

Records Management Manual for School Districts and Educational Service Districts in Washington State



This manual defines the components of a good records management program. It contains detailed descriptions of processes and procedures that are intended to help school districts establish and maintain efficient office filing systems that meet their daily operational needs.

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Manual prepared by WASBO
Records Management Committee, May 2015

DISCLAIMER

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The accompanying material has been prepared to establish a process on how to create a good records management system. The samples contained within this manual are for viewing/reference only. Readers should research original sources of authority.

WASBO reserves the right to revise and update or replace its course material at any time without advance notice.

Acknowledgments

The Records Management Manual for School Districts in Washington State is the product of the collaborative efforts of the following individuals:

Darlene Fuller, Olympia School District
Veronica Gray, Bellevue School District
Rick Gregory, Bellevue School District
Jenel Helbig, North Thurston Public Schools
Aaron Purcell, Seattle Public Schools
Sue Warnke, Evergreen Public Schools

Julie Blecha, Office of Secretary of State/Washington State Archives
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The processes, procedures and examples in this manual are recommendations only. This information may be incorporated into your district policies and procedures as appropriate. We encourage you to reproduce and modify this document, in whole or part, to meet the needs within your educational service district or school.

"Scribes even recognized-perhaps through bitter experience-the need to take preservation precautions..(so) clay tablets would not become brittle and crumble in the hot Mesopotamian climate. The Eanna temple in Uruk equipped its storage room with an ingenious "air-conditioning system, featuring a grooved floor...water could flow and evaporate to ensure proper humidity for records preservation." 625 - 520 BCE. *Excerpted from Archives Power: Memory, Accountability, Social Justice, by Rand Jimerson.*

King Ashurbanipal, who ruled Assyria from 668 to 627 BCE, boasted... "I wrote on tablets, I arranged [the tablets] in series, I collated [them], and for my royal contemplation and recital I placed them in my palace."

"Without records, there can be no democracy or accountability. Without evidence of accountability, society cannot trust in its public institutions."
- 1998, John McDonald, *Canadian Archivist*, excerpted from *Archives Power: Memory, Accountability, Social Justice*, by Rand Jimerson.

"Wonderful, you men of Athens, wonderful is the custody of the public records." *Aeschines, Greek statesman and orator, 389 - 314 BC.*

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INTRODUCTION

The Records Management Program provides a comprehensive, cohesive and legally compliant system for the management of all district records. An effective records management program is vital to the success of the district and requires the cooperation of every school and department. Every employee has an important role to play in protecting the district by creating, using and disposing of records in accordance with state statutes and federal law as well as district policies and procedures. Failure to comply with state and federal laws concerning records may result in audit findings, public records fines and/or withdrawal of funding for the district. Good records management results in more time, more energy, more money and more space for educating students.

This manual will clearly define the components that create legally compliant best practices for a good Records Management Program. The objective is to bring a consistent approach to recordkeeping practices, free up valuable office space and ensure the retention of vital documents. This manual contains detailed descriptions of processes and procedures that will help schools and departments establish and maintain efficient office filing systems that meet daily operational needs. The information is intended to be accurate, authoritative and simple to understand.

Foremost, this is a reference manual. Please take time to familiarize yourself with the Table of Contents so you will know where to look when you have a question. You will be able to answer most of your questions by referring to this manual, including:

- Who do I contact for help matching a record to a record series in a currently approved Retention Schedule?
- How do I determine the legally mandated minimum Retention Period?
- Do I have the primary copy? Who has the secondary copy?
- How do I differentiate between a record and a non-record?
- What do I do with historical records?
- Should I dispose of records by recycling or shredding? Why does it matter?
- Where do I get State Archive Storage boxes? How should they be labeled?
- I'm new. Is additional help available?

RECORDS MANAGEMENT RESPONSIBILITIES

Individual schools and programs have primary responsibility for the proper and legal management of their records. Principals and program managers are responsible for ensuring that the retention and disposition of public records is in accordance with current approved records retention schedules. Some responsibilities include:

1. Ensuring that the district references current records retention schedules approved by the Local Records Committee.
2. Assisting with procedures in filing, storage, destruction of district records, and helping determine how long records are required to be stored.
3. Receiving, maintaining and sending withdrawn student records.
4. Determining what records should be microfilmed and/or scanned.
5. Providing on-site training, as needed.
6. Maintaining archival and historical storage of district records.
7. Creating internal retention schedules for departments and schools.
8. Maintaining district documents on paper, microfiche, microfilm, or electronically as applicable.
9. Scanning documents for online access.
10. Providing copies of student records.

For entities with an established Records Center, the following is a more specific breakout of level responsibilities.

The District Records Manager directs the Records Management Program with the assistance of Records Coordinators in each school and program. The specific responsibilities of the District Records Manager and Archivist, the Principal / Program Manager, and the Records Coordinator are listed below.

DISTRICT RECORDS MANAGER RESPONSIBILITIES

This is the individual who is responsible for the entire District's Records Management Procedures, including retention scheduling, file organization, records storage, and destruction.

The District Records Manager updates and reissues a School Records Retention and Destruction Activity Log annually to reflect changes and additions to the Records Retention Schedule. They coordinate the archives and records, which includes the following:

- Conducts** workshops with school/program Records Coordinators.
- Coordinates** the development of Records Retention and Disposition Schedules.
- Serves** as Records Liaison between the District and the Washington State Division of Archives and Records Management.
- Represents** the School District to the State Local Records Committee in matters

related to the disposal of District records.

- Assists** in Schedule Revisions and Updates submitted by schools/programs and consults with Records Coordinators about records retention and transfer recommendations.
- Submits** suggested Retention Schedule revisions to the WASBO Records Management Committee.
- Provides** information about physical disposal of eligible records.

PRINCIPAL / PROGRAM MANAGER RESPONSIBILITIES

Designates a staff member as Records Coordinator and delegates the day-to-day responsibilities for records management to that person. The person designated as Records Coordinator should be familiar with the school's operations and its files.

- Ensures that the Records Coordinator understands his or her responsibilities.
- Ensures that all staff knows who the Records Coordinator is and what his or her responsibilities are.

RECORDS COORDINATOR RESPONSIBILITIES

Each Records Coordinator is responsible for identifying new records as they are discovered, created, or received, and for consulting with the District Records Manager to determine the minimum retention requirements. Records may not be destroyed unless they are covered by a current approved records retention schedule.

The Records Coordinator, within his/her school/program, is responsible for:

- Attending workshops and meetings for Records Coordinators.
- Distributing retention schedules to the appropriate people within the school/program.
- Maintaining records management files and schedules.
- Recommending schedule revisions and additions to the District Records Manager and Archivist.
- Assisting in retention schedule implementation and evaluation.
- Documenting and authorizing the physical destruction of records eligible for disposal.
- Coordinating the physical disposal of eligible records for destruction.

- [Insert your district's contact information] []

- []

- []

- []

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SERVICES PROVIDED BY YOUR DISTRICT:

Records Storage - Permanent:

For records that have a sufficient legal, fiscal, and/or historical value to be retained indefinitely. A very small portion of District records need to be kept permanently or for a very long time. For schools, the most obvious example of a record that needs to be kept for a very long time (100 years) is the official record that documents a student's educational progress (that is, the high school transcript, the middle school course history summary, and the elementary school enrollment history record, also known as the Elementary Permanent Record Card).

Records Storage - Inactive:

Semi-active and Inactive records should be transferred from active office filing space to the designated records storage site. Having fewer files in the school or department makes office retrieval and filing of records more efficient. It also reduces cost in equipment and staffing.

