



# Charter School Legal Issues



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# **Agenda**

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- Charter School Law in Tennessee
- Student Records & Confidentiality
- TN Open Meetings Act
- TN Open Records Act
- Civil Rights Laws in Public Schools
- Religious Expression in Public Schools

# Charter Schools in TN

- Charter schools are public schools.
- T.C.A. § 49-13-104 defines “public charter school” as a public school in the state of Tennessee that is established and operating under the terms of a charter agreement and in accordance with this chapter.

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# **Student Records & Confidentiality**

# Student Records & Confidentiality

- Family Educational Rights and Privacy Act (FERPA)
  - Also known as the Buckley Amendment
  - Statute: 20 U.S.C. 1232(g)
  - Regulations: 34 CFR Part 99

# Primary Rights under FERPA

- Right to inspect and review education records
- Right to seek to amend education records
- Right to have some control over the disclosure of information from education records
- These rights transfer to a student when the student turns 18 or attends a postsecondary institution.

# Primary Rights under FERPA

- To which educational agencies and institutions do these regulations apply?
  - FERPA applies to agencies that receive federal funds under any program administered by the Secretary of Education.
  - Most private and parochial schools at the elementary and secondary levels do not receive such funds and are, therefore, not subject to FERPA.

# Primary Rights under FERPA

- “Parent” means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

# Records under FERPA

- “Education records” are records that:
  - contain information that is directly related to a student; and
  - are maintained by an educational agency or institution or by a party acting for the agency or institution.
- Records on a student receiving services under Part B of the Individuals with Disabilities Education Act are “education records” subject to FERPA.
- Medical or health records are “education records” subject to FERPA.

# Records under FERPA

- Exceptions to “education records” include:
  - Records kept in the sole possession of the maker of the record and not revealed to anyone but a temporary substitute (e.g., personal notes).
  - Records created and maintained by a law enforcement unit for a law enforcement purpose.

# Records under FERPA

- “Personally identifiable information” includes, but is not limited to:
  - the student’s name;
  - the name of the student’s parent or other family members;
  - the address of the student or student’s family;
  - a personal identifier, such as a social security number or student number; and
  - a list of personal characteristics or other information that would make the student’s identity easily traceable.

# Records under FERPA

- “Directory information” is:
  - information not generally considered harmful or an invasion of privacy if disclosed, and
  - includes, but is not limited to:
    - name, address, telephone listing, email address;
    - date and place of birth, photographs;
    - participation in officially recognized activities and sports;
    - field of study, grade level;
    - weight and height of athletes;
    - enrollment status (full-, part-time, undergraduate, graduate);
    - degrees and awards received; and
    - dates of attendance, most recent previous school attended.

# Records under FERPA

- “Directory information” **cannot** include:
  - student identification numbers or
  - social security numbers.

# Records under FERPA

- “Record” means any information maintained in any way, including, but not limited to:
  - handwriting,
  - video or audio tape,
  - computer media,
  - film,
  - print, and
  - microfilm and microfiche.

# Primary Rights under FERPA

- What are the rights of parents, custodial or noncustodial?
  - FERPA affords full rights to either parent, unless the school has been provided with evidence that there is a court order, state statute, or legally binding document that specifically revokes these rights.

# Subpart B – Inspection and Review of Education Records

- What rights exist for a parent or eligible student to inspect and review education records?
  - The school must comply with request within 45 days.
  - The school is generally required to give copies only if failure to do so would effectively deny access (e.g., student or former student who does not live within commuting distance).
  - The school may not destroy records if request for access is pending.

# Subpart B – Inspection and Review of Education Records

- May an educational agency or institution charge a fee for copies of education records?
  - Yes, unless imposing a fee effectively prevents a parent from exercising his or her right to inspect and review education records.
- What limitations exist on the right to inspect and review education records?
  - If the records contain information on more than one student, the requesting parent may inspect, review, or be informed of only the specific information about his or her child's records.

# Subpart C – Procedures for Amending Education Records

- Parents should identify the portion of the record believed to contain inaccurate or misleading information.
- Schools must decide within a reasonable period of time whether to amend as requested.
- If a school decides not to amend, it must inform parent of the right to a hearing.
- After a hearing, if the decision is still not to amend, parent has a right to insert a statement in the record.

# Directory Information

- A school may disclose directory information if it has given public notice to parents of students in attendance of:
  - what items the school has designated as directory information,
  - a parent’s right to refuse to let the school designate any or all of the information as directory information, and
  - the time within which a parent must notify the school in writing that he or she does not want any or all of the information designated as directory information.

