



**2019**  
**Student Discipline Institute**

# DISCLAIMER

***These materials are not intended as legal advice, and should not be so construed.***

***Law, local policy, and unique facts make dramatic differences in analyzing any situation. Consult your attorney for legal advice regarding a specific situation.***

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**What is going on in  
schools in 2019?**

# “Momo Challenge”

- The internet hoax was a viral urban legend that swept the entire globe.



# Vaping and Juuling

- **As teen vaping trends rise, so does use in schools**
- The Centers for Disease Control and Prevention reported that in 2017, 3.6 million middle and high school students were using tobacco products, with 2.1 million favoring e-cigarettes.



# Viral 'Nazi Salute' Students Not Punished

- 60 Wisconsin boys in a spring prom picture participating in racist salute resulted in a strong social media response, including from the Auschwitz Memorial.
- “We cannot know the intentions in the hearts of those who were involved. Moreover, because of students’ First Amendment rights, the district is not in a position to punish the students for their actions.”



# Arkansas school settles lawsuit over student's expulsion for photo with gun

- Arkansas School District voted Jan. 28 to pay Kylan Pierce, and his mother, Jessica McKinney, \$42,665 to settle lawsuit.
- In February 2018, ten days after a man opened fire in a Florida high school and killed 17 students and teachers, Pierce posted a photo of himself wearing a trench coat and holding an assault rifle on Instagram. He was expelled a month later.
- He sued arguing his freedom of speech was violated by being expelled.
- Pierce, a junior, must still serve a 365-day suspension from Huntsville High School, but may attend online classes within the district.
- The district maintained in the agreement that it did nothing wrong and that its policies do not violate the U.S. Constitution.



# Can Schools Ban MAGA Hats?

- Issues in Arizona, California and Georgia
- 50th anniversary of *Tinker v. Des Moines School District*
- SCOTUS ruled in favor of students who had been suspended for coming to school wearing black armbands to protest the Vietnam War.
- Justice Abe Fortas proclaimed for the majority that “it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”
- Student speech could be suppressed, however, if it “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.”





# Montana student raises the ‘steaks’ with “prom-posal”

- GREAT FALLS – Fort Benton student used his steer, Beef Cakes, to ask fellow student to prom Tuesday complete with a sign that read, “If you don’t go to prom with me, I’m gonna have a cow!”



# High school football players suspended for running naked with Oreos wedged in cheeks

- Administrators at an Illinois high school suspended ten football players for stripping naked and running across the field with Oreo cookies between their buttocks.
- Dubbed the “Oreo run,” the streaking incident was voluntary and not related to hazing according to coaches.



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**2018 - New Laws  
Impacting Student  
Attendance, Discipline,  
& Safety**

# BEP Funds to Day Treatment Centers

- **PC 810:** Requires LEAs to transfer BEP funding to a day treatment facility providing education services to students admitted to the facility by court order.
- In order to receive BEP funding the day treatment facility must meet the following requirements:
  - the facility operates as a Category 1 school;
  - the facility provides a minimum 32 hours per week of educational instructional services to students; and
  - the facility is a recipient of a juvenile justice prevention grant.

# Child Abuse Awareness Training

- PC983: Requires the department to identify child abuse training programs appropriate for teachers.
- Beginning with the 2019-2020 school year, requires each LEA and public charter school to ensure its teachers complete a child abuse training program identified by the department or a training program that meets the guidelines established by the department of children's services.

# AEDs in All High Schools

- PC1028: Requires all public high schools to have an automated external defibrillator (AED) device placed within the school.
- Encourages public middle and elementary schools to place AEDs within the school. Requires all public and private schools that have an AED device in the school to comply with requirements for training, establishment of a written plan, notification, and maintenance and testing.

# Corporal Punishment

- **PC 777:** Requires each LEA to annually submit a report to the department detailing the LEA's use of corporal punishment. Requires the department to post on its website the number of instances of corporal punishment in each LEA and the number of instances involving a student with an active IEP or an active 504 plan.
- **PC 900:** Prohibits the use of corporal punishment against students with disabilities unless an LEA's discipline policy permits the use of corporal punishment and a parent of a child who has a disability permits, in writing, the use of corporal punishment against the parent's child.

