

Legal Guidance for Frequent Back to School Questions

1. *What is the compulsory school attendance requirement in Tennessee?*

Pursuant to T.C.A. § 49-6-3001(c)(1), every parent, guardian or other legal custodian residing within this state having control or charge of any child or children between six (6) years of age and seventeen (17) years of age, both inclusive, shall cause the child or children to attend public or nonpublic school. Non-public school means a home school as defined in T.C.A. § 49-6-3050, or a private school that is accredited by, or a member of, an organization or association approved by the state board of education as an organization accrediting or setting academic requirements in schools, or that has been approved by the state, or is approved by the commissioner of education in accordance with rules promulgated by the state board of education.

This requirement does not apply to a child who:

- Has received a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state;
- Is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED(R)) from a state-approved institution or organization or who has obtained a GED(R);
- Is six (6) years of age or younger and whose parent or guardian has filed a notice of intent to conduct a home school with the director of the LEA or with the director of a church-related school; or
- Is enrolled in a home school who has reached seventeen (17) years of age. (T.C.A. § 49-6-3001(c) (2)).

Additionally, as determined by the public or private school where the children are enrolled, the following classes of children between six (6) and seventeen (17) years of age, both inclusive, shall be temporarily excused from complying with the compulsory school attendance law:

- Children mentally or physically incapacitated to perform school duties, such disability to be attested by a duly licensed physician in all cases;
- Children who have completed high school and hold a high school diploma;
- Children temporarily excused from attendance in school under rules and regulations promulgated by the state board of education, which rules and regulations shall not be in conflict with § 50-5-103 or any other law governing child labor in this state;
- Children six (6) years of age or under whose parent or guardian have filed a notice of intent to conduct a home school as provided by T.C.A. § 49-6-3001 or who are conducting a home school as provided by T.C.A. § 49-6-3050; and
- Children who have attained their seventeenth birthday and whose continued compulsory attendance, in the opinion of the board of education in charge of the school to which the children belong and are enrolled, results in detriment to good order and discipline and to the instruction of other students and is not of substantial benefit to the children. (T.C.A. § 49-6-3005(a)).

2. *What is the age of enrollment for kindergarten?*

A child entering kindergarten must be five years old on or before August 15. (T.C.A. § 49-6-201(b) (3)). While children do not have to enroll in school at five years of age, they must enroll no later than their sixth birthday. (T.C.A. § 49-6-3001(c) (1) and State Board of Education (SBE) Rule 0520-01-03-.03(8) (a)).

There is one exception to the age requirement for enrollment in kindergarten. T.C.A. § 49-6-3001(b)(2)(B) provides that, "if the director of schools finds through evaluation and testing, at the request of the parent or legal guardian, that a child who is five (5) years of age on or before September 30 is sufficiently mature emotionally and academically, then the child may be permitted to enter kindergarten." However, this exception will only apply in school districts choosing to exercise this evaluation and testing option.

Additionally, a child who has moved to Tennessee from another state, but does not meet the age requirement, may enroll in kindergarten so long as they will turn five (5) by the end of the calendar year and they were enrolled in an approved kindergarten in the other state. (SBE Rule 0520-01-03-.03(8) (b)).

Please note that the compulsory school attendance law applies to five (5) year old children once they have attended school for six (6) weeks. "[A] child may be withdrawn within six (6) weeks of initial enrollment without penalty." (T.C.A. § 49-6-3007(f)).

3. *May a parent delay their child's enrollment in school?*

Parents or guardians who believe their children are not yet ready to attend school at the designated age of mandatory attendance may make application to the principal of the public school that the child would attend for a one (1) semester or one (1) year deferral in attendance. The principal of the school shall report this deferral to the school director. (T.C.A. § 49-6-3001 (b) (5)).

4. *May schools or school districts refuse to enroll undocumented immigrant children?*

No. In 1982, the United States Supreme Court ruled that schools may not deny enrollment solely on the basis of the student's actual or perceived citizenship or immigration status (*Plyler v. Doe* 457 U.S. 202 (1982)). Likewise, schools may not deny enrollment on the basis of the parent or legal guardian's actual or perceived citizenship or immigration status.