# Enforcement Provisions

- The Family Policy Compliance Office is authorized by the Secretary of Education to investigate, process, and review complaints and violations under FERPA.
- Parents and eligible students may file complaints with the U.S. Department of Education.
- Timely complaint = 180 days.

# FERPA and the Every Student Succeeds Act

- Two provisions of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act of 2015 (ESSA) relate to disclosures of education records.
  - Disciplinary Records
  - Military Recruiters

# FERPA and the Every Student Succeeds Act

- Disciplinary Records
  - States that receive funds under the ESEA were required by January 2004 to provide an assurance to the Secretary that the State:
    - “has a procedure in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, by local educational agencies to any private or public elementary school or secondary school for any student who is enrolled or seeks, intends, or is instructed to enroll, on a full or part-time basis, in the school.”

# FERPA and the Every Student Succeeds Act

## ■ Military Recruiters

- ESEA, as amended by ESSA, and 2002 Defense Reauthorization Act require LEAs to:
  - give military recruiters the same access to secondary school students as provided to postsecondary institutions or to prospective employers;
  - provide students' names, addresses, and telephone listings to military recruiters, when requested, unless a parent has opted out of providing such information; and

# FERPA and the Every Student Succeeds Act

- notify parents that it routinely discloses information to military recruiters and how parents may opt out of this.
  - This notification may be included with the “directory information” notice under FERPA.
  - If a school does not provide sufficient notice relating to "directory information," it must complete a special notice to parents about the disclosure to military recruiters.

# Technical Assistance

- For technical assistance and advice to school officials, contact the Family Policy Compliance Office.
  - U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-9520
  - (202) 260-3887 telephone
  - (202) 260-9001 fax
  - [FERPA@ed.gov](mailto:FERPA@ed.gov)
  - <http://www.ed.gov/policy/gen/guid/fpco/index.html>



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**Tennessee Law  
Regarding  
Student Records**

# Tennessee Law Regarding Student Records

- T.C.A. § 49-6-901
  - A copy of a student's report card shall be furnished by the LEA to the parent or parents of such student.
- T.C.A. § 49-6-902
  - Rights of noncustodial parent to have copy of records

# Tennessee Law Regarding Student Records

- T.C.A. § 10-7-504(a)(4)(A) – Confidential Records
  - Student records 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 or to the public or any agency without the consent of the student involved or the parent or guardian of a minor student.

# Tennessee Law Regarding Student Records

- T.C.A. § 10-7-504(a)(4)(A) – Confidential Records – Exceptions
  - “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.”



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# **Tennessee Open Meetings Act**

# Tennessee Open Meetings Act

- T.C.A. § 8-44-101(a) – “The Sunshine Law”
  - The General Assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.
- T.C.A. § 8-44-102(a)
  - All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

# Tennessee Open Meetings Act

- A meeting is the convening of a governing body in order to make a decision or to deliberate toward a decision on any matter.
- A governing body consists of the members of a public body with two or more members with the authority to make decisions for or recommendations to a public body on policy or administration (includes negotiation committees).

# Tennessee Open Meetings Act

- T.C.A. § 8-44-103(a) – Notice of Public Meetings
  - Any such governmental body which holds a meeting... shall give adequate public notice of such meeting.
  - Adequate public notice is determined under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.
    - *Memphis Pub. Co. v. City of Memphis* (1974)

# Tennessee Open Meetings Act

- T.C.A. § 8-44-104 – Minutes or Votes
  - Promptly and fully recorded
  - Open to inspection
  - All votes public
  - Record of individual vote if roll call

# Tennessee Open Meetings Act

- T.C.A. §§ 8-44-104 and 8-44-105 – Actions Nullified: Enforcement
  - Prohibited actions void
  - Court to make findings of fact and conclusions of law
  - Permanent injunction
  - Court retains jurisdiction
  - Semi-annual reports

# Tennessee Open Meetings Act

- Exceptions
  - Chance meetings
  - On-site inspections
  - Attorney/client discussions
  - Negotiation committee strategy sessions



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# **Tennessee Open Records Act**

# Tennessee Open Records Act

- T.C.A. § 10-7-503 – Open Records
  - “All state, county, and municipal records... shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee...”