# Progressive Truancy

- **Progressive Truancy Intervention Plans**
- PC 958: Revises and updates law regarding school attendance and truancy and discipline.



# Armed School Security Officers

- **PC1008:** Enacts the **School Safety Act of 2018**, which authorizes LEAs to adopt a policy to allow off-duty law enforcement officers to serve as armed school security officers.

# Gun Safety for Elementary Students

- **PC 906:** Elementary Schools May Offer a Gun Safety Course
- Course shall not permit the use or presence of live ammo or live fire

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**2019 - Proposed  
Legislation Impacting  
Student Attendance,  
Discipline, & Safety**

# School Safety Funding for SROs

- SB0803/HB0947 (**Johnson/Lamberth** )
- **Administration Bill**
- Requires the TN school safety center to establish school safety grants to assist LEAs in funding programs that address school safety;
- Establishes requirements for school safety grant applications and eligibility;
- Requires the Tennessee school safety center to reserve funds for, and give priority in awarding school safety grants to, LEAs with schools that did not have a full-time school resource officer during the 2018-2019 school year.

# Threat Assessment Teams

- SB1238/HB1158 (**Gresham/Ogles**)
- Authorizes LEAs to establish a threat assessment team for the purpose of developing comprehensive, intervention-based approaches to prevent violence, manage reports of potential threats, and create a system that fosters a safe, supportive, and effective school environment.
- Threat assessment teams must include LEA personnel and law enforcement personnel but may include juvenile services personnel, a representative of the local district attorney's office, a representative of DCS, and mental health service providers.

# Threat Assessment Teams

- If a threat assessment team makes a preliminary determination that an individual poses a threat of violence or exhibits significantly disruptive behavior or need for assistance, this bill authorizes the threat assessment team to request law enforcement information or records and court files and records, which may be provided as deemed appropriate by the applicable law enforcement agency or juvenile court.
- This bill prohibits a member of a threat assessment team from disclosing any court files or records obtained pursuant to any such request or otherwise using any record of an individual beyond the purpose for which the disclosure was made.
- This bill does not require a law enforcement agency or juvenile court to produce a record requested by a threat assessment team.

# Threat Assessment Teams

- This bill prohibits the use of law enforcement and juvenile justice information obtained pursuant to this bill for the following purposes:
  - (1) To discipline or exclude a child from educational services unless the information is provided to a school pursuant to the present law requirement for notification of schools of certain adjudications of delinquency that would be a violent criminal offense if committed by an adult; or
  - (2) By a juvenile court system to assess legal consequences against a person for any action, unless the information is brought before the juvenile court pursuant to a properly filed petition and addressed through the proper court proceedings.

# Threat Assessment Teams

- This bill specifies that an LEA may disclose information contained in a student's education record to appropriate parties in the event of an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Any such disclosure must comply with relevant state and federal privacy laws.



# Threat Assessment Teams

- This bill requires a threat assessment team to certify to any agency or individual providing confidential information that the information will not be disclosed to any other party, except as provided by law.
- This bill provides immunity from civil liability to threat assessment teams and individual members of threat assessment teams, and persons providing information to threat assessment teams, for any lawful actions taken in accordance with this bill.

# District Wide and Building Level Safety Plans

- SB1196/HB0671 (**White/Daniel**)
- **Caption Bill**
- AN ACT to amend Tennessee Code Annotated, Title 49 and Title 68, relative to school safety
- Increases the amount of time from 30 to 45 days prior to adoption of a district-wide and building-level school safety plan that the LEA shall make the plan available for public comment.

# Limits on Student Suspensions

- SB1153/HB1255 (**Akbari/Johnson**)
- Prohibits local boards of education and school administrators from suspending students in pre-kindergarten through grade two from attending school as a form of discipline. AN ACT to amend Tennessee Code Annotated, Title 49, relative to discipline of students.
- Recommended Amendatory Language
- Students in Voluntary Pre-K-2 may only be suspended:
  - 1. If required by federal law (carrying a gun on school property).
  - 2. For not more than five (5) days per incident if the school administrator, in consultation with school psychologist or other mental health professionals, determines that there is an imminent threat of serious harm to other students or staff that cannot be reduced or eliminated through interventions or supports.