Effective Checkout System:

All records sent to the Records Storage Site may be checked out. The Records Storage Site will document to whom the records were checked out to and a follow-up will be done to make sure they are returned. The originating office will be asked for approval if the requestor is not from their office.

All District publications, regardless of medium or form, have permanent historical value. Every school and program is asked to send two copies of each publication to the Archives and Records Manager, where they are stored, and retrieved for research purposes.

The Records Storage Site will provide safe, secure storage for all district permanent records. This includes historical records.

Historical Materials Storage:

Storage for historically valuable items, such as student publications (annuals/yearbooks and newspapers), commencement programs, trophies, banners, and photographs, should be sent to your District's Records Storage Site. Every effort should be made to preserve and protect the items and to provide access for research and display purposes. Typically, one to five percent of a school district's total records have historical value.

Records Storage - Format:

The Records Center may store primary and secondary records regardless of format. Common formats for Primary Records may include: paper, photos, negatives, magnetic tapes, microfiche, etc. Secondary (duplicate) copies may be any of the above or CDs. (CDs are not recommended for long-term storage.)

Microfilming of Documents:

The Records Storage Site staff will work with individual departments/schools in having their records filmed to reduce storage space. The records should have at least a six-year retention period in order for filming to be cost effective. Microfilm copies of public records, which meet state standards and are officially sanctioned, have the same legal status as the paper originals (RCW 40.20.020 and RCW 5.46.010).

Scanning of Documents:

The Records Storage Site staff will work with individual departments/schools in having their records scanned to reduce storage space. Conversion to an imaging system does not automatically authorize the destruction of the source documents from which images have been created. If your district wishes to destroy original Non-Archival Records after scanning, approval must first be granted by the Washington State Archives (WAC 434-663 and RC 40.14).

Records Retention Schedule - Official:

The Records Manager will ensure that agency staff are utilizing the current Records Retention Schedules approved by the Local Records Committee. <http://www.sos.wa.gov/archives/>

Records Retention Schedule - Internal:

The Records Manager will meet with departments to create internal retention schedules designed for their departments, as requested.

Research Assistance:

The Records Manager will assist in the research of records and historical materials, when requested.

One of the primary aims of the Records Management Program is to ensure the "ready" availability of records that have long-term administrative, legal, or historical value. In accordance with the Family Educational Rights and Privacy Act (FERPA) and the Public Disclosure Act, public records, district publications, and historical materials transferred to the Records Storage Site are available for inspection, by appointment, during regular working hours.

The Records Center assists individuals with records research by helping to find the needed materials and providing photocopies of records at a charge that does not exceed the actual cost of reproduction.

Archival material is generally not circulated. Certain items might be released for a temporary exhibit or display, but only if their physical protection and preservation is ensured.

Retrieval of Information:

The Records Manager will retrieve and provide information pertaining to the records stored at the Records Storage Site. Information will be released as directed by federal laws, state laws and district policies and procedures.

PLANNING

MANAGING YOUR RECORDS

Records include any paper, correspondence, form, bound volume, film, magnetic record, drawing, or other document (regardless of format), including copies, that have been created or received by the District (RCW 40.14.010, WAC 434-610-010 and WAC 434-662).

Many records created by schools are protected from disclosure by FERPA, HIPAA and other regulations.

Proper file maintenance in your office is the foundation of effective recordkeeping. Each department or school has different needs and should be considered when developing your record filing system.

Keep the following in mind when determining how your records are going to be stored:

- What records need to be grouped together?
- Which records do you need most frequently?
- How long do the records need to be stored?
- Be consistent.
- Document your procedures.
- Have procedures set up for your electronic records.

Approved retention periods apply regardless of format - remember the retention period is the same as if it were on paper:

- Back up your electronic records.
- Records must remain usable, retrievable and authentic for the length of the designated retention period.
- Records need to be securely preserved.

Many school/department records are duplicated and may be stored in various offices. It is important to determine who is retaining the primary copy, as secondary copies have a shorter retention period.

Benefits and Risks Associated with Records Management:

- Public records designated as Archival or Permanent shall not be destroyed. Records designated as Potentially Archival or Appraisal-Required, must be appraised by the Washington State Archives before disposition.
- Public records must not be destroyed if they are subject to ongoing or reasonably anticipated litigation. Such public records shall be managed in accordance with the agency's policies and procedures for legal holds.
- Public records must not be destroyed if they are subject to an existing Public Records Request in accordance with RCW 42.56. Such public records must be managed in accordance with the agency's policies and procedures for public records requests.

- Keep storage costs down by destroying records after their useful lifespan and they have met their minimum retention.
- Good records management facilitates the ability to retrieve important documents when needed.
- Audits. If procedures are not consistent it is difficult to provide information when requested.

The State Auditor's Office takes a risk-based approach to auditing; looking at those areas determined to be of highest risk. Therefore, auditors do not request/review all possible records at every audit. If records are maintained and retained according to current, approved records retention schedules, the auditor will never request records the district does not have. Visit the State Auditor's Office website at www.sao.wa.gov for more information.

OUR INVESTMENT IN RECORDS

RECORDS CREATION

Each inch of file space contains up to 160 pieces of correspondence, reports, or forms. Original correspondence has been reliably estimated to cost as much as \$12.00 in professional and clerical time to prepare. That adds up to as much as \$1,920.00 per inch or \$48,000.00 per file drawer in value.

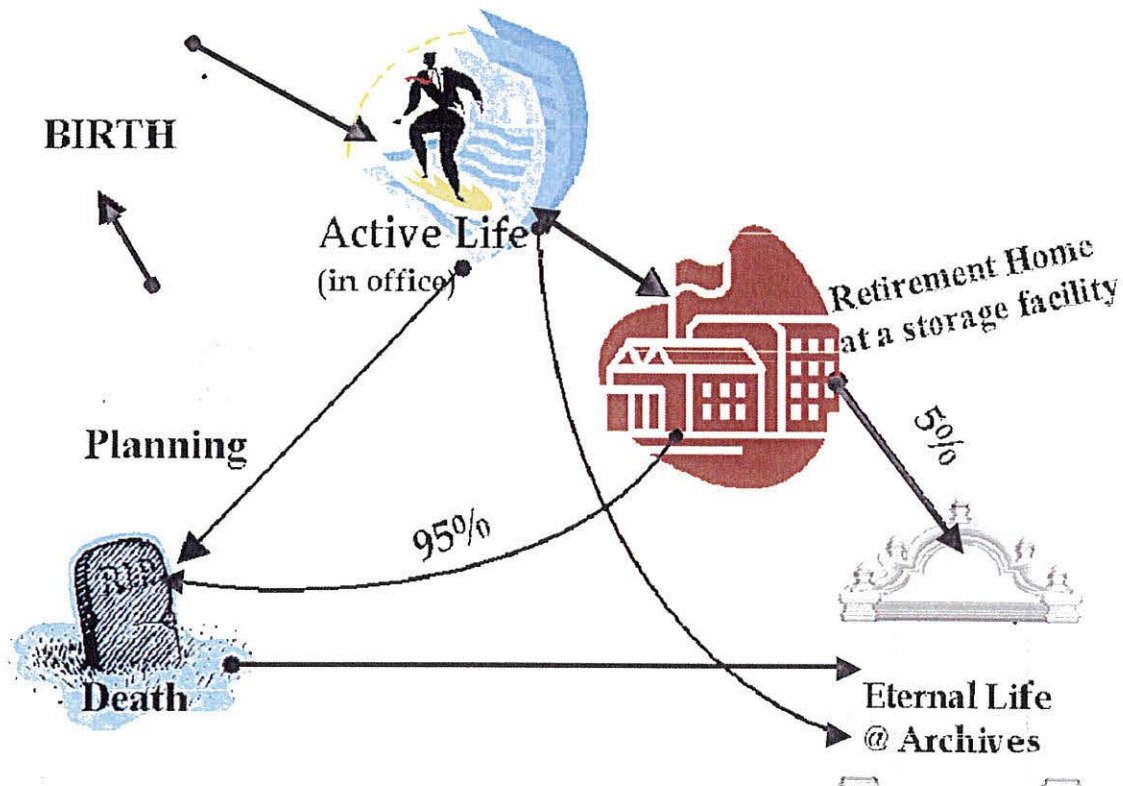
RECORDS MAINTENANCE

The average annual cost of filing and retrieval is about \$48.30 per file inch in clerical and supervisory costs.

