

MURFREESBORO CITY SCHOOL BOARD POLICY

Descriptor Term: EDUCATIONAL RECORDS AS EVIDENCE ACT-- SUBPOENAS FOR EDUC. RECORDS	Descriptor No: STU 55	Date Adopted: 2/10
<i>Reviewed/Revision Adopted:</i>		

1 I. PURPOSE

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3 This policy is intended to ensure compliance by all MCS personnel with the Educational
4 Records as Evidence Act codified at 49-50-1501 et seq. When any employee of MCS
5 receives a subpoena for educational records, the employee should notify their supervisor.
6 The supervisor should immediately contact the attorney for MCS and fax a copy of the
7 subpoena to the school attorney.
8

9 II. DEFINITIONS¹

- 10
11 A. “Custodian” means the educational record practitioner and the administrator or other
12 chief officer of an educational institution in this state and its proprietor, as well as their
13 deputies and assistants, and any other persons who are official custodians or depositories
14 of records;
15
16 B. “Parent” means a parent of a student and includes a natural parent, a guardian, or an
17 individual acting as a parent in the absence of a parent or a guardian; and
18
19 C. “Student record” means an educational record that is directly related to a student and is
20 maintained by an educational institution or by a party acting for the institution.
21

22 III. REQUESTED RECORDS²

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24 A. Pursuant to the Educational Records as Evidence Act, the custodian of the requested
25 records within 20 days after being served with a subpoena duces tecum, must, either by
26 personal delivery or certified or registered mail, file with the court clerk or the officer,
27 body or tribunal conducting the hearing, a true and correct copy (which maybe a copy
28 reproduced on film or other reproducing material by microfilming, photographing,
29 photostating, or other approximate process, or a facsimile, exemplification or copy of
30 such reproduction or copy) of all records described in the subpoena.
31

32
33 ¹T.C.A. 49-50-1502 (5)

34 ²T.C.A. 49-50-1503

- 36 **B.** Before complying with a subpoena for student records, the custodian of the requested
37 record shall make a reasonable effort to notify the parent or guardian of the subpoena, so
38 that the parent or guardian may seek protective action, unless the subpoena was issued by
39 a federal grand jury or for a law enforcement purpose and the court or other issuing
40 agency ordered that the existence or the contents of the subpoena or the information
41 furnished in response to the subpoena not be disclosed. The format set forth on STU 55
42 Form B should be utilized when sending such letter.

43
44 **IV. PRODUCTION OF SUBPOENAED RECORDS**³

- 45
46 **A.** The copy of the records must be separately enclosed in an inner envelope or wrapper,
47 sealed with the following information on the front of the inner envelope or wrapper:
48
49 1. title of the case,
50 2. case number,
51 3. name of witness, and
52 4. date the subpoena was issued.
53
54 **B.** The custodian of the record shall affix to the sealed envelope or wrapper containing
55 student records an affidavit stating that each parent or guardian of a student whose
56 records are within the sealed envelope or wrapper was notified of the subpoena prior to
57 compliance and the date on which such eligible student or parent was notified, unless the
58 subpoena was issued by a federal grand jury or for a law enforcement purpose and the
59 court or other issuing agency ordered that the existence or the contents of the subpoena or
60 the information furnished in response to the subpoena not be disclosed.
61
62 **C.** The custodian of the requested records must complete the form affidavit (Attachment A)
63 and email or fax it to the school attorney for review and finalization. The affidavit
64 attached to the inner envelope or wrapper must be signed by the records custodian and
65 notarized.
66
67 **D.** The sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper,
68 sealed and directed as follows:
69
70 1. If the subpoena directs attendance in court, to the clerk of such court or the judge
71 thereof;
72 2. If the subpoena directs attendance at a deposition, to the officer before whom the
73 deposition is to be taken, at the place designated in the subpoena for the taking of
74 the deposition, or at such officer's place of business; and
75 3. In other cases, to the officer, body or tribunal conducting the hearing at a like
76 address.
77

78 **V. DUTIES OF CUSTODIAN OF REQUESTED RECORDS**⁴

- 79
80 **A.** Upon receipt of a subpoena, the custodian must send the records to the attorney
81 responsible for the issuance of the subpoena at the place and on or before the date
82 designated in the subpoena, if such subpoena:
83

84
85 _____
85 ³49-5-1504

86 ⁴40-50-1505

- 87 1. States conspicuously on its face that the records are required in a tort action or
88 domestic relations proceeding in which the student or parent has raised the issue of
89 the student's educational level, performance, or attendance and
90
91 2. Directs the custodian's attendance at a deposition.
92

93 VI. CUSTODIAN AFFIDAVIT⁵
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95 A. The records must be accompanied by an affidavit of a custodian stating in substance:

- 96
97 1. That the affiant is the duly authorized custodian of the records and has authority
98 to certify the records;
99 2. That the copy is a true copy of all the records described in the subpoena;
100 3. That the records were prepared by the personnel of the Murfreesboro City School
101 system or persons acting under Murfreesboro City School's control in the ordinary
102 course of business at or near the time of the act, condition or event reported
103 therein; and
104 4. Certifying the amount of the reasonable charges of the educational institution for
105 furnishing such copies of the record.
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107 B. If Murfreesboro City Schools has none or only a portion of the records described in the
108 subpoena, the custodian must so state in the affidavit and file the affidavit and such
109 records as are available in the manner described above.
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111 C. The reasonable charges for copies of such records shall be as follows:

- 112
113 1. black and white copy = \$0.15 per page
114 2. color copy = \$0.50 per page
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116 D. STU 55 form A is a form affidavit which must be completed by the custodian of the
117 requested records and sent to the school attorney for review and finalization.
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119 E. The final affidavit must be signed by the custodian of the requested records and
120 notarized.
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122 VII. REQUIRING PERSONAL ATTENDANCE OF CUSTODIAN - COSTS⁶
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124 A. Where the personal attendance of the custodian is required, the subpoena duces tecum
125 should contain a clause which reads: "The procedure authorized pursuant to §40-50-1503
126 will not be deemed sufficient compliance with this subpoena."
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128 B. Where both the personal attendance of the custodian and the production of the original
129 record are required, the subpoena duces tecum should contain a clause which reads:
130 "Original records are required, and the procedure authored pursuant to §49-50-1503 will
131 not be deemed sufficient compliance with this subpoena."
132

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134 ⁵T.C.A. 49-50-1506

135 ⁶T.C.A. 49-50-1508
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- 137 C. If an employee of MCS receives a subpoena containing any of the language set forth
138 above in clauses A or B, the employee should notify their supervisor. The supervisor
139 should immediately contact the attorney for MCS and fax a copy of the subpoena to the
140 school attorney.

141
142 VIII. SUBSTITUTION OF COPIES AFTER ORIGINAL RECORDS INTRODUCED INTO
143 EVIDENCE
144

- 145 A. In view of the property right of the educational institution in its records, original records
146 may be withdrawn after introduction into evidence and copies substituted, unless
147 otherwise directed for good cause by the court, judge, officer, body or tribunal
148 conducting the hearing.
149
- 150 B. The custodian may prepare copies of original records in advance of testifying for the
151 purpose of making substitution of the original record, and the reasonable charges for
152 making such copies shall be taxed as costs of court.
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- 154 C. If copies are not prepared in advance, they can be made and substituted at any time after
155 introduction of the original record, and the reasonable charges for making such copies
156 shall be taxed as costs of court.
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188 **IN THE [INSERT CORRECT COURT NAME]**

189 **[INSERT PARTY NAME])**

190 **)**

191 **Plaintiffs,)**

192 **)**

193 **-v-)**

Case No.

194 **[INSERT DEFENDANT NAME])**

195 **)**

196 **Defendant.)**

197
198 **AFFIDAVIT OF CUSTODIAN OF RECORDS**

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200 I, _____, say as follows:

- 201
- 202 1. That I am the duly authorized custodian of the attached records for Murfreesboro City
- 203 Schools for [INSERT NAME OF SCHOOL] and have authority to certify said attached
- 204 records.
- 205
- 206 2. That the copy of the attached record, regarding [INSERT NAME OF STUDENT] is a
- 207 true and correct copy of all school records concerning [INSERT NAME OF STUDENT].
- 208
- 209 3. That these documents were prepared by myself or personnel of Murfreesboro City
- 210 Schools at or near the time of the occurrence of the matters set forth by, or from
- 211 information transmitted by, a person with knowledge of these matters.
- 212
- 213 4. That the records attached are kept in the course of the regularly conducted activity of the
- 214 Murfreesboro City Schools.
- 215
- 216 5. And that it is a regular practice of the Murfreesboro City Schools to make records of
- 217 these regularly conducted activities.
- 218
- 219 6. That I certify that _____ is the amount of the reasonable charges of Murfreesboro City
- 220 Schools for furnishing such copies of the records.
- 221
- 222 7. That I certify that the parent of [INSERT STUDENT NAME], [INSERT PARENT
- 223 NAME] was notified of the subpoena prior to compliance on [INSERT DATE
- 224 NOTIFIED].

225
226 Further the deponent saith not.

227
228 **WITNESS MY HAND** this _____ day of, _____ 20__.

229
230 _____
231 **Date**

232 Sworn to and subscribed before me, this the ____day of _____, 20__.

233
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235 My Commission Expires: _____

(Seal)

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(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]