# Training in Restorative Justice Discipline

- SB0820/HB0767 (**Akbari/Love**)
- Requires in-service training in restorative justice discipline practices for all employees of an LEA;
- Requires the course of instruction in all public schools to include content designed to educate children on restorative justice discipline practices.
- Taken off notice in House

# Mandates Alternative School for Grades 7-12

- SB0604/HB0664 (**Robinson/Parkinson**)
- Requires students expelled in grades 7 through 12 to attend alternative school;
- Requires a governing body of a public charter school to establish an alternative educational setting for students suspended from the regular school program;
- Prohibits a charter school from expelling a student from school attendance until after the student has been placed in an alternative educational setting.

# ACES Assessment prior to suspension or expulsion

- SB0170\*/HB0405 (**Robinson/Love**)
- Requires each local board of education to adopt a policy requiring schools within the LEA to perform an adverse childhood experiences assessment before suspending or expelling a student or requiring a student to attend in-school suspension or alternative school.
- Present law requires the TDOE to develop an evidence-based training program on ACEs for school leaders and teachers. ACEs are stressful or traumatic events experienced by minor children, such as physical abuse or substance abuse.
- Present law also authorizes LEAs to develop their own ACEs training program to make available to their school personnel.
- **FISCAL NOTE –**
  - Increase State Expenditures - \$197,500/FY19-20 \$107,500/FY20-21 and Subsequent Years Increase Local Expenditures - Exceeds \$6,682,000/FY19-20 and Subsequent Years\*

# Mandatory Annual Implicit Bias Training

- SB0819/HB0766 (**Akbari/Love**)
- Requires all school personnel to receive implicit bias in-service training annually;
- Requires students desiring a license to teach to pass a course of implicit bias training.

# Vaping on School Grounds

- SB0026/HB0097(**Gardenhire/Howell**)
- The bill limits the places in which one may use vapor products, including schools grounds.
- In most places, the bill provides the same limitations on vaping as current law does smoking.
- The bill changes the definition of Vapor product and school grounds where smoking and vaping is prohibited by replacing the current definition of "vapor product" with one that includes a description of vapor as "visible or non-visible", and includes "any substance used to refill a vapor cartridge".
- Adult staff members at public and private kindergartens and elementary and secondary schools must not be within 100 feet of any entrance to the building for smoking or the use of vapor products. This is a change from existing law, which states 50 feet for smoking.
- The bill removes current language that allows adults to smoke on property surrounding school grounds.



# Raising Age to Smoke or Vape to 21

- SB1200/HB1454 (**Reeves/Ramsey**)
- SB0849\*/HB1459 (**Hensley/Gant**)
- Increases age of persons allowed to use tobacco and vapor products from 18 years of age to 21 years of age.
- SB0738\*/HB1419 (**Kyle/Towns**)
- Raises the minimum age from 18 to 21 to purchase any tobacco or vapor products;
- Creates a Class C misdemeanor of selling or distributing flavored electronic cigarettes;
- Increases the tax rate on cigarettes by 1.25 cents per cigarette.

# No Sale of Smoking Hemp to Minors

- SB0360\*/HB1284 (**Southerland/Mitchell**)
- This bill enacts the Prevention of Youth Access to Tobacco, Smoking Hemp, and Vapor Products Act. It prohibits the sale or distribution of smoking hemp products to, or purchase of smoking hemp products on behalf of, persons under eighteen (18) years of age.

# Arming Teachers in Distressed Rural Counties

- SB0752\*/HB1247 (**Hensley/Byrd**)
- Deletes requirement that Wayne County and Pickett County be defined as distressed rural counties for purposes of being considered an eligible county authorized to select employees who may carry a concealed handgun on school property.