RECORDS STORAGE

The average cost of office space is about \$12.00 per square foot per year. On that basis, it costs \$96.00 per year to house each letter-size four-drawer filing cabinet and \$144.00 per year to house each legal-size four-drawer filing cabinet.

The Public Records Life Cycle



ACTIVE AND INACTIVE RECORDS

To determine if a record is active or inactive, the following formula is helpful.

Active = fiscal year

Semi-Active = through audit period

Inactive = remainder of retention period

EMAIL RECORDS

Electronic mail (email) is primarily a communication system. Individual email messages may be public records with legally mandated retention requirements, or may be information with no retention value. Email messages are public records when they are created or received in the transaction of public business and retained as evidence of official policies, actions, decisions, or transactions. Such messages must be identified, filed, and retained just like records in any other formats.

RETENTION SCHEDULES

The Local Records Committee approves Records Retention Schedules for commonly held records for all school districts in the State of Washington. Public records covered by records series within these schedules (regardless of format) **must** be retained for the minimum retention period as specified in the schedule. If you are unable to identify a records series to cover a school district record, then the record **cannot** be destroyed until the Local Records Committee has approved its destruction.

Records Retention Schedules can be accessed at the Washington State Archives website. Agency heads should take measures to ensure that the retention and disposition of public records is in accordance with current, approved records retention schedules.

<http://www.sos.wa.gov/archives/RecordsRetentionSchedules.aspx>

The current, approved Records Retention Schedules that cover all public records created or received by school districts are:

School Districts and Educational Service Districts Records Retention Schedule

This Schedule covers records that pertain specifically to school districts, such as student records, student attendance, teaching records, etc.

Local Government Common Records Retention Schedule (CORE)

This Records Retention Schedule covers the public records of all local government agencies relating to the common functions of the management of the agency, and management of the agency's assets, finances, human resources and information resources.

Examples include: Board minutes, payroll records, personnel records, library records, financial and budget records, electronic information systems, etc.

SEARCHING THE DATABASE:

A database containing all approved records series is available on the Washington State Archives website. You have the ability to search the databases using a keyword.

- To access the search function, click on "Search Database" at the top of the web page.
- There are two drop down menus that should be adjusted prior to Beginning your search.
- Click on the checkmark next to the "Schedule" box, click on the box next to "CORE" then, click on the box next to "SCHOOLS".
- Click on the checkmark next to the "Record Category" box and click on the "Select All" box.
- Enter a key word in the "Search For" box and then click on "View Report".
- This will bring up all the records series that contain your searched word. You can broaden or narrow your search as needed. It is best to start with a simple word to ensure that you locate all records relating to your search. For example, enter "time" instead of "time card"; enter "bus" instead of "buses"; enter "card" instead of "report cards".

By using current, approved Records Retention Schedules, you can ensure that all district records are retained and disposed of in accordance with RCW 40.14.070.

Non-Archival records may be destroyed after their minimum retention period has been met unless they are needed for pending litigation or to fulfill an outstanding or reasonably anticipated public records request.

While records may be retained beyond the minimum retention period, Washington State Archives strongly recommends the disposition of public records at the end of their minimum retention period for the efficient and effective management of local resources.

Records designated as Archival must not be destroyed. Contact your Regional Archivist for appraisal. These records may be selected to be transferred to and preserved at a Regional Archives branch.

RECORDS CENTER and ELECTRONIC RECORDS REPOSITORY

An In-District Records Center and Electronic Repository's purpose is to provide economical storage, timely retrieval, security, document processing and legally compliant disposal for records made or received by school districts.

Best practice is to establish two different types of storage – a Records Center for physical objects such as paper, microfilm and artifacts, and an Electronic Repository for digital content like scanned records, photographs and websites.

The goal is to manage records in a way that best serves the school district's needs, while protecting the district from legal and fiscal liability. Storing physical records in the Records Center and electronic records on a Repository Server, instead of using staff office space or computers is a more efficient use of resources that ensures records are secure and easily retrievable.

Small school districts may find it challenging to set-up centralized storage for records due to limited resources, space and staffing. An appropriately scaled Records Management Program may still be put into place to include a dedicated storage area for Inactive Records that have not reached the legally mandated retention period.

SERVICES AND BENEFITS A RECORDS CENTER AND ELECTRONIC REPOSITORY MAY PROVIDE:

-Better Cost Effective Storage:

-Accountable and Restricted Check-Out System:

Records sent to the Records Center/Storage Site can be checked-out by the department or school who owns the records. Electronic Records can be moved to a repository/server and protected from loss or unauthorized access. The Records Manager provides access to records as directed by Federal Laws, State laws and District Policies and Procedures. The Records Manager or Public Records Officer documents to whom the records were released to, provides copies to the requestor and follows-up to confirm the records are returned to the Records Center/Storage Site.

-Non-Archival Permanent Records Storage:

The Records Center can provide safe, secure storage for all district records. A Repository Server can store electronic records of former staff members no longer employed by the district and/or programs or projects that have closed.

-Storage of Records in other Media Formats:

The Records Center/Storage Site and Electronic Repository stores primary records regardless of format. The items must be properly labeled. Common formats for primary records may include – paper, photos, negatives, microfiche, etc. Portable media such as CD's, thumb drives, disks, etc., are used to transfer electronic documents and are not

appropriate devices for storing public records. See *Records Management Advice* issued by the Office of the Secretary of State, Washington State Archives for more information.

-Microfilm / Imaging Services (digitize paper and microfilm):

The Records Center may film and/or digitize Non-Archival Records to reduce storage space. They may also contract out with Washington State Archives to convert paper and microfilm to user-friendly digital images. For more information about these services contact *Imaging – Washington State Archives*.

-Scanning of Documents (Scan and Toss):

Many school districts may wish to scan records and then toss the paper, to improve access, provide backup etc. Washington State Archives has provided guidance on the systems and processes that must be in place to allow *Scan and Toss* of documents. Specifically, the school district must have an Electronic Records Repository that can manage the security of the scanned documents, and preserve the data so that the records may be assessable and searchable by file name, owner, etc.

-Research and Filing Assistance:

Whether on an Electronic Repository Server or a physical Records Center/Storage Site, staff must develop the expertise to use the systems available to search and find records under their management. Electronic records may be categorized in folders by *Type of Record* or *School Year*, for example. The district Records Center/Storage Site manages information by creating folders which can then be placed in a shared Electronic Repository Server, eliminating individual filing systems created by staff.