Additionally, enrollment practices that chill or discourage participation in school on the basis of citizenship or immigration status may violate Title VI of the Civil Rights Act of 1964. (4 C.F.R. § 100.3(b) (2)). The U.S. Department of Education's Office for Civil Rights provides [information](#) regarding what documents schools may and may not ask for during the enrollment process.

5. **May schools or school districts deny enrollment or withdraw a student based solely on age?**

Decisions to deny enrollment or withdraw a student may never be made based solely on the student's age. Students who are 18 years of age and over may drop out of school without the consent of the school district or the student's parents, however, this does not mean that schools are no longer open to students who are 18 years old and older. There is no age limit for public schools in TN. However, school districts are given latitude to determine student assignment or placement. The district may have a policy, for example, that all students age 18 and over must attend an adult high school. If that is the policy, the school district must be sure it is applied equally to all students age 18 years of age and older. Also, student assignment decisions may be appealed, first to the local board of education, and then to the court. (T.C.A. § 49-6-3201 through 3206).

School districts may temporarily refuse to enroll students who are 17 years of age and older in only very limited circumstances, but such refusal must be made by the local board of education in compliance with T.C.A. § 49-6-3005(a)(5) which provides:

"Children who have attained their seventeenth birthday and whose continued compulsory attendance, in the opinion of the board of education in charge of the school to which the children belong and are enrolled, results in detriment to good order and discipline and to the instruction of other students and is not of substantial benefit to the children."

Please note that the above provision does not apply to students receiving special education services under the federal Individuals with Disabilities Education Act (IDEA).

In all circumstances, where a school district is providing education services to a student, the student must be enrolled in a school within that district, and properly reported to the Tennessee Department of Education's (TDOE) Education Information System (EIS).

6. **Who may enroll a student in school?**

Based on the compulsory school attendance law, every parent, guardian, or other legal custodian residing in the state of Tennessee having control or charge of any child between the ages of six (6) and seventeen (17) years of age, both inclusive, shall cause the child to attend public or nonpublic school or otherwise be in compliance with the law. (T.C.A. § 49-6-3001).

Most public schools have policies that only a parent, guardian or other legal custodian residing within the geographic boundaries of the school district may actually enroll the student. This means, that with few exceptions, a student may not be enrolled by a family friend, grandparent, or other person who is not the parent, guardian or other legal custodian.

One exception is provided under the Power of Attorney for Care of a Minor Child Act. This law allows a parent or parents of a minor child to delegate temporary care-giving authority to any adult residing in Tennessee when certain situations of hardship prevent the child's parents from caring for the child.

(T.C.A. § 34-6-302). Completion of this form along with the necessary signatures authorizes a non-custodial guardian to enroll a minor child into school, extracurricular activities, and authorize medical treatment.

Hardships include, but are not limited to:

- Serious illness or incarceration of a parent or legal guardian;
- The physical or mental condition of the parent or legal guardian of the child is such that care and supervision of the child cannot be provided; or
- Loss or uninhabitability of the child's home as a result of a natural disaster

Please note that a school district is not required to enroll a student with a power of attorney stating a hardship outside the scope of the above mentioned situations, but the school district may, however, enroll a student with a properly executed power of attorney for other hardships on a case-by-case basis. (T.C.A. § 34-6-302). School districts may also request additional documentation demonstrating such hardships and the need for the power of attorney.

There are specific exceptions for military families. T.C.A. § 49-6-3101 provides that a board of education shall allow a student who does not reside within the boundaries of the school district to enroll in a public school within the school district if:

“(1) The student is the dependent child of a service member who is being relocated to the state of Tennessee on military orders and will, upon relocation, be a resident of the school district, but will not be a resident of the school district when the school district conducts an open enrollment period; and

(2) The service member provides the school district with documentation evidencing that the student is the dependent child of the service member and that the service member is being relocated to the state of Tennessee on military orders and will, upon relocation, be a resident of the school district.”

In addition, the Interstate Compact on the Educational Opportunity for Military Children, found at T.C.A. § 49-12-301, provides the following on the eligibility for enrollment for the children of military families:

“1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation. State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of

application deadlines, to the extent they are otherwise qualified.”