# Parent Viewing of Bus Videos

- SB0182\*/HB0248 (**Reeves/Tillis**)
- This bill requires local boards of education to adopt policies to allow a parent of a student to view photos or video footage from a camera installed inside a school bus if a parent or student reports to a school official that physical harm, harassment, intimidation, or bullying has occurred against the parent's student while being transported on the school bus. These policies must:
  - (1) Require that photos or video footage be viewed under supervision of the director of schools, the school principal, or a school official; and
  - (2) Comply with state confidential records laws, the federal Family Educational Rights and Privacy Act, and any other relevant state or federal privacy laws
- These policies may establish a process or timeframe by which a parent must request access to view the photos or video footage.

# Off-Duty Law Enforcement Officers Carrying Firearms on School Grounds

- SB1301/HB1176 (**Pody/Weaver**)
- This would allow law enforcement officers in good standing to carry firearms onto the grounds of a school even if not in performance of their official duties, without having to notify school officials first.

# Code of Conduct for Non-Students on School Grounds

- SB1261/HB0399 (**Gresham/Parkinson**)
- Original bill requires each local board of education and charter school governing body to adopt a comprehensive code of conduct for each school under the authority of the board or governing body that describes the types of behavior expected from all persons entering on school grounds.
- Amended to only pertain to non-students

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# **The Legal Foundation for Managing Student Behavior in 2019**

# Foundation for School Discipline in Law

- Understand sources of authority:
  - Federal and state law
  - Case law
  - SBE rules
  - Local board policy
- Defensible policies that make schools safer
- Consistent and equitable application of policies



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# **Discipline Policies & Codes**

# School Board Authority

- Tennessee law provides school boards broad discretion to manage and control schools under their jurisdiction, including the obligation to set policy regarding student behavior.

# T.C.A. §49-6-4002. Discipline policy -- Code of conduct.

- **(a)** Each local board of education and charter school governing body shall adopt a discipline policy to apply to the students in each school operated by the LEA or charter school governing body.
- **(b)** The director of schools or head of the charter school is responsible for overall implementation and supervision, and each school principal is responsible for administration and implementation of a code of conduct within the principal's school.
- **(c)** In developing a discipline policy, the local board of education or charter school governing body shall seek recommendations from parents, employees of the LEA or charter school, law enforcement personnel, and youth-related agencies in the community.

# T.C.A. §49-6-4002. Discipline policy -- Code of conduct.

- (d) Each discipline policy or code of conduct must contain the **type of behavior expected** from each student, the **consequences** of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged. Each policy **must address**:
  - (1) Language used by students;
  - (2) Respect for all school employees;
  - (3) Fighting, threats, bullying, cyberbullying, and hazing by students;
  - (4) Possession of weapons on school property or at school functions;
  - (5) Transmission by electronic device of any communication containing a credible threat to cause bodily injury or death to another student or school employee;
  - (6) Damage to the property or person of others;
  - (7) Misuse or destruction of school property;
  - (8) Sale, distribution, use, or being under the influence of drugs, alcohol, or drug paraphernalia;
  - (9) Student conduct on school property, conduct in classes, and conduct on school buses; and
  - (10) Other subjects that a local board of education or a charter school governing body chooses to include.

# T.C.A. §49-6-4002. Discipline policy -- Code of conduct.

- **(e)** Each local discipline policy must indicate that the following offenses are **zero tolerance offenses**:
- **(1)** Unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921;
- **(2)** Aggravated assault as defined in § 39-13-102 upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer;
- **(3)** Assault that results in bodily injury as defined in § 39-17-101(a)(1) upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer; and
  - **Meant** - A person commits assault who intentionally, knowingly or recklessly causes bodily injury to another; but
  - **Says** - **It is an offense for a person to display, exhibit, handle, or use a poisonous or dangerous snake or reptile in a manner that endangers the life or health of any person.**
- **(4)** Unlawful possession of any drug, including any controlled substance, as defined in §§ 39-17-402 -- 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101 on school grounds or at a school-sponsored event.