Often information systems allow you to attach a document or email to a record, but the attachments alone may not be searchable, in order to verify that the attachment was truly a *504 Plan* and not a *Receipt*, for example. Such systems do not usually have the ability to apply retention. (Example: all attachments pertaining to discipline records, which are eligible for destruction after three years after resolution of the incident, may not be identified or found. The original paper record must be preserved and remain searchable/retrievable for the life of the record even when it has been scanned.

Washington State Archives has created a master contract for electronic records management software that would allow school districts and others to purchase services from this contract. This Statewide contract is a systemic approach to standardize the scanning of paper records. School Districts will be able to scan paper records, file the electronic copies in the electronic Records Management Software and then destroy the paper record, once the scan is verified.

The records management software can also be used by the district to file and maintain electronic records that come in via email or on discs or other media, and the electronic records can be filed and manage, with additional copies destroyed.

STORING LONG-TERM, NON-ARCHIVAL PAPER RECORDS

These records should be stored in Acid-Free Folders Storage Boxes. The following should be done to preserve the records:

- Unfold and carefully flatten papers.
- Remove all paper clips, staples and rubber bands.
- If paper is not acid-free, interleaf acid-free paper to preserve the writing.

Acid-Free or “Archival” Storage Boxes

Acid-Free Archive Storage Boxes may be ordered from your Regional Washington State Archives (<http://www.sos.wa.gov/archives>). You will need to order approximately two (2) boxes for each full, letter-size, file drawer or three (3) boxes for each full, legal-size file drawer.

Packing of Acid-Free Storage Boxes

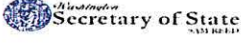
When packing records in acid-free storage boxes, please remember:

- Boxes must be the standard acid-free box (so they fit on shelves).
- Only one type of record per Transmittal Form and Box (For Example: do not mix Official Student Records with Student Discipline records).
- Pack records in an upright position.
- Pack records in the same order as they were filed in your office.
- Remove binders, hanging files or other similar devices which make packing into boxes difficult.
- Do not pack files too tightly in the box, as this hinders easy retrieval. Leave approximately one inch of space in each box.

Non-Archival Paper Records Storage-Box Label

Label each Acid-Free Storage Box with a good quality permanent label so it does not fall off the box over time (or during moves). Just like soup cans, a row of boxes without a label is hazardous to the health of the school district – and records will be lost before their retention period is over. Starliner is one of many vendors that carry quality adhesive paper.

The Archive Storage Box Label is placed on the front of the box in the area marked “PLACE LABEL HERE”.

 Retain		
The Washington State Archives PO Box 40239 Olympia, Washington 98506-0239 RECORDS CENTER BOX LABEL 0S0SF-003(04/01) (Formerly SSA-16 (8/92))	Office/Dept/School	Box No. Location
	Disposition Authority No.	Records Title
Box Contents:		

Retain: Year record can be destroyed

Office/Dept/School: Owner of the records in box

Box No. Location: Assigned by owner to help track information, including location if stored in a records center

Disposition Authority No.: Tracking number from state retention schedule

Records Title: Title of the records from the state retention schedule

Inclusive Dates: Inclusive dates of the records in the acid-free box

Box Contents: More detailed information on the records stored in the acid-free box

Having Boxes Picked-Up

Once the Box Label and Transmittal Form and Tracking Sheet are complete, the boxes are ready to be sent to the Centralized Records Center/Storage Site, so follow your district's designated process and procedures.

Storing of District Photographs

Photographs should be stored in an environment that protects them from creases, fading or water damage. There are plastic sleeves that can provide additional protection for photos. Photos should be removed from Non-Acid Free Paper or glue and stored in Acid-Free Boxes.

Photographs should be properly labeled or an index provided that includes:

- Event of the photograph
- Names of individuals/landmarks in photograph
- Location of photograph
- Date of photograph

Sorting Long-Term, Non-Archival Digital Records

For Long-Term Electronic Records, the requirement to preserve public records and information includes preserving the record so that it is readable and searchable in its original format, regardless of changes in technology. Remember – if the long-term record is born digital, then it must be preserved as a digital record. (It can't be printed and saved.) See the [Preservation of Electronic Records WAC 343-662](#) for more information.

Current best practice for Long-Term Storage formats for documents and images include: TIF, Word and Excel. Other formats are less stable and constantly changing. Digital recordings such as for Board Meetings, should use a lossless file type such as WAV. For additional assistance please [see guidance](#) on digital audio/visual recordings.

In this era of ever-changing technology, a District-wide Electronic Repository needs to be periodically assessed for compliance with the Washington State Retention Schedule and State and Federal Law.

ACCESSING, PROTECTING & PRESERVING YOUR RECORDS

The daily work of records custodians can be summed up as accessing, protecting and preserving public records. Federal and State Law, especially the Family Educational Rights and Privacy Act (FERPA), RCW 40.16 "Injury to or Misappropriation of Public Records" and the Public Records Act RCW 42.56 define these responsibilities.

ACCESSING is how records are made available for viewing and production regardless of form (i.e., paper, electronic, photographs etc.) FERPA establishes the right to access education records by parents or an adult student. The right to inspect and review the student's education records within 45 days of the day the district receives a request for access. Parents or eligible students should submit to the District Records Custodian a written request that identifies the record(s) they wish to inspect. The Records Custodian will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

Records may include:

Cumulative Records:

- Enrollment and Attendance Records
- Grades, Progress Reports, and Test Scores
- Schools Attended, Courses Taken, School Activities and Awards
- Immunization Records
- Other Records collected, maintained and used by the school to meet the educational needs of all students

Confidential Records:

- Section 504 and Special Education Records
- Title I, LAP, and ESL Records
- School Nurse and Home-Hospital Records
- Guidance, Counseling and Social Work Records
- Discipline and Truancy Records
- Law Enforcement and Child Abuse Records
- Court Orders and Legally-binding Divorce, Separation and Custody Records
- Investigation and Hearing Records regarding bullying, harassment, discrimination, etc.
- Other Records collected, maintained and used by the school to meet the educational needs of a specific student

Parents and Adult Students do not have the right to inspect and review the following records under FERPA:

- **Working Notes of Staff** that are kept in the sole possession of the maker, not accessible or revealed to any other person except a temporary substitute, and used only as a memory aid.
- **Emails** naming a student that are not collected, maintained or used by the school to meet the educational needs of the student.

The Public Records Act Establishes:

...that all records maintained by state and local agencies are available for public inspection unless the law specifically exempts them.

PROTECTING keeps the records in correct order and free of error.

- After use, check records for any errors or disorganization before returning to storage.
- Always supervise records inspections by the public.
- Consult FERPA and your Agencies Procedure to correct errors in records.

FERPA:

Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

WSSDA Sample Procedure:

The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate or misleading. Parents or eligible students may ask the district to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading. If the district decides not to amend the record as requested by the parent or eligible student, the district will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

PRESERVING ensures that records are not destroyed or damaged and are retained in accordance with the Washington State Retention Schedule.

-Familiarize yourself with the Washington State Retention Schedules and the CORE. Always check these Schedules for legally mandated retention and Disposition of public records at <http://www.sos.wa.gov/archives/RecordsRetentionSchedules.aspx>.

-Records that are responsive to a public records request or subject to a litigation hold cannot be destroyed until the matter is resolved even if they reached or passed the retention period defined on the Washington State Retention Schedule.

In accordance with the Washington State Retention Schedule, School Districts must retain the Official Student Record (Elementary School grade progression and schools of attendance, the Middle School Report and the High School Transcript) for 100 years.