7. What documents must be provided to the school to enroll a student?

The following are the types of documents that a school district may require for a child to enroll in school:

- Proof of identity and age (such as a certified birth certificate)
- An official copy of records and transcripts from the previous school the child most recently attended to assist in determining placement at the new school
- Immunization records (or proof that immunization is not required for the child)
- Proof of home address so that it can be confirmed that the child resides within the jurisdictional boundaries of the school district (school districts may not require a specific document but may require proof by a variety of documents such as a utility bill, tax statement, or rental agreement)

Please keep in mind that districts should never simply turn a student away due to a missing document. For example, if the student’s previous private school is withholding the student’s transcript for unpaid tuition, the school district should enroll the student and find others ways to determine the best placement for the student.

Also, federal and state law maintain that enrollment requirements should not be a barrier to homeless students enrolling in school. T.C.A. § 49-6-5001(c)(3) provides that, “No child or youth determined to be homeless shall be denied admission to any school or school facility if the child or youth has not yet been immunized or is unable to produce immunization records due to being homeless. The enrolling school shall comply with any and all federal laws pertaining to the educational rights of homeless children and youth, including the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.). Please see the following TDOE resources for the education of homeless children: [Homeless Student Resources](#)

Additionally, federal law prohibits the requirement of a social security number to enroll a child in school under the federal Privacy Act of 1974 (5 U.S.C. § 552(a)).

8. What fees may schools charge?

Public education is free in Tennessee! School fees are governed by state law, state board of education rules, and local board of education policy. No student can be charged a fee to attend a public school or use school equipment. (T.C.A. § 49-2-110(c)).

All school fees must be authorized by the local board of education. (T.C.A. § 49-2-110(c)). Certain fees may be requested, but not required, from students regardless of their financial status, including:

- fees for activities that occur during regular school hours (such as field trips);
- fees for activities outside regular hours if required for credit or a grade;
- fees for activities and supplies required to participate in all courses offered for credit or

grade; and

- refundable security deposits collected for use of school property (SBE Rule 0520-01-03.03(14)(a)).

School districts must also establish a process to waive all school fees for students who receive free or reduced priced lunches (T.C.A. § 49-2-114), and provide written notice to all students and parents or legal guardians of the fees that may be requested and the fee waiver process (SBE Rule 0520-01-03-.03 (12)(d)).

Please see the [guidance memorandum on school fees](#) from the TDOE.

9. *What are the immunization requirements for school attendance?*

The commissioner of the department of health is authorized, subject to the approval of the public health council, to designate diseases against which children must be immunized prior to attendance at any school, nursery school, kindergarten, preschool, or child care facility in the state of Tennessee. (T.C.A. § 49-6-5001(a)).

A complete list of required immunizations is available at the [Department of Health's website](#).

Parents or guardians are responsible for having their children immunized. (T.C.A. § 49-6-5001(b) (1)). Parents who have religious exemptions to a vaccination must file a signed, written statement with the child's school that the vaccination conflicts with their religious tenets or practices. (T.C.A. § 49-6-5001(b) (2)).

If a child has a medical exemption, the child's physician or public health nurse are required to indicate that specific vaccines are medically exempted due to risk of harm. All other vaccines remain required. The medical reason for the exemption does not need to be provided. (T.C.A. § 49-5-5001(e)).

State law also gives specific guidance on immunization requirements for students who are determined to be homeless. "No child or youth determined to be homeless shall be denied admission to any school or school facility if the child or youth has not yet been immunized or is unable to produce immunization records due to being homeless. The enrolling school shall comply with any and all federal laws pertaining to the educational rights of homeless children and youth, including the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq. and T.C.A. § 49-6-5001 (c)(3)).

10. *May a school district retain a student at a certain grade level?*

Decisions to promote or retain students are made by the local board of education. School districts must develop policies addressing promotion and retention of students and communicate these

polices to students and parents each year. (SBE Rule 0520-01-03-.05 (3) (b)).

11. *Can a student lose his or her driver's license for failure to attend school?*

In order to receive a driver's license from the department of safety, applicants under the age of eighteen (18) must present a high school diploma, high school certificate of graduation, or documentation that

the applicant is:

- i. Enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED) from a state-approved institution or organization, or has obtained such certificate;
- ii. Enrolled and making satisfactory progress in a secondary school of this state or any other state; or
- iii. Excused from such requirement due to circumstances beyond the applicant's control. (T.C.A. § 49-6-3017(b))

Whenever a student fifteen (15) years of age or older withdraws from school, a notice is sent to the department of safety. Within five days of receipt of the notice, the department of safety will notify the student that their license will be suspended in thirty (30) days under Title 55, Chapter 50 unless they receive documentation of compliance before that time.