# History of Zero Tolerance

- "Zero Tolerance" has no formal definition but generally means policies that require suspension & expulsion in response to weapons, drugs & violent acts in the school setting.
- Over time, zero tolerance has come to refer to school or district-wide policies that mandate predetermined, typically harsh consequences or punishments for a wide range of rule violations.
- Zero tolerance policies became popular in the 1980s, during the “war on drugs.”
  - Broken windows philosophy - cracking down on lesser crimes prevents bigger ones.
  - Providing severe consequences to even minor infractions would send a message to students that disruptive behavior was unacceptable.
- Zero tolerance policies were supposed to make schools safer and make discipline fair.

# Zero Tolerance in Tennessee

- Gun Free Schools Act of 1994
  - Mandatory Calendar Year Expulsion
  - Firearms
  - Case-by-case modifications
- Drugs - 1996
- Aggravated assault – 1996
- Local board policy

# Zero Tolerance in Tennessee

- **(g) (1)** It is the legislative intent that if a rule or policy is designated as a zero tolerance policy, then violations of that rule or policy must not be tolerated and violators shall receive certain, swift, and proportionate punishment.
- **(2)** Notwithstanding other provisions of this section or any other law, a student shall be considered in violation of a zero tolerance offense and shall be expelled for a period of not less than one (1) calendar year, except that the director of schools may modify this expulsion on a case-by-case basis for the following:
  - **(A)** A student brings to school or is in unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921;
  - **(B)** A student commits aggravated assault as defined in § 39-13-102 or commits an assault that results in bodily injury as defined in § 39-13-101(a)(1) upon any teacher, principal, administrator, any other employee of an LEA, or a school resource officer; or
  - **(C)** A student is in unlawful possession of any drug, including any controlled substance, as defined in §§ 39-17-402 -- 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101, on school grounds or at a school-sponsored event.



# Zero Tolerance in Tennessee (cont.)

- **(3)** Nothing in this section prohibits the assignment of students who are subject to expulsion from school to an alternative school.
- **(4)** Disciplinary policies and procedures for all other student offenses, including terms of suspensions and expulsions, must be determined by local board of education policy.
- **(5)** For purposes of this subsection (g):
  - **(A)** "Expelled" means removal from the student's regular school program at the location where the violation occurred or removal from school attendance altogether, as determined by the school official; and
  - **(B)** "Zero tolerance offense" means an offense committed by a student requiring the student to be expelled from school for at least one (1) calendar year that can only be modified on a case-by-case basis by the director of schools or the head of a charter school.

# T.C.A. §49-6-4002. Discipline policy -- Code of conduct.

- **(f)** Each local board of education and charter school governing body may adopt a discipline policy that promotes positive behavior and includes evidence-based practices to respond effectively to misbehavior and minimize a student's time away from school.
- **(g)** Each discipline policy or code of conduct must state that a teacher, principal, school employee, or school bus driver may use reasonable force in compliance with § 49-6-4107.

# **T.C.A. §49-6-4004. Uniform and fair application of code of conduct.**

- The principal of each school shall apply the code of conduct uniformly and fairly to each student at the school without partiality or discrimination.

## **T.C.A. §49-6-4005. Different discipline policies or codes of conduct applicable to different classes of schools.**

- Each local board of education or charter school governing body may choose to adopt different but consistent discipline policies or codes of conduct to apply to different classes of schools, such as elementary, middle, junior high, and senior high schools, under its jurisdiction. The policies and codes of conduct must be uniform to the extent of maximum consideration for the safety and well-being of students and employees.

# **T.C.A. §49-6-4007. Posting and distribution of discipline policy or code of conduct.**

- When a discipline policy or code of conduct has been adopted by a local board of education or charter school governing body, a copy must be posted on the LEA or school website. A copy must also be supplied to all school counselors, teachers, administrative staff, students, and parents.

## **T.C.A. §49-6-4009. Student discipline code to include provision prohibiting indecent clothing.**

- **(a)** An LEA shall include in its student discipline code a provision prohibiting students from wearing, while on the grounds of a public school during the regular school day, clothing that exposes underwear or body parts in an indecent manner that disrupts the learning environment.
- **(b)** An LEA shall specify in its student discipline code the disciplinary actions that shall be taken against a student for a violation of subsection (a).
- **(c)** Subsection (a) shall not be enforced in a manner that discriminates against a student on the basis of race, color, religion, sex, disability, or national origin.

