



# County Technical Assistance Service

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## Student Records

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily 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 e-Li material.

Sincerely,

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## Student Records

**Reference Number:** CTAS-208

Both federal and state laws include special provisions to protect the confidentiality of records of students in Tennessee schools. Tennessee's public records statutes specifically provide for the confidentiality of such records.<sup>[1]</sup> But more significant than our state statutes is a complex set of federal law that provides extensive regulations controlling the inspection, amendment, and disclosure of educational records. The primary federal statute addressing student records is the "Family Educational Rights and Privacy Act" (FERPA).<sup>[2]</sup> This law outlines who can and cannot access student education records and establishes rights for both parents and students in regard to these records.

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<sup>[1]</sup> T.C.A. § 10-7-504.

<sup>[2]</sup> 20 U.S.C.A. § 1232g with related regulations found in 34 C.F.R. Part 99.

## The Family Educational Rights and Privacy Act

**Reference Number:** CTAS-1178

The following information relative to FERPA is from the U.S. Department of Education's website at <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> as of 2018. Before relying on this information, local education officials should check with the attorney for their school board to make sure these regulations have not been amended.

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - Specified officials for audit or evaluation purposes;
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for or on behalf of the school;
  - Accrediting organizations;
  - To comply with a judicial order or lawfully issued subpoena;
  - Appropriate officials in cases of health and safety emergencies; and
  - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means

of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information, you may call 1-800-USA-LEARN (1-800-872-5327) (voice). Individuals who use TDD may use the [Federal Relay Service](#).

Or you may contact us at the following address:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-8520

## Model Notification of Rights under FERPA for Elementary and Secondary Schools

**Reference Number:** CTAS-1179

The following information relative to FERPA is from the U.S. Department of Education's website at <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/lea-officials.html> as of 2018. Before relying on this information, local education officials should check with the attorney for their school board to make sure these regulations have not been amended.

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day the [Name of school ("School")] receives a request for access.  
Parents or eligible students who wish to inspect their child's or their education records should submit to the school principal [or appropriate school official] a written request that identifies the records they wish to inspect. The school official will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.
2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.  
Parents or eligible students who wish to ask the [School] to amend their child's or their education record should write the school principal [or appropriate school official], clearly identify the part of the record they want changed, and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.
3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.  
One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. The criteria for determining who constitutes a school official and what constitutes a legitimate educational interest must be set forth in the school's or school district's annual notification for FERPA rights. A school official typically includes a person employed by the school or school district as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer, contractor, or consultant who, while not employed by the school, performs an institutional service or function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official typically has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

[Optional] Upon request, the school discloses education records without consent to officials of another school or school district in which a student seeks or intends to enroll, or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. [NOTE: FERPA requires a school or school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request or the disclosure is initiated by the parent or eligible student.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

[NOTE: In addition, a school may want to include its directory information public notice, as required by § 99.37 of the regulations, with its annual notification of rights under FERPA.]

[Optional] See the list below of the disclosures that elementary and secondary schools may make without consent.

FERPA permits the disclosure of PII from students' education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in § 99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student, § 99.32 of the FERPA regulations requires the school to record the disclosure. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student –

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in § 99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(3) are met. (§ 99.31(a)(1))
- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of § 99.34. (§ 99.31(a)(2))
- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency (SEA) in the parent or eligible student's State. Disclosures under this provision may be made, subject to the requirements of § 99.35, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf, if applicable requirements are met. (§§ 99.31(a)(3) and 99.35)
- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§ 99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to § 99.38. (§ 99.31(a)(5))
- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction, if applicable requirements are met. (§ 99.31(a)(6))

- To accrediting organizations to carry out their accrediting functions. (§ 99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§ 99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena if applicable requirements are met. (§ 99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to § 99.36. (§ 99.31(a)(10))
- Information the school has designated as “directory information” if applicable requirements under § 99.37 are met. (§ 99.31(a)(11))
- To an agency caseworker or other representative of a State or local child welfare agency or tribal organization who is authorized to access a student’s case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student in foster care placement. (20 U.S.C. § 1232g(b)(1)(L))
- To the Secretary of Agriculture or authorized representatives of the Food and Nutrition Service for purposes of conducting program monitoring, evaluations, and performance measurements of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, under certain conditions. (20 U.S.C. § 1232g(b)(1)(K))

## Model Notice for Directory Information

**Reference Number:** CTAS-1180

The following information relative to FERPA is from the U.S. Department of Education's website at <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html> as of 2018. Before relying on this information, local education officials should check with the attorney for their school board to make sure these regulations have not been amended.

**[Note: Per 34 C.F.R. § 99.37(d), a school or school district may adopt a limited directory information policy. If a school or school district does so, the directory information notice to parents and eligible students must specify the parties who may receive directory information and/or the purposes for which directory information may be disclosed.]**

The *Family Educational Rights and Privacy Act* (FERPA), a Federal law, requires that **[School or School District]**, with certain exceptions, obtain your written consent prior to the disclosure of personally identifiable information from your child’s education records. However, **[School or School District]** may disclose appropriately designated “directory information” without written consent, unless you have advised the **[School or School District]** to the contrary in accordance with **[School or School District]** procedures. The primary purpose of directory information is to allow the **[School or School District]** to include information from your child’s education records in certain school publications. Examples include:

- A playbill, showing your student’s role in a drama production;
- The annual yearbook;
- Honor roll or other recognition lists;
- Graduation programs; and
- Sports activity sheets, such as for wrestling, showing weight and height of team members.

Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can also be disclosed to outside organizations without a parent’s prior written consent. Outside organizations include, but are not limited to, companies that manufacture class rings or publish yearbooks. In addition, two federal laws require local educational agencies (LEAs) receiving assistance under the Elementary and Secondary Education Act of 1965, as amended (ESEA) to provide military recruiters, upon request, with the following information – names, addresses and telephone listings – unless parents have advised the LEA that they do not want their student’s information disclosed without their prior written consent. **[Note: These laws are Section 9528 of the ESEA (20 U.S.C. § 7908) and 10 U.S.C. § 503(c).]**

If you do not want [School or School District] to disclose any or all of the types of information designated below as directory information from your child's education records without your prior written consent, you must notify the [School or School District] in writing by [insert date]. [School District] has designated the following information as directory information: **[Note: an LEA may, but does not have to, include all the information listed below.]**

- **Student's name**
- **Address**
- **Telephone listing**
- **Electronic mail address**
- **Photograph**
- **Date and place of birth**
- **Major field of study**
- **Dates of attendance**
- **Grade level**
- **Participation in officially recognized activities and sports**
- **Weight and height of members of athletic teams**
- **Degrees, honors, and awards received**
- **The most recent educational agency or institution attended**
- **Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user**
- **A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.**

## Educational Records of Disabled Students

**Reference Number:** CTAS-1181

Certain students in the care of a local education agency have medical conditions, physical or mental disabilities or other special needs that affect and determine the educational services rendered to the child. With such children, significant amounts of medical records may be included in the educational records of the student. Specific requirements and regulations control the management of these records. The Tennessee Department of Education offers the following information in regard to these records.

### When must a school district destroy a disabled student's records?

This is an important administrative question because student records may contain test results, evaluations, past Individualized Education Program (IEPs), correspondence, due process hearing transcripts, IEP meeting minutes, and teacher-produced anecdotal records, etc.

The governing authority is found at 34 C.F.R. Section 300.573.

#### *300.573 Destruction of information.*

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Subpart (a) requires schools to notify parents when materials in the student's record are deemed no longer necessary to provide appropriate services. In other words, schools may begin the removal of surplus materials any time that the information is judged to be of no value to the design or implementation of the child's educational program.

Subpart (b) requires that schools destroy such personally identifying but unnecessary records upon the parents' request. In short, when records are declared surplus, they must be destroyed when the child's parents ask that this be done. However, school districts may retain a permanent record of the student's name address, and phone number, his or her grades, attendance record, classes attended, grade level

completed, and year completed..." even if the parents request that the entire student record be destroyed. Best practice would be to retain the above listed information in perpetuity.

34 C.F.R. 300.560 defines destruction as "physical destruction or removal of personal identifiers from the information so that the information is no longer personally identifiable."

Must a school district keep student records for a specific time period?

Schools receiving federal funds are required to keep for three years records necessary to show their compliance with federal and state mandates, (34 C.F.R. Section 76.730, financial records, and Section 76.731, program compliance requirement, Section 80.42, retention and access requirements for records).

Under previous law, (34 C.F.R. Section 76.734 abrogated) the required retention period was five years. This regulation was the basis of several OSEP policy letters contributing to a continued confusion about the required retention period.

How may a school district keep records for three years, as stated above, and still comply with a parent's request to destroy personally identifiable information that is no longer needed to provide educational services to their child?

The school district may remove any reference, which makes the information personally identifiable while still maintaining the records proving compliance with state and federal programs, 34 C.F.R. 300.560.

## Tennessee Statutes Affecting Education Records

**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.<sup>[1]</sup> 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.<sup>[2]</sup> 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.<sup>[3]</sup> 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.<sup>[4]</sup> 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.<sup>[5]</sup> 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.<sup>[6]</sup> Multiple affidavits may be filed where more than one person has knowledge of the facts.<sup>[7]</sup> 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.<sup>[8]</sup> Where original records are introduced, the act permits the substitution of copies thereof and the return of the original records after their introduction.<sup>[9]</sup> Charges for copies and production of the records are allowed as a court cost.<sup>[10]</sup>

#### 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.<sup>[11]</sup> 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.<sup>[12]</sup>

#### 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.<sup>[13]</sup> 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.<sup>[14]</sup> 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.<sup>[15]</sup>

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

<sup>[2]</sup> T.C.A. § 49-50-1503.

<sup>[3]</sup> T.C.A. § 49-50-1504.

<sup>[4]</sup> T.C.A. § 49-50-1505.

<sup>[5]</sup> T.C.A. § 49-50-1506.

<sup>[6]</sup> T.C.A. § 49-50-1507.

<sup>[7]</sup> T.C.A. § 49-50-1507.

<sup>[8]</sup> T.C.A. § 49-50-1508.

<sup>[9]</sup> T.C.A. § 49-50-1509.

<sup>[10]</sup> T.C.A. § 49-50-1508.

<sup>[11]</sup> T.C.A. § 49-6-902.

<sup>[12]</sup> T.C.A. § 49-6-902(b).

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

<sup>[14]</sup> T.C.A. § 49-2-301(b)(2).

<sup>[15]</sup> T.C.A. § 49-2-301(b)(1)(Y).

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