For guidance on Electronic Records, please review WAC 434-662 "Preservation of Electronic Public Records" <https://www.sos.wa.gov/assets/archives/OTS-9203%206final.pdf>. Electronic Records are bound by the same provisions as paper records as defined in RCW 40.14. Electronic records must be retained and remain usable, searchable, retrievable and authentic for the length of the designated retention period regardless of software and device changes, updates or upgrades.

-Survey the environment where the records are stored to avoid direct sunlight, extremes of temperature, dirt or water. Do not eat or have food close to records.

-Have a disaster recovery plan. Excellent training is available through Washington State Archives.

<http://www.sos.wa.gov/archives/RecordsManagement/DisasterPreparednessandRecovery.aspx>

Always keep in mind, Agency records are valuable assets on which correct decisions and actions are based and authentic agency business documented.

RETRIEVING STORED RECORDS

Retrieving records stored at a Records Storage Site should be a simple request by using email, phone call, district online program (if available) or other written format.

Even though records are stored at the Records Storage Site until their retention has been met, each department/school still has custody over them. Schools/Departments have the responsibility of maintaining a Log of their archive boxes that have been sent to the Records Storage Site. The Log should include:

- Date Record(s) Sent to Records Storage Site
- Box Number, Archive ID Number or other unique identifier that may have been assigned by the records storage personnel
- Records Retention Schedule Name, Records Series Title, and Disposition Authority Number (DAN)
- Description of documents in box
- Inclusive dates of documents in box
- Retention Period
- Destruction Year

This same information should be on each box label. A detailed description of documents in each box will insure that departments/schools will request the correct box. This practice will save time and money for the district. The information can be kept on any electronic spreadsheet. Therefore, retrieving records can be as simple as requesting a box number.

The Records Storage Site should be a very basic setup so retrieval of records is quick and simple. Using an electronic spreadsheet with the same information as mentioned above, records storage personnel can add columns for assigning an archive box number and the location of each box within the storage area. Once a box has been given a number, the information can be e-mailed back to the department for their log sheet.

When a school/department requests a box, they can submit a written request, email or phone the record storage personnel with the assigned box number. It is the responsibility of the records storage personnel to document to whom and when the box was sent / returned. Again, you can use your spreadsheet.

Whether you are requesting records or filling a request for records, keep it simple, be consistent, and use good documentation practices.

After destruction, the School Records Retention and Destruction Activity Log will serve to document the following:

- Which records have been destroyed and how;
- The volume of records destroyed; and
- The date the records were disposed.

SENDING CONFIDENTIAL RECORDS TO THE RECORDS STORAGE SITE TO BE DESTROYED

Types of records that are considered confidential and can be sent to the Records Storage Site for shredding include, but are not limited to:

- Employee Records
- Confidential Student Information / Records
- Other Material that would not be considered a Public Record
- Employee Telephone Directories

Do Not Send Public Records to be Shredded:

- Fiscal Records
- District Publications
- Discontinued Department Forms

Preparing records to send to the Records Storage Site for destruction:

- Sort Records
- Put records to be destroyed in a sealed envelope or box
- Fill-out a Request for Pick-Up Form

ARCHIVAL TRANSFER

Transferring Archival Records

What are “Archival Records”?

“Archival” can mean different things for different people, for IT (Intercity Transit) for example an archive can be tape that has old backup files on it. In the context of our responsibilities as public servants, school districts have the responsibility to identify and protect records that have been identified by the Local Records Committee as Archival (Permanent Retention) or Archival (Appraisal Required) – and districts are legally required to arrange for these records to be transferred to the Washington State Archives. The following are School District specific archival records:

- Agency Management
 - Community Relations
 - Descriptive Guide to School District Administration and Buildings
 - Historical Records, Materials and Artifacts that Should be Retained for Commemorative Events and Displays
- Superintendent
 - Accreditation
 - Basic Education Act Compliance
 - Boundary Records
 - Official School District Negotiated School Calendars
 - Superintendent of Schools (General)
- Student Administration
 - Student Records
 - Graduate List
 - School Registers

- Student Learning
 - Course Description Catalog
 - Curriculum Summaries and Guides
 - Graduation Requirements
 - Instructional Materials Subject File
 - School Master Schedule
 - List of Services Provided by the School District
 - Interscholastic Activities – Achievements

Other Archival Records are found in [CORE](#) such as School Board documents, Superintendent Files, Capital Projects (As-Built Drawings, Long-Range Facility Plans) and Levy/Bond Planning along with other studies and reports.

These records should be transferred to the Washington State Archives. The records are made available to researchers all year round and the material can be protected from further degradation, theft or other natural disasters. These records are also used as an [Educational Resource for Teachers and Students](#) – including common core tools for social studies resources.

[School Districts](#)

TRANSFERRING ARCHIVAL RECORDS

There are two methods for transferring records to the Washington State Archives; one for electronic records and one for paper records.

If the records are digital, you can work with the [digital archives](#) to transfer your records. They have made it very easy to transfer Archival Email, School Board Minutes and other born electronic records. They will provide for the preservation of these valuable legal and historical records as per Chapter 434-662 WAC. If you have archival electronic records to transfer to the Digital Archives please contact them at 360-586-4901.

If the Archival records are paper, they need to be indexed and boxed up in Acid-Free Storage Boxes (see Long-Term Records). You may contact your Archives Branch for assistance.

HISTORICAL RECORDS AND SCHOOL ARTIFACTS

There are additional Historical Artifacts that schools and districts may choose to manage on-site to provide ready access. These types of records are more focused on the history of the specific school or program and may include: Yearbooks, Commencement Programs, Student Newspapers, Literary Magazines, Comics, Interscholastic Activities like Trophies, and School Programs (theater, music). Additional records include school identity/brand information such as mascots, school colors, school songs. A school-based archive usually includes paper, trophies, fabric, video, tapes, CD's, and digital content. Assistance in preserving these materials can be found by [Ask an Archivist](#).

In general, school districts should store Historical Records in an Archive-Approved Storage Site, such as a storage facility in a concrete building, which reduces the chance of destruction by natural disasters. Often school libraries may have a storage space that can be used, or the Historical Archive may be part of the Central Records Center/Storage Site.

DESTRUCTION OF RECORDS

Every public servant has a responsibility to do one of two things concerning public records: 1) transfer records to storage if the retention isn't met or 2) destroy or delete records that have exceeded the legal retention period and are not subject to a litigation hold or public records request.

The Local Records Committee grants the Disposition Authority Number (DAN) in the records retention schedules. Work with your records coordinator or records manager to insure you know which records to transfer and which ones to destroy and when.

Follow the records retention rules unless there is a public disclosure or discovery request (legal hold). Your legal department will let you know if the records cannot be destroyed because of a legal hold.

The consequence of knowingly destroying public records can be imprisonment and fines. RCW 40.16.020: Injury to public record "Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record map, box, paper, document of other thing....by authority of law is guilty of a class C felony..."

The consequence of not destroying records is unmanaged growth resulting in increased costs for discovery and disclosure, the need for additional space, servers and staffing, and increased costs for migration, recopying, recreating, searching of records.

Records stored at the designated Records Storage Site or Electronic Records Repository will be destroyed when they have reached the end of their retention period. At the end of a records retention period, a Records Transmittal and Disposition Form will be sent to the owners responsible for the respective record, obtaining their approval for destruction. No records will be destroyed without an authorization, which can be electronic.

Confidential records will be destroyed in a manner recommended by the Washington State Archives: [Methods for Destroying Paper Records](#) and [Methods for Destroying Electronic Records](#).