# Tennessee Open Records Act

- T.C.A. § 10-7-504(f)(1) – Exceptions
  - Unpublished numbers
  - Bank account information
  - Social security number
  - Driver license information
  - Medical information
  - Teacher effectiveness data (T.C.A. § 49-1-606)

# Tennessee Open Records Act

- T.C.A. §§ 12-4-101 and 12-4-102 – Conflict of Interest
  - Direct conflicts are prohibited.
  - Indirect conflicts must be publicly acknowledged.
  - Penalty is a forfeiture of all pay and compensation, dismissal, and ineligibility for 10 years.
- T.C.A. § 49-6-2003
  - No direct or indirect interest in supplying books, maps, furniture, apparatus to public schools



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**Civil Rights Law**

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# Title VI of the Civil Rights Act of 1964

- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- This does not apply only to minorities.
- This covers all discrimination based on a person's race, color, or national origin, whatever it may be.
- Prohibits retaliation against those who make complaints

# Title VI of the Civil Rights Act of 1964

- Intentional discrimination based on race, color, or national origin is a violation of Title VI.
- Unintentional discrimination may also be a violation if policies or practices have an unjustified effect of discriminating.
- In addition, the existence of a hostile environment based on race, color, or national origin created, encouraged, accepted, tolerated, or left uncorrected by an LEA is also a violation of Title VI.

# Title IX of the Education Amendments of 1972

- No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
- Covers sexual harassment, pregnancy discrimination, athletics, and any discrimination with a basis in the differences between the genders

# Title IX of the Education Amendments of 1972

- Sexual harassment is prohibited regardless of the sex of the harasser or the victim (e.g., sexual harassment may occur if the harasser and the victim are the same sex).
- For Title IX to apply, the discrimination must be based on sex, even where the harasser and victim are the same sex.

# Title IX of the Education Amendments of 1972

- Title IX prohibits sex stereotyping (i.e., harassment or discrimination for failing to conform to stereotypical notions of masculinity and femininity).
- Though Title IX does not explicitly prohibit discrimination on the basis of sexual orientation, all students—including lesbian, gay, bisexual, and transgender (LGBT) students—are protected from sexual harassment (i.e., harassment based on sex).
- Courts are still deciding if Title IX prohibits discrimination on the basis of gender identity.

# Education Improvement Act (IDEA)

- All students can learn and have the right to attend school.
- Free Appropriate Public Education (FAPE)
- Least Restrictive Environment (LRE)
- Individualized Education Plan (IEP)
- Parents have the right to participate in decision making.

# Section 504 of the Rehabilitation Act of 1973

- Civil rights legislation for persons with disabilities, designed to prevent any form of discrimination based upon those disabilities
  - “No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

# Section 504 of the Rehabilitation Act of 1973

- Eligibility is very broad and covers many different types of disabilities and disabling conditions, many of which are not covered under IDEA.
- Eligibility is based on the definition of disability, as defined in Section 504.
- Eligibility is not based on clinical categories, such as intellectual or learning disabilities.

# Section 504 of the Rehabilitation Act of 1973

- Eligibility for protections under Section 504 is not related to eligibility under other federal or state laws, such as IDEA.
- As with IDEA, schools are required to locate students in its districts who may be eligible for protections under Section 504.

# Section 504 of the Rehabilitation Act of 1973

- Definition of Disability
  - Physical or mental impairment that substantially limits one or more major life activities
  - Have a record of such impairment
  - Be regarded as having such an impairment

# Section 504 of the Rehabilitation Act of 1973

- Physical Impairment
  - Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
    - Neurological
    - Musculoskeletal and skin
    - Special sense organs
    - Respiratory, including speech organs
    - Cardiovascular
    - Reproductive
    - Ingestive and genitourinary
    - Memic and lymphatic
    - Endocrine

# Section 504 of the Rehabilitation Act of 1973

- Mental Impairment
  - Any mental or psychological disorder, such as:
    - Intellectual disabilities
    - Organic brain syndrome
    - Emotional or mental illness
    - Specific learning disabilities

# Section 504 of the Rehabilitation Act of 1973

- Major Life Activities
  - Non-exhaustive list including functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working
- The Americans with Disabilities Amendments Act of 2008
  - General activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating
  - Major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions

# Section 504 of the Rehabilitation Act of 1973

- Determining Substantial Limitations
  - Must be made on a case-by-case basis with respect to the individual student.
  - Section 504 requires that a group of knowledgeable persons draw upon information from a variety of sources to make this determination.

