

	MURFREESBORO CITY SCHOOL BOARD POLICY		
	Descriptor Term: EDUCATIONAL RECORDS AS EVIDENCE ACT-- SUBPOENAS FOR EDUC. RECORDS	Descriptor Number: STU 55	Date Adopted: 2/23/10

I. PURPOSE

This policy is intended to ensure compliance by all MCS personnel with the Educational Records as Evidence Act codified at 49-50-1501 et seq. When any employee of MCS receives a subpoena for educational records, the employee should notify their supervisor. The supervisor should immediately contact the attorney for MCS and fax a copy of the subpoena to the school attorney.

II. DEFINITIONS¹

- A. "Custodian" means the educational record practitioner and the administrator or other chief officer of an educational institution in this state and its proprietor, as well as their deputies and assistants, and any other persons who are official custodians or depositories of records;
- B. "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 a guardian; and
- C. "Student record" means an educational record that is directly related to a student and is maintained by an educational institution or by a party acting for the institution.

III. REQUESTED RECORDS²

- A. Pursuant to the Educational Records as Evidence Act, the custodian of the requested records within 20 days after being served with a subpoena duces tecum, must, either by personal delivery or certified or registered mail, file with the court clerk or the officer, body or tribunal conducting the hearing, a true and correct copy (which maybe a copy reproduced on film or other reproducing material by microfilming, photographing, photostating, or other approximate process, or a facsimile, exemplification or copy of such reproduction or copy) of all records described in the subpoena.
- B. Before complying with a subpoena for student records, the custodian of the requested record shall make a reasonable effort to notify the parent or guardian of the subpoena, so that the parent or guardian may seek protective action,

¹T.C.A. 49-50-1502 (5)

²T.C.A. 49-50-1503

unless the subpoena was issued by a federal grand jury or for a law enforcement purpose and the court or other issuing agency ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed. The format set forth on STU 55 Form B should be utilized when sending such letter.

IV. PRODUCTION OF SUBPOENAED RECORDS³

- A. The copy of the records must be separately enclosed in an inner envelope or wrapper, sealed with the following information on the front of the inner envelope or wrapper:
1. title of the case,
 2. case number,
 3. name of witness, and
 4. date the subpoena was issued.
- B. The custodian of the record shall affix to the sealed envelope or wrapper containing student records an affidavit stating that each parent or guardian of a student whose records are within the sealed envelope or wrapper was notified of the subpoena prior to compliance and the date on which such eligible student or parent was notified, unless the subpoena was issued by a federal grand jury or for a law enforcement purpose and the court or other issuing agency ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
- C. The custodian of the requested records must complete the form affidavit (Attachment A) and email or fax it to the school attorney for review and finalization. The affidavit attached to the inner envelope or wrapper must be signed by the records custodian and notarized.
- D. The sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed and directed as follows:
1. If the subpoena directs attendance in court, to the clerk of such court or the judge thereof;
 2. If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition, or at such officer's place of business; and
 3. In other cases, to the officer, body or tribunal conducting the hearing at a like address.

V. DUTIES OF CUSTODIAN OF REQUESTED RECORDS⁴

- A. Upon receipt of a subpoena, the custodian must send the records to the attorney responsible for the issuance of the subpoena at the place and on or before the date designated in the subpoena, if such subpoena:

³49-5-1504

⁴40-50-1505

1. States conspicuously on its face that the records are required in a tort action or domestic relations proceeding in which the student or parent has raised the issue of the student's educational level, performance, or attendance and
2. Directs the custodian's attendance at a deposition.

VI. CUSTODIAN AFFIDAVIT⁵

- A. The records must be accompanied by an affidavit of a custodian stating in substance:
 1. That the affiant is the duly authorized custodian of the records and has authority to certify the records;
 2. That the copy is a true copy of all the records described in the subpoena;
 3. That the records were prepared by the personnel of the Murfreesboro City School system or persons acting under Murfreesboro City School's control in the ordinary course of business at or near the time of the act, condition or event reported therein; and
 4. Certifying the amount of the reasonable charges of the educational institution for furnishing such copies of the record.
- B. If Murfreesboro City Schools has none or only a portion of the records described in the subpoena, the custodian must so state in the affidavit and file the affidavit and such records as are available in the manner described above.
- C. The reasonable charges for copies of such records shall be as follows:
 1. black and white copy = \$0.15 per page
 2. color copy = \$0.50 per page
- D. STU 55 form A is a form affidavit which must be completed by the custodian of the requested records and sent to the school attorney for review and finalization.
- E. The final affidavit must be signed by the custodian of the requested records and notarized.

VII. REQUIRING PERSONAL ATTENDANCE OF CUSTODIAN - COSTS⁶

- A. Where the personal attendance of the custodian is required, the subpoena duces tecum should contain a clause which reads: "The procedure authorized pursuant to §40-50-1503 will not be deemed sufficient compliance with this subpoena."
- B. Where both the personal attendance of the custodian and the production of the original record are required, the subpoena duces tecum should contain a clause which reads: "Original records are required, and the procedure authored pursuant to §49-50-1503 will not be deemed sufficient compliance with this subpoena."
- C. If an employee of MCS receives a subpoena containing any of the language set forth above in clauses A or B, the employee should notify their supervisor. The

⁵T.C.A. 49-50-1506

⁶T.C.A. 49-50-1508

supervisor should immediately contact the attorney for MCS and fax a copy of the subpoena to the school attorney.

VIII. SUBSTITUTION OF COPIES AFTER ORIGINAL RECORDS INTRODUCED INTO EVIDENCE

- A. In view of the property right of the educational institution in its records, original records may be withdrawn after introduction into evidence and copies substituted, unless otherwise directed for good cause by the court, judge, officer, body or tribunal conducting the hearing.
- B. The custodian may prepare copies of original records in advance of testifying for the purpose of making substitution of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.
- C. If copies are not prepared in advance, they can be made and substituted at any time after introduction of the original record, and the reasonable charges for making such copies shall be taxed as costs of court.

(INSERT DATE)

To the Parents/Guardian of:
[INSERT PARENT(S)/GUARDIAN(S) NAME(S)]
[INSERT ADDRESS]

Re: [INSERT CASE NAME (EXAMPLE MOORE V. MOORE)]
 [INSERT NAME OF COURT]
 [INSERT CASE NO.]
 Subpoena Duces Tecum

Dear [INSERT PARENT(S)/GUARDIAN(S) NAMES(S):

Pursuant to T.C.A. §40-50-1503(a), this letter is to inform you as the parent/guardian of [INSERT STUDENT'S NAME], that [INSERT NAME OF SCHOOL] has received the attached subpoena requesting that the custodian of the relevant school records produce a copy of [INSERT IN “ “ WHAT SUBPOENA ASKS FOR] concerning [INSERT STUDENT'S NAME], from [INSERT DATES].

Sincerely,

[INSERT PRINCIPAL OR CUSTODIAN'S NAME]

