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Opinion No. 01-101

Use of student information collected from private, parochial, and denominational schools

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QUESTION

Tenn. Code Ann.§ 49-6-3007 requires each private, parochial, and denominational school to report the names, ages, residences, and attendance of their students to the public school district in which the school is located.

1. May this information be used by the school system for purposes other than enforcement of truancy laws?

2. Specifically, may the lists of names and addresses of students in non-public schools in Davidson County be used to notify those students and their parents concerning the magnet schools operated by the Metropolitan Nashville-Davidson County Schools ("Metro Nashville Schools")?

OPINION

1. Yes.

2. Yes.

ANALYSIS

Tenn. Code Ann. § 49-6-3007 requires the principals and teachers of all schools - including private, parochial, and denominational schools as well as public schools - to report to the superintendent of the public school system in which the school is located the names, addresses, and ages of all the pupils in attendance in their schools. The same statute requires all schools to keep attendance records, and to report to the superintendent or the superintendent's designated representative the names of children who have withdrawn from that school or who have been absent an aggregate of five days. The superintendent is directed to use this information to enforce truancy laws in the private, parochial, and denominational schools as well as in the public schools within the superintendent's school district.

There are two statutes, one state and one federal, that contain provisions governing access to

student information in the hands of public school systems. The state statute is the Tennessee Public Records Act.[1] The federal statute is the Family Educational Rights and Privacy Act (FERPA).[2]

The Tennessee Public Records Act provides that all state, county and municipal records shall be open to any citizen "unless otherwise provided by state law."[3] The records that are subject to disclosure include not only records made by the government agency but also records "received pursuant to law or ordinance or in connection with the transaction of official businesses by any governmental agency."[4] The records of the names, addresses, and ages of all pupils in private, parochial, and denominational schools that are filed with the public schools are received by the public school systems pursuant to law, namely Tenn. Code Ann. § 49-6-3007. Consequently, in the hands of the public school system they are considered to be public records subject to public inspection and copying unless otherwise provided by state law.[5]

The Public Records Act provides that all student records "shall be treated as confidential," with the following exception:

> 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 level completed, class placement and academic degrees awarded may likewise be disclosed.[6]

The only information public school systems by law receive pertaining to students in private, parochial, and denominational schools is the students' names, addresses, and ages, and any truancy reports. Under Tennessee's Public Records Act as quoted above, and with the exception of the truancy reports, this information may be released to any person, agency, or the public. This would include the officials of Metro Schools responsible for operating the magnet school program.

A complete analysis of this opinion request also requires consideration of the Family Educational Rights and Privacy Act (FERPA). FERPA denies federal funds to any educational agency or institution

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[1]Tenn. Code Ann. §10-7-503.

[2]20 U.S.C. §1232g.

[3]Tenn. Code Ann. §10-7-503(a); *Griffin v. City of Knoxville*, 821 SW. 2nd. 921 (Tenn. 1991).

[4]Tenn. Code Ann. §10-7-301(6).

[5]*See Memphis Publishing Company v. City Of Memphis*, 871 SW. 2d 681 (Tenn. 1994)

[6]Tenn. Code Ann. §10-7-504 (a)(4).

that violates its provisions. "Educational agency or institution" is defined to include both public and private institutions that receive federal funds under any applicable program.[7] The purpose of this Act is to ensure access to educational records for parents and students while protecting the privacy of such records. It seeks to deter educational agencies by threat of loss of federal funds from adopting policies of releasing certain student records.[8] In general, federally funded educational agencies may release "directory information," which includes a student's name, address, and age, only after giving notice and an opportunity for a parent to designate any student information that should not be released without the parent's prior consent.[9] There are, however, exceptions to this general rule.

FERPA's sanctions for educational agencies releasing directory information without parental consent do not apply to the disclosure of those records to "other school officials...who have been determined by such educational agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required."[10]

Metro Nashville Schools' officials responsible for the magnet school program have legitimate educational interests in attracting a diverse body of students to fill Metro's magnet schools. The same officials might also reasonably conclude that it is in the educational interests of area students and their parents to have complete knowledge of the educational programs available to them in the public school system, and specifically magnet schools, in order to make a fully informed decision about the best educational setting for their children - be it a private, parochial, or institutional school, the public school to which they are zoned, or a public magnet school.

In conclusion, it is the opinion of this office that the Tennessee Public Records Act requires public disclosure of the names, addresses, and ages of area non-public school students that are in the hands of a public school system pursuant to Tenn. Code Ann. § 49-6-3007, and FERPA would not deny federal funds to Metro Nashville Schools using this data by to advertise their magnet schools to students in area private, parochial, and denominational schools.

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[7]20 U.S.C. §1232 g(a)(3). All Tennessee public school systems receive federal funds. *See* Annual Statistical Report of the Department of Education, Table 15.

[8]See Thurman, John, "Validity Construction, and Application of Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. § 1232g)," 112 ALR Fed 1.

[9]FERPA uses the term "directory information" to include the following: "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." 20 U.S.C. § 1232g(a)(5)(A).

[10]20 U.S.C. § 1232g (b)(1)(A).

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