# Section 504 of the Rehabilitation Act of 1973

- Mitigating Measures under Section 504
  - Cannot consider “mitigating measures” in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity
  - Examples – medication, medical supplies, equipment or appliances, low-vision devices (do not include ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aids and cochlear implants or other implantable devices, mobility devices, oxygen therapy equipment and supplies, use of assistive technology, reasonable accommodations or auxiliary aids or services, and learned behavioral or adaptive neurological modifications

# Section 504 of the Rehabilitation Act of 1973

- Mitigating Measures Exception
  - Ordinary eyeglasses or contact lenses can be considered in determining if an impairment substantially limits a major life activity.
    - Defined as lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas “low-vision devices” are devices that magnify, enhance, or otherwise augment a visual image

# Section 504 of the Rehabilitation Act of 1973

- Temporary Disabilities
  - Usually does not constitute a disability, unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time
  - Must be determined on a case-by-case basis
  - ADAAA provides an individual is not “regarded as” an individual with disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

# Section 504 of the Rehabilitation Act of 1973

- Physical Accessibility
  - All buildings in a school district do not have to be accessible. Rather, all programs offered by the district have to be accessible.
  - Buildings that are renovated, new, or that will be built in the future must be accessible for children with different types of disabilities.

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# **Religious Expression in Public Schools**

# Religious Expression in Public Schools

- Misunderstanding of how the Free Exercise and Establishment Clauses in the First Amendment to the U.S. Constitution apply to public schools
- Mistaken beliefs that any type of religious expression in school is unconstitutional
- Mistaken beliefs have caused unintentional violations of First Amendment rights of students and employees.
- Understanding a few basic points and dispelling myths regarding religious liberty is a way for school boards, school system employees, and communities to avoid negative feelings, conflict, and legal pitfalls

# Religious Expression in Public Schools

- The Establishment Clause prohibits the government from "establishing a religion." It does not apply to private citizens. While the Constitution limits the power of the government to take actions that advance or promote religion, it also limits the government's power to inhibit religion in any way.
- Schools must be absolutely neutral with regard to religion.

# Religious Expression in Public Schools

- The Supreme Court, in the *Lemon v. Kurtzman* case, adopted a three-part test for interpreting the Establishment Clause.
  - School systems must always keep this three-part test in mind when taking actions or developing policies that may involve religious expression.
  - The Lemon Test:
    - Does the law, or other government action, have a bona fide secular or civic purpose?
    - Does the primary effect neither advance nor inhibit religion? In other words, is it neutral?
    - Does the law avoid excessive governmental entanglement with religion?

# Religious Expression in Public Schools

- Tennessee Student Religious Liberty Act of 1997
  - Stated purpose of the legislation
    - Fight confusion and myths
    - Protect rights and schools
    - Reduce litigation costs

# Religious Expression in Public Schools

- Myths about Religion in Public Schools
  - Students may not pray in school.
    - School system employees may not direct or encourage any religious or anti-religious activity, but no law prohibits students from voluntarily praying in school. The Establishment Clause only prohibits school-sponsored prayer. Voluntary prayers of course may not infringe on the rights of the school to maintain discipline, prevent disruptions, or determine educational curriculum and assignments.
    - *Santa Fe Independent School District v. Jane Doe*
      - Prayer at sporting events

# Religious Expression in Public Schools

## ■ Myths about Religion in Public Schools

- Students may not read the Bible or other religious books in school.
  - Not allowing students to read religious material in class during free time would clearly be a violation of the First Amendment. Schools may not act to inhibit religion or promote religion.
  - Pursuant to the Tennessee Student Religious Liberty Act of 1997, students may "possess or distribute religious literature in a public school, subject to reasonable time, place, and manner restrictions to the same extent and under the same circumstances as a student is permitted to possess or distribute literature on non-religious topics or subjects in such school."

# Religious Expression in Public Schools

- Myths about Religion in Public Schools
  - Students may not share their faith with others.
    - Students may speak to and attempt to persuade their peers about religious topics just as they do regarding political topics.
    - School officials should not allow student speech that constitutes harassment aimed at a student or a group of students.
    - The Equal Access Act also prohibits secondary schools that accept federal aid and allow extracurricular clubs to meet during non-instructional times from denying other clubs to meet as a result of their political, philosophical, or religious orientation. The clubs must be student initiated and led.

# Religious Expression in Public Schools

- The only way a school system may disallow religious clubs to meet at school is by choosing to be a closed forum and not allowing any extracurricular groups to meet, in which case the provisions of the act would not apply.

# Religious Expression in Public Schools

- Myths about Religion in Public Schools
  - Teachers may never discuss religion in their classes.
    - The Supreme Court wrote in *Abington v. Schempp* that without the study of comparative religion or the history of religion and its relationship to the advancement of civilization, a student's education is not complete. The study of religion or religious writings, when presented objectively as part of a secular program of education, is consistent with the First Amendment.
    - The important thing for educators to remember is that schools may teach "about religion" but must avoid religious indoctrination.

# Questions





***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**

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Citizens and agencies are encouraged to report fraud, waste, or abuse in State and Local government.

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**1-800-232-5454**

Notifications can also be submitted electronically at:

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