A Public Records Destruction Log serves the following purposes:

- Provides an inventory of the majority of the records maintained in most schools;
- Provides minimum state and district retention periods for those records; and
- Reflects which records can be destroyed during a given school year.

The following is an example of a Public Records Destruction Log:

Local Government Public Records Destruction Log

The purpose of this form is to document compliance and reasonable accountability by verifying that specific public records have met current, approved minimum retention periods before being destroyed pursuant to RCW 40.14.070, WAC 434-610-070, and WAC 434-640-010, -020, and -030. Please fill out this form when destroying all public records whose minimum retention is *other than* "Retain until no longer needed for agency business then destroy" (such as records covered in the "Records with Minimal Retention Value" section of the Local Government Common Records Retention Schedule (CORE)).

Legal Disposition Authority (taken from Records Retention Schedule)				Agency Records			
Records Series Title	Records Series DAN	Records Retention Schedule	Minimum Retention Period	Description (Box/item numbers, volume, etc.)	Dates Covered	Date Minimum Retention Met	Method(s) of Destruction (See examples, below*)

**Examples of methods of destruction: electronic deletion, in-house OR outside contractor shredding, secure recycling, other (describe)*

Statement: *The public records listed above have met their minimum retention period(s), are not subject to ongoing or reasonably anticipated litigation or public records requests, are not needed for audit or other agency business, and shall be destroyed.*

The individual responsible for inventorying the listed records must sign below prior to the Records Manager's approval:

Employee Signature: _____ Printed Name: _____ Division: _____

The Records Manager must sign the approval of this request prior to the destruction of the listed records:

Records Manager Signature: _____ Printed Name: _____ Date Approved: _____

The person/people responsible for the destruction of records must sign upon destruction of the listed records:

Employee Signature: _____ Printed Name: _____ Date Records Destroyed: _____

Vendor Business Name (if used): _____ Phone: _____

Vendor Signature: _____ Printed Name: _____ Date Records Destroyed: _____

The retention and disposition action for this Public Records Destruction Log is "Retain for the life of the agency" pursuant to CORE series 6550-09-06.

This sample form was prepared by Washington State Archives as a courtesy to local government agencies in January, 2014.

It may be modified to meet individual agency needs.

APPENDICES

GLOSSARY

ACTIVE RECORDS

Records frequently referenced and considered in **active use**. Active records should be maintained in the office.

ADMINISTRATIVE FILES

Records documenting the operation, management, and administration of an office, usually distinguished from program records that relate to the office's primary function. Generally, eighty percent of the references made to a record occur within one year from the date it is created. The administrative value of most records is exhausted within two years.

ADMINISTRATIVE VALUE

The usefulness of specific records for the current or future business/agency.

ARCHIVES/ARCHIVAL RECORDS

Public records which the State Archivist deems worthy of continued preservation based on enduring legal and/or historical value for reference and research purposes and which have been identified for transfer to the custody of the Washington State Archives.

CASE FILES

See *PROJECT FILES*.

CFR

Code of Federal Regulations

CORRESPONDENCE

Letters, emails, memos, text messages, tweets, notes, voicemail recordings and any other form of **communications** that are sent or received. Correspondence is simply a description of a **type** of record; it is the **informational content and context** that determines which records series applies to any type of record. (Additional types of records are reports, contracts, spreadsheets, charts, graphs, maps.)

CUSTODY (OF RECORDS)

Guardianship of records that includes both physical possession and legal title.

CUT-OFF

Date of document/event that generates the start of the Retention Period for a records series. Examples may include: Date of Document, Fiscal Year, School Year, When Superseded, Date of Report, etc.

DISPOSITION

The manner or method of changing the custody, location, and/or physical state of records - this includes: transfer, microfilming, duplication and destruction.

DISPOSITION AUTHORITY NUMBER (DAN)

The control number assigned to records series in Records Retention Schedules approved by the Local Records Committee.

DOCUMENT SCANNING / IMAGING

The process used when converting paper, photographs and/or microfilm to a machine-readable format. **Important:** pursuant to [Chapter 40.14 RCW](#), minimum requirements must be met in order to **lawfully** destroy paper - or film-based source records after they have been converted to a digital format by imaging (scanning). These requirements may be found on the Washington State Archives website at:

<http://www.sos.wa.gov/archives/RecordsManagement/Destruction-of-Public-Records.aspx>.

EMAIL

Email is simply one **form(at)** of electronic communication and is **not** a record **type**. There is no records series that covers "email" just as there is no records series that covers "paper". Information generated or received on an email system needs to be managed according to the **informational content and context** of the message.

ELECTRONIC RECORDS

Data or information that has been captured and fixed for storage and manipulation in an automated system and that requires the use of the system to render it intelligible by a person.

ESSENTIAL RECORDS

Public records, which are needed to protect assets, obligations and resources of state agencies, and are necessary to provide for the continuity, preservation and operation of government.

EXEMPT RECORDS

See *RESTRICTED RECORDS*.

FERPA

Family Educational Rights and Privacy Act

FISCAL VALUE

An agency's financial transactions and obligations documented through the use of specific records series. Examples of records with primary fiscal value include budgets, allotments, ledgers, periodic accounting reports, vouchers, and warrants.

FOIA

Freedom of Information Act

GENERAL RECORDS RETENTION SCHEDULE

See *RECORDS RETENTION SCHEDULES*.

HIPAA

Health Insurance Portability and Accountability Act

HISTORICAL VALUE

Some records have long-term research value because they provide significant documentation concerning the development of the agency's mission, policies, programs, and the area(s) it serves through time. Once the agency's administrative, legal, and fiscal needs for such records have been exhausted they should be transferred to the Regional Archives for long-term preservation and public research use.

IDEA

Individuals with Disabilities Education Act

IMAGING

See *DOCUMENT SCANNING*

INACTIVE RECORDS

Records with a reference rate of less than one search per file drawer per month. Such records may be transferred to an Inactive-Records Storage site.

INTERNET

A data communication network that:

- is logically linked together by a globally unique address space based on the Internet Protocol (IP) or its subsequent extensions/follow-ons;
- is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite or its subsequent extensions/follow-ons, and/or other IP-compatible protocols; and
- provides, uses or makes accessible, either publicly or privately, high-level services layered on the communications and related infrastructure described herein.

INTRANET

An information-sharing network that belongs to an organization and is designed to be accessible only by the organization's members, employees, or others with authorization. Based on the Internet TCP/IP open standard, an intranet website looks and acts just like other websites, but has a firewall surrounding it to block unauthorized users.

INVENTORY

- A descriptive listing of records series held by an office or file station, including such data as title, inclusive dates, quantity, arrangement, relationships to other series, and description of significant subject content;
- A survey of records conducted prior to disposition or the development of a records retention schedule.

LEGAL VALUE

Specific records series used as documentation of an agency's legally enforceable rights and obligations.

LOCAL RECORDS COMMITTEE

"Except as otherwise provided by law, no public records shall be destroyed until approved for destruction, by the Local Records Committee (LRC)." [RCW 40.14.070\(2\)\(a\)](#). The LRC is comprised of the State Archivist and representatives of both the Attorney General and the State Auditor. "...Recurring disposition schedules... are to be submitted...by the division of archives and records management to the LRC, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the Local Records Committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.. ." ([RCW 40.14.070](#)).

MACHINE-READABLE RECORDS

Records in a medium or format that requires a mechanical and/or electronic device to make it intelligible to humans.