A student who withdraws from school will not be considered to be in compliance until they return to school and make satisfactory progress or reach the age of eighteen (18). If the student returns but withdraws an additional time, they will have all driving privileges suspended until they reach the age of eighteen (18). (T.C.A. § 49-6-3017(c)).

Any student under eighteen (18) years of age enrolled in a course leading to a GED(R) or high school diploma who has more than ten (10) consecutive or fifteen (15) days total unexcused absences in a semester will not be considered as making satisfactory academic progress and their driver's license will be suspended. If the student does not have a motor vehicle driver license, the student will be ineligible to obtain a one until they reach eighteen (18) years of age. The attendance teacher, director of schools or director of a GED(R) program must notify the department of safety whenever any student under eighteen (18) years of age enrolled in a course leading to a GED(R) has more than ten (10) consecutive or fifteen (15) days total unexcused absences in a semester. (T.C.A. § 49-6-3017(f)).

12. *Is there a time limit on how long a student's bus ride may be?*

A student's bus ride may not exceed one and a half (1 ½) hours in the morning or one and a half (1 ½) hours in the afternoon. (T.C.A. § 49-6-2105).

13. When are school districts obligated to provide transportation for students with disabilities?

When the Individualized Education Program (IEP) team determines that Special transportation is required as a related service for a student with a disability. (34 C.F.R. 300.34)

In addition, transportation of a student with a disability should not be provided in a manner that results in the student having a shorter school day than his or her nondisabled peers unless there has been a determination, through a process that comports with IDEA and Section 504, that a shortened school day is necessary to meet the student's individual needs.

14. May a parent request that a student be transferred to a different classroom or school?

Local boards of education are responsible for making student assignment decisions. Both T.C.A. § 49-6-3102(b) and T.C.A. § 49-6-3103 list factors local boards may consider when making such decisions. Parents may appeal assignment decisions to the local board of education; the appeal must be submitted within 10 days of the assignment decision. (T.C.A. § 49-6-3201 through 3206).

In addition, in accordance with [State Board policy](#), each school district should have an Unsafe School Choice policy in place which offers any student who attends a persistently dangerous school, or any student who has been the victim of a crime while at school, the opportunity to attend a safe school. TDOE offers [guidance](#) on this policy for parents and school administrators.

15. What may a parent of a student with a disability do if the student has started school and the IEP is expired?

A student with a disability must have a current IEP in place on the first day of school. (34 C.F.R. § 300.323(a)). The following are steps that may be taken to resolve this issue:

- Request an IEP team meeting in writing;
- Contact the teacher or service provider and discuss the concerns;
- Request the assistance of the principal;
- Contact the director/supervisor of special education for the schools system and make them aware of the concerns. Provide the results of any contact with the teacher, principal, or related parties; and/or
- Contact the Office of the General Counsel and request to speak with an IDEA complaint investigator.

If a resolution is unable to be reached, the Office of the General Counsel can assist in determining the next steps. The regulations for Part B of the federal Individuals with Disabilities Education Act (IDEA), Tennessee law, and the Tennessee State Board of Education rules and regulations set procedures for the three (3) dispute resolution processes available: Administrative Complaint,

Mediation, and Due Process Hearing. The Office of General Counsel can explain what each of these options entails and can help initiate each of the three options.

16. *What precautions should schools take regarding extreme heat during athletic practices and games?*

The Centers for Disease Control (CDC) published a [study in 2010](#) that stated heat illness is the leading cause of death and disability among high school athletes. According to the CDC, there are more than 9,000 heat illnesses among high school athletes annually.

TSSAA strongly recommends that all coaches and sponsors of activities which occur outdoors complete the National Federation of State High School Associations (NFHS) Heat Illness Prevention Course before working with students each season. Please see the following TSSAA resources on prevention strategies to combat heat and hydration problems in sports practices during hot weather:

- [TSSAA Heat Policy](#)
- [Heat Policy Modifications for Competition](#)
- [NFHS Heat Illness Prevention Course](#)

Please find other TSSAA resources and health and safety policies that will help ensure the health and safety of student-athletes: [TSSAA Health and Safety Policies](#)

Please contact the Office of General Counsel for more information regarding these questions at 615-741-2921.