist. Re-1*, 137 S. Ct. 988.
- An **appropriate education** for a student with a disability **should generally be the same** regardless of whether the student is in a public school or a correctional facility.





Least Restrictive Environment

- LEAs must ensure that students with disabilities are educated with students who are nondisabled to the maximum extent appropriate. *See* 34 C.F.R. § 300.114(a)(2).
- **“The IDEA requirements related to LRE apply to the education of students with disabilities in correctional facilities.** IEP teams or placement teams must make individualized placement decisions, and may not routinely place all students with disabilities in correctional facilities in classes that include only students with disabilities, even if this means creating placement options or using other arrangements, to the maximum extent appropriate to the student’s needs.” *See* U.S. Dep’t of Educ., [*Dear Colleague Letter*](#) (Dec. 5, 2014).

Disciplinary Protections

- LEAs must conduct a **manifestation determination review (MDR)** within 10 school days of “any decision to change the placement of a child with a disability because of a violation of a code of student conduct.” 34 C.F.R. § 300.530(e).
- A change of placement occurs when the (1) the removal is for more than 10 consecutive school days, or (2) the student has been subjected to a series of removals that constitute a pattern because the removals total more than 10 school days in a school year and because the behavior is substantially similar in previous incidents. *See* 34 C.F.R. § 300.536.
- Students with disabilities **are still entitled to the disciplinary protections** available under IDEA, including the right to a manifestation determination review.

Disciplinary Protections

- If the behavior is NOT a manifestation of the student's disability, then the student may be discipline, but **must be given the opportunity to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP**, albeit in a different setting. *See* 34 C.F.R. § 300.530(d)(1).
- For example, the student may be provided educational services in the student's cell or in a "lockdown" unit.
- When the student engages in behavior that results in a "change of educational placement," the student's IEP team should also **consider the need to conduct a functional behavior assessment (FBA) and implement a behavior intervention plan (BIP)**. *See* SBE Rule 0520-01-09-.24.



Qualifications for Special Education Teachers and Service Providers

- FAPE includes “ensuring that special education teachers and related services providers are **appropriately and adequately prepared and trained.**”
- Teachers providing special education **must have obtained State certification** as a special education teacher.
- Related services providers **must meet the State-approved licensing and registration requirements** that apply to their professional discipline.
- Paraprofessionals and assistants may be used to assist in the provision of special education and related services **if they are appropriately trained and supervised** and work **under the supervision of** a certified teacher.
- Special education teachers and related services personnel **may not have certification or licensure requirements waived** on an emergency, temporary, or provisional basis.

U.S. Dep’t of Educ, [*Memorandum to State Directors of Special Education*](#) (Oct. 4, 2022)

Parental Rights

- Just as with parental rights under FERPA, parental rights under IDEA do not automatically terminate when a student with a disability is convicted as an adult and incarcerated in an adult correctional facility.
- Until the student turns 18-years-old, parents of a student with a disability maintain all rights identified under IDEA, including the right to:
 - Participate in and provide input during IEP meetings.
 - Provide consent prior to evaluations and the initial provision of special education services.
 - Receive invitations and prior written notices.
 - Seek one of the special education dispute resolution options.



Exceptions for Students Convicted as an Adult

- Child Find: If a student is over 18-years-old and incarcerated in an adult correctional facility, **there is no child find obligation** if the student was not made eligible for special education and related services in the last educational placement prior to their incarceration in an adult correctional facility. See 34 C.F.R. § 300.102(a)(2).
- Transition Planning: If a student is convicted as an adult and incarcerated in an adult correctional facility, **there is no obligation to provide transition planning or transition services** if the student is not eligible for release prior to IDEA services terminating. See 34 C.F.R. § 300.324(d)(1)(ii); SBE Rule 0520-01-09-.05(f)(1)(ii).
- Participation in Statewide Assessments: If a student is convicted as an adult and incarcerated in an adult correctional facility, **there is no obligation for the student to participate in general statewide assessments**. See 34 C.F.R. § 300.324(d)(1)(i); SBE Rule 0520-01-09-.05(f)(1)(i).

Exceptions for Students Convicted as an Adult

- “The IEP team may modify the child’s IEP or placement if the [LEA] has demonstrated a **bona fide security or compelling penological interest that cannot otherwise be accommodated.**” See SBE Rule 0520-01-09-.05(f)(2).
 - When is modification allowable? A student’s IEP may only be modified when a student has been convicted as an adult under State law and incarcerated in an adult prison, not when a student is awaiting trial.
 - What is a “bona fide” interest? A “bona fide” interest exists when there is an actual or genuine security or penological interest that cannot be accommodated, not when there is only a speculative or theoretical interest or an interest that can be accommodated. The “bona fide” interest must be determined on a case-by-case basis and cannot be the result of a blanket policy.
 - What modifications are allowable? The special education, related services, supplementary aids and services, and least restrictive environment can all be modified, but the provision of special education and related services cannot be completely eliminated. See *Buckley v. State Corr. Inst. Pine Grove*, 98 F.3d 704 (2015).



Section 504 and Title II

- Almost all students who are eligible for special education and related services under IDEA **will also be covered under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.**
- Both Section 504 and Title II prohibit public entities from discriminating on the basis of disability.
- Section 504 includes many provisions that are substantially similar to IDEA, including the right to FAPE and the right to non-discriminatory discipline. See U.S. Dep't of Educ. & U.S. Dep't of Justice, [*Dear Colleague Letter*](#) (Dec. 8, 2014).





“

“Ensuring that students in correctional facilities are receiving a high quality education will have a clear, positive effect in reducing recidivism and increasing post-release success in higher education, employment, and other life endeavors.”

See U.S. Dep’t of Educ., [Dear Colleague Letter](#) (Dec. 5, 2014).



Thank You!

Gillian Jones
Staff Attorney

Gillian.L.Jones@tn.gov

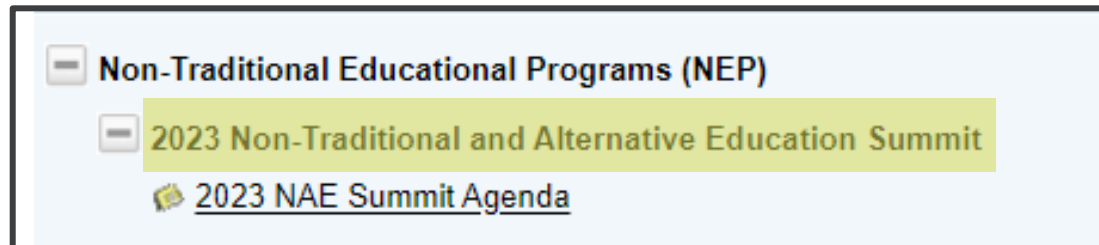
Taylor Jenkins

Assistant General Counsel for Special Education

Taylor.Jenkins@tn.gov

Permission is granted to use and copy these materials for non-commercial educational purposes with attribution credit to the "Tennessee Department of Education". If you wish to use these materials for reasons other than non-commercial educational purposes, please contact Joanna Collins (Joanna.Collins@tn.gov).

- All breakout session presentations may be accessed by going to ePlan.tn.gov and clicking on “TDOE Resources” along the left menu options. On the TDOE Resources page, scroll down to Non-Traditional Educational Programs (NEP), click on the + icon, and then select 2023 Non-Traditional and Alternative Education Summit to find all presentations by session title.
- ***Note: A login is not required on ePlan to access TDOE Resources.***



Please Share your Feedback:

<https://tinyurl.com/naesummit>