MICROFILM

A high-resolution photographic film used to record reduced-size images from original records.

OFM (Office Files and Memoranda)

A public records classification established by **RCW 40.14.010** for records that have purely administrative value and do not come within the classification of official public record (OPR) as *determined by the Local Records Committee*. Legal disposition authority for these records is provided by the Local Records Committee.

OPR (Official Public Record)

A public records classification established by **RCW 40.14.010** for records which have significant legal or fiscal value and require a minimum retention of six (6) years unless an agency establishes justification that a six (6) year retention is unnecessary and uneconomical. OPR's include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency is a party; all fidelity, surety, and performance bonds; all claims filed against the state or any agency; all records or documents required by law to be filed with or kept by any agency; all legislative records; and all other records determined by the Records Committee to be official public records. Legal disposition authority for these records is provided by the Local Records Committee.

OFFICIAL STUDENT RECORD

For all grades and all schools, including, but not limited to, standardized high school transcripts; middle/junior high school transcript or other academic history showing courses and grades earned; elementary enrollment history and grade progression.

All other records pertaining to each student belong in the Cumulative Folder, or are covered by other series.

PERMANENT RECORDS

Archival records because of their legal and/or historical value should be retained without purging or sampling.

PRIMARY FILING CLASSIFICATION

The general category used under which records can be sorted and arranged for filing. Primary filing classifications should be defined by the function and retention requirements of the records.

PRIMARY RECORD COPY

The agency's **official** copy of a document. Sometimes the record is an *original* (contract with signatures), sometimes it is a *copy* (scan or photocopy of cumulative folder received from transferring district).

PROJECT (CASE) FILES

Groups of documents pertaining to a particular action, event, person, or place and may consist of correspondence, form records, memoranda, reports or, a combination of such records.

PROPRIETARY RECORDS

Records containing information of a confidential or highly-sensitive nature and requires destruction by shredding, to eliminate the possibility of illegal or undesirable disclosure.

PUBLIC RECORD

"Public Records shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map, drawing, machine-readable material...regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business". RCW 40.14.010. All public records are required to be maintained and disposed of by local government agencies in accordance with the provisions of **RCW 40.14.070**.

All records maintained in electronic format are included in the definition of a "public record" and are governed under the terms of the Preservation and Destruction of Public Records Act.

PURGING

The process of identifying, documenting and removing records with no, to limited, administrative legal fiscal or historical (archival) value.

RCW

See *REVISED CODE OF WASHINGTON*.

RECORDS

See *PUBLIC RECORDS*.

RECORDS CENTER

A centralized storage site for Inactive and/or Non-Current Records that are organized/controlled for easy maintenance, retrieval, and disposition.

RECORDS COORDINATOR

Agency staff who assist the agency records officer with the records management duties of their department or division.

RECORDS MANAGEMENT

The management function concerned with the efficient, systematic control of records from their creation to their ultimate disposition.

RECORDS OFFICER

The individual responsible for an agency's records management procedures, including retention scheduling, files organization, records storage, and disposition (transfer to Washington State Archives) or destruction.

RECORDS RETENTION SCHEDULES

Records Retention Schedules (RRS) approved by the Local Records Committee provide local government agencies (including School Districts and ESDs) ***ongoing legal disposition authority*** for records made or received in the course of the agency is fulfilling its mission. RRSs list records series and are organized by functions and activities.

RECORDS SERIES

A group of records, performing a specific function, which is used as a unit, filed as a unit and may be transferred or disposed of as a unit. A records series may consist of a single type of document or a number of different types of documents that are filed together as related to a specific function.

RECORDS WITH MINIMAL RETENTION VALUE

Records which are duplicates or have no administrative value and are authorized by the records retention schedule to be destroyed when no longer needed.

REFERENCE FILES

Publications, books, periodicals, catalogs, bulletins, reports, maps, thesis, tapes, films, photographs, and other materials that are needed as informational resources but are not part of the main body of files.

RESTRICTED RECORDS

Records which are restricted (classified, confidential or exempt) from public disclosure. **RCW 42.56 Public Records Act.**

RETENTION PERIOD

The **minimum** amount of time that a record must be retained before it can be disposed of, ***as determined by the Local Records Committee,***
(See *RECORDS RETENTION SCHEDULES.*)

REVISED CODE OF WASHINGTON (RCW)

A codification of current statutes as enacted and amended.

SAMPLING

The documented archival process of selecting records from a collection to represent the collection as a whole and disposing of the remainder of the records.

SCANNING

See *DOCUMENT SCANNING.*

SCREENING

The process of reviewing records that are restricted or may be restricted because they contain information which is classified, confidential, or exempt from public disclosure.

SECONDARY FILING CLASSIFICATION

The second most general class of filing category under which records can be sorted or arranged for filing; subsidiary to primary classification.

STATUTE

A law enacted by the Legislature.

SUBJECT FILE

A file in which documents are arranged alphabetically by general subject or topic.

TRANSACTIONAL FILES

Records documenting the unique daily transactions or activities of an office that distinguishes its' primary functions.

TRANSMITTAL FORM

A document that authorizes the transfer of public records to: inactive storage, to Washington State Archives, or for legal disposal.

WAC

Washington Administrative Code. The WAC states how State agencies shall organize and adopt rules and regulations. WACs and rules and regulations refer to agency guidelines adopted pursuant to the Administrative Procedure Act.

WASHINGTON STATE ARCHIVES

Washington State Archives, a division of the Office of the Secretary of State, was established by chapter **RCW 40.14** to provide centralized records management services to state and local governments. It is responsible for assisting government agencies in complying with Washington State's laws pertaining to the creation, maintenance and disposal of public records.

WORKING FILE

A file of rough notes, calculations, or preliminary drafts (*that do not represent significant basic steps*) assembled and used in the preparation or analysis of other documents; usually retained in desk files or filed separately until project is completed.

(For guidance please see Washington State Archives' advice sheet, [Using Records Retention Schedules: Local Government Preliminary Drafts](http://www.sos.wa.gov/assets/archives/RecordsManagement/Local-Govt-Preliminary-Drafts-Nov-2013.PDF) at <http://www.sos.wa.gov/assets/archives/RecordsManagement/Local-Govt-Preliminary-Drafts-Nov-2013.PDF>.

OTHER

FERPA

(Family Educational Rights and Privacy Act)

HIPAA

(Health Insurance Portability and Accountability Act)

RCW's

(Revised Code of Washington – Relative to Records)

Sample Forms

WACS

(Washington Administrative Codes – Relative to Records)

WSSDA Policies & Procedures

(Washington State School Directors' Association)



Federal Register

Wednesday,
April 21, 2004

Part V

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy
Act; Final Rule

DEPARTMENT OF EDUCATION**34 CFR Part 99**

RIN 1855-AA00

Family Educational Rights and Privacy Act

AGENCY: Office of Innovation and Improvement; Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR part 99 to implement the Department's interpretation of the Family Educational Rights and Privacy Act (FERPA) identified through administrative experience as necessary for proper program operation. These final regulations provide general guidelines for accepting "signed and dated written consent" under FERPA in electronic format.

DATES: These regulations are effective May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Wolan, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W115, Washington, DC 20202-5901. Telephone: (202) 260-3887.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On July 28, 2003, the Secretary published a notice of proposed rulemaking (NPRM) for this amendment in the *Federal Register* (68 FR 44420). In the preamble to the NPRM, we invited interested persons to submit comments concerning the proposed change. We proposed to add § 99.30(d) in order to provide general guidelines for educational agencies and institutions that choose to meet the requirements of § 99.30 with records and signatures in electronic format.

