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Tennessee Statutes Affecting Education Records

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-1182

Confidentiality

While the federal act provides a much more comprehensive treatment of the law on student records, Tennessee's public records act also classifies student records as confidential. T.C.A. § 10-7-504(a)(4) reads:

"The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed."

Like FERPA, this statute requires parental consent for disclosure of records except for the case of directory information. It allows access in cases where there is a danger to person or property on in accordance with legal process. Because the language in our state statute appears more restrictive than FERPA with regard to academic performance information, most attorneys in Tennessee are advising LEAs to get prior consent before publishing honor rolls or anything else regarding a student's academic performance. This is the one exception to the definition and examples of directory info under FERPA that you may want to keep in mind.

Educational Records as Evidence in Judicial Proceedings

In 2002, the General Assembly passed a comprehensive law entitled the Educational Records as Evidence Act to establish detailed procedures governing the production of subpoenaed student educational records.^[1] The act provides that it is sufficient to comply with a subpoena requesting educational records for the custodian of the records to furnish a true and correct copy of the records within five days of the subpoena in cases where the school is neither a party to the action nor the place where any cause of action is alleged to have arisen.^[2] The act requires that the records be enclosed in a separate sealed inner envelope and addressed to the appropriate court clerk, deposition officer, or party.^[3] The envelope remains sealed until opened at trial or other appropriate time in the presence of all required parties. Prior to the opening of the envelope, the act requires that the judge or presiding individual first determine that either (1) the records have been subpoenaed at the instance of an involved student, parent, or the student or parent's counsel; (2) the involved student or parent has consented and waived confidentiality; or (3) the records have been subpoenaed in a criminal proceeding.^[4] The act requires the custodian of records to submit an affidavit with a copy of the records certifying the authenticity of the records, providing that the records were prepared by the personnel of the school or persons acting under their control and certifying the reasonable charges of the school for furnishing such copies.^[5] The act provides that the furnished copies and the affidavit of the custodian of the records are admissible into evidence as though the original records were produced and the custodian were present to testify.^[6] Multiple affidavits may be filed where more than one person has knowledge of the facts.^[7] The act requires a subpoena to contain a clause stating that a copy of the records and an affidavit are not sufficient if the original school records or the personal attendance of the custodian of records is required.^[8] Where original records are introduced, the act permits the substitution of copies thereof and the return of the original records after their introduction.^[9] Charges for copies and production of the records are allowed as a court cost.^[10]

Non-Custodial Parents

Any parent who does not have custody of a child, or if the parents have joint custody, the parent not

residing with the child, may request in writing that a copy of the child's report card, notice of school attendance, names of teachers, class schedules, standardized test scores and any other records customarily available to parents be furnished directly to the non-custodial or non-resident parent.^[11] However, a judge with jurisdiction over the custody of the child may, upon showing of good cause, deny any information concerning the residence of the child to the non-custodial or non-resident parent.^[12]

Record Keeping Duties of the Director of Schools

The director of a local board of education is given specific responsibility under the statutes that spell out his or her duties to keep certain records in specific formats and under certain conditions.^[13] The director is charged with keeping a complete and accurate record of the proceedings of all meetings of the school board and the director's official acts and a detailed and accurate account of all receipts and disbursement of the public school funds in both well bound books and in electronic disks. These records must be kept in a location that is secure from the effects of natural disasters, to include fires, earthquakes, tornadoes and other catastrophic events.^[14] The law also provides that the director must deliver to his or her successor all records and official papers belonging to the position. A failure to do so is a separate Class C misdemeanor for each month during which the director withholds the records.^[15]

[1] 2002 Public Chapter 621 codified as T.C.A. §§ 49-50-1501 *et seq.*

[2] T.C.A. § 49-50-1503.

[3] T.C.A. § 49-50-1504.

[4] T.C.A. § 49-50-1505.

[5] T.C.A. § 49-50-1506.

[6] T.C.A. § 49-50-1507.

[7] T.C.A. § 49-50-1507.

[8] T.C.A. § 49-50-1508.

[9] T.C.A. § 49-50-1509.

[10] T.C.A. § 49-50-1508.

[11] T.C.A. § 49-6-902.

[12] T.C.A. § 49-6-902(b).

[13] T.C.A. § 49-2-301(b)(1)(C) and (D).

[14] T.C.A. § 49-2-301(b)(2).

[15] T.C.A. § 49-2-301(b)(1)(Y).

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