# Guidelines for Discipline Policies and Codes

- Does your policy manual include all policies required by law?
  - Corporal Punishment
  - Hazing
  - Bullying & Harassment
- How often are your policies reviewed?
- Policies must give adequate notice of prohibited conduct but not be too limiting
- Policies must be applied equitably and uniformly
- Policies must serve a legitimate educational purpose:
  - Safety
  - Order
  - Suppression of lewd or vulgar speech

# Due Process

- Fifth Amendment's Due Process clause applied to states through the 14<sup>th</sup> Amendment
- Due process clause:
  - *No person shall be deprived of life, liberty, and property without due process of law.*



# Due Process

- Substantive Due Process
- Policies will generally be upheld if they are reasonable and rationally related to a legitimate school interest.
- FAIR & REASONABLE

# Due Process

- Procedural Due Process
- Due process actually means notice and opportunity to be heard.
- What process is due prior to deprivation?
- The formality of the due process depends on the length of the deprivation (suspension or expulsion).
- *Goss v. Lopez* and T.C.A. § 49-6-3401
  - Greater than 10 days requires a formal hearing

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# **Expulsions and Suspensions**

# T.C.A. §49-6-3401. Suspension and Expulsion of Students

- **(a)** Any principal, principal-teacher or assistant principal of any public school in this state is authorized to suspend a pupil from attendance at the school, including its sponsored activities, or from riding a school bus, for good and sufficient reasons. Good and sufficient reasons for suspension include, but are not limited to:
  - **(1)** Willful and persistent violation of the rules of the school;
  - **(2)** Immoral or disreputable conduct or vulgar or profane language;
  - **(3)** Violence or threatened violence against the person of any personnel attending or assigned to any public school;
  - **(4)** Willful or malicious damage to real or personal property of the school, or the property of any person attending or assigned to the school;
  - **(5)** Inciting, advising or counseling of others to engage in any of the acts enumerated in subdivisions (a)(1)-(4);
  - **(6)** Marking, defacing or destroying school property;
  - **(7)** Possession of a pistol, gun or firearm on school property;
  - **(8)** Possession of a knife and other weapons, as defined in § 39-17-1301 on school property;

# T.C.A. §49-6-3401. Suspension and Expulsion of Students (cont.)

- **(9)** Assaulting a principal, teacher, school bus driver or other school personnel with vulgar, obscene or threatening language;
- **(10)** Unlawful use or possession of barbitol or legend drugs, as defined in § 53-10-101;
- **(11)** One (1) or more students initiating a physical attack on an individual student on school property or at a school activity, including travel to and from school or a school activity;
- **(12)** Making a threat, including a false report, to use a bomb, dynamite, any other deadly explosive or destructive device, including chemical weapons, on school property or at a school sponsored event;
- **(13) Any other conduct prejudicial to good order or discipline in any public school;** and
- **(14)** Off campus criminal behavior that results in the student being legally charged with an offense that would be classified as a felony if the student was charged as an adult or if adjudicated delinquent for an offense that would be classified as a felony if the student was an adult, or if the student was convicted of a felony, and the student's continued presence in school poses a danger to persons or property or disrupts the educational process. Notwithstanding § 37-1-131 or any other law to the contrary, the principal of the school in which the student is enrolled and the director of schools shall determine the appropriate educational assignment for the student released for readmission.

# T.C.A. §49-6-3401. Suspension and Expulsion of Students (cont.)

- Due process requirements
- Written notification to parents
- Long term (more than 10 days)
- Special education

# Terms of Suspensions in State Law

- Unconditional for specified period
- Reasonable terms and conditions
- May assign alternative program
- May be permitted to take final exams
- Appeals to board or SDHA

# Other Laws to Consider

- Federal
  - Gun Free Schools Act
  - IDEA
- Tennessee School Security Act
- Tennessee's anti-bullying and anti-hazing laws
- Local board policy





*Districts and schools in Tennessee will exemplify excellence and equity such that all students are equipped with the knowledge and skills to successfully embark on their chosen path in life.*

**Excellence | Optimism | Judgment | Courage | Teamwork**