We reviewed guidance for electronic signatures recently published by a variety of Federal Government sources, including the Office of Management and Budget (OMB), the General Services Administration, and the National Institute for Standards and Technology. Based on that review and comments received from school officials, we believe it is necessary to modify these final regulations. We modified these regulations to reflect the definition of "electronic signature" established in the

Government Paperwork Elimination Act (GPEA), Public Law 105-277, Title XVII, Section 1710.

Electronic signatures are an area of rapidly evolving technology. These modified regulations provide more fluid and flexible standards for schools that choose to implement a process for accepting electronic signatures. These modified regulations permit schools to take advantage of changing technology as it may become available, whether the change concerns additional security provisions or enhanced customer service.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 16 parties submitted comments on the proposed regulations. We publish an analysis of the comments and of the changes in the regulations since publication of the NPRM as an appendix at the end of these final regulations. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make. However, we have reviewed these regulations since publication of the NPRM and have made changes as follows:

Acceptance of signature in electronic form (§ 99.30)

Comments: None.

Discussion: Electronic formats for signatures and documents are changing rapidly and substantially in response to evolving technologies and public acceptance. We wish to provide the widest possible flexibility for schools to adapt to such changes yet retain a methodology that operates within FERPA's requirements for proper disclosure of education records. Because FERPA applies to educational agencies and institutions at all levels, we do not want these regulations to inadvertently impose standards on elementary and secondary schools that may be valid only for postsecondary schools under Federal student aid programs.

Based on our review of standards acceptable to other areas of the Federal Government, including OMB circulars and Federal Student Aid (FSA) guidance for electronic student loan transactions, as well as standards established by laws such as the Electronic Signatures in Global and National Commerce Act (E-Sign) and GPEA, we believe these modified regulations will more easily permit schools to adapt to changing standards in the areas of electronic signatures and documents.

Changes: We have revised these regulations to be consistent with other Federal Government standards for "electronic signatures."

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (68 FR 44421).

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the *Federal Register*, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also find these regulations, as well as additional information about FERPA, on the following Web site: <http://www.ed.gov/policy/gen/guid/fpco/index.html>.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Parents, Privacy, Records, Reporting and recordkeeping requirements, Students.

Dated: April 2, 2004.

Rod Paige,
Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends part 99 of title 34 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

■ 2. Section 99.30 is amended by adding a new paragraph (d) to read as follows:

§ 99.30 Under what conditions is prior consent required to disclose information?

* * * * *

(d) "Signed and dated written consent" under this part may include a record and signature in electronic form that—

(1) Identifies and authenticates a particular person as the source of the electronic consent; and

(2) Indicates such person's approval of the information contained in the electronic consent.

Appendix

Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Use at Multiple School Levels

Comments: One commenter asked whether the proposed regulations apply only to eligible students at postsecondary institutions.

Discussion: FERPA gives the right to consent to disclosure of education records to parents of minor children at the elementary and secondary school levels, and to parents of children with disabilities who receive services under Part B or Part C of the Individuals with Disabilities Education Act (IDEA). When a student turns 18 years of age or attends a postsecondary institution at any age, the student is considered an "eligible student" under FERPA. The right to consent under FERPA transfers under either of those two conditions from the parent to the eligible student. Although the term "eligible student" will be used throughout this document, educational agencies and institutions at all levels may use these regulations to accept electronic signatures.

Change: None.

Specific Methodologies

Comments: Several commenters asked for more specific guidance on authentication methods and technologies that may be used.

Discussion: As explained in the preamble to the NPRM, the regulations are purposefully narrow in scope and intended to be technology-neutral (page 44420). While we will issue additional guidance that will include further examples of an acceptable process, we do not want to limit the flexibility of schools in this area of rapid technological change.

Change: None.

Safe Harbor

Comments: Several commenters support the use of the FSA standards for electronic signatures in electronic student loan transactions (FSA Standards) as a "safe harbor" provision for acceptance of electronic signatures in FERPA. Several other commenters objected to the FSA Standards as being too rigorous for the perceived level of risk of improper disclosure. The FSA Standards may be viewed on the Internet at the following site: <http://www.ifap.ed.gov/dpccletters/gen0106.html>.

Discussion: The preamble to the NPRM stated (page 44421) that the FSA Standards would be the "safe harbor" provision. A "safe harbor" is not set at the minimally acceptable level of security. Due to the nature of the information that may be disclosed and the potential harm a student may suffer from an unauthorized disclosure, we believe the "safe harbor" provision is not unduly rigorous. Schools retain the flexibility to choose to implement a system that meets the "safe harbor" provisions or to choose to implement another system to meet the new FERPA provisions.

However, schools should be reminded that Congress has also, through the Gramm-Leach-Bliley Act (GLB) (Pub.L. 106-102, November 12, 1999), imposed additional privacy restrictions on financial institutions, which include postsecondary institutions, requiring institutions to protect against unauthorized access to, or use of, consumer records. The Federal Trade Commission's (FTC) rule on the privacy of consumer financial information provides that postsecondary institutions that are complying with FERPA to protect the privacy of their student financial aid records will be deemed in compliance with the FTC's rule. (65 FR 33646, 33648 (May 24, 2000)). This exemption applies to notice requirements and the restrictions on a financial institution's disclosure of nonpublic personal information to nonaffiliated third parties in Title V of GLB. However, postsecondary institutions are not exempt from the FTC final rule implementing section 501 of GLB on Safeguarding Customer Information. (67 FR 368484 (May 23, 2002)). Financial institutions, including postsecondary institutions, are required to have adopted an information security program by May 23, 2003, under the FTC rule.

Thus, while schools have the maximum flexibility in choosing a system that meets FSA's "safe harbor" provisions or another

process for authenticating Personal Identification Number (PIN) numbers under FERPA, postsecondary institutions should keep these other Federal requirements in mind when implementing such systems.

Change: None.

Applicability of FSA Standards

Comments: One commenter stated that it was confusing to apply the situations and terminology in the FSA Standards to FERPA. The commenter suggested that we issue a separate guide on FERPA standards.

Discussion: The FSA Standards do not apply directly to FERPA because some actions are imposed only on lenders or borrowers of financial aid. For example, the FSA Standards require that paper copies of transactions be provided to a student borrower at no cost in some circumstances, and lenders are required to obtain a borrower's specific consent to conduct loan transactions electronically. Neither of those circumstances has parallels within FERPA.

We agree that some circumstances within the FSA Standards do not relate directly to FERPA. While schools are not required by FERPA to follow the FSA Standards, we believe that schools may use the set-up and security measures described in the FSA Standards, particularly sections 3 through 7, as guidance for security measures in a system using electronic records and signatures under FERPA. We do not plan to issue a separate FERPA standards document, but we will clarify these items in additional guidance.

Change: None.

Use of "Trusted Third Party" in Identification Verification

Comments: A commenter expressed a belief that disclosure by a school of student information without prior written consent to a "trusted third party" as part of an identification verification process may be in violation of FERPA. This commenter stated that the conflict arises because the FSA Standards specify that the third party may not be an agent of the school.

Discussion: FSA authenticates student identification information with the Social Security Administration as a "trusted third party." FERPA's consent provisions do not apply to transactions between a student and FSA.

In situations where a school is disclosing education records to a third party, FERPA's consent provisions apply. When the third party receiving the information from the school is not an agent for the school, FERPA generally requires a school to obtain prior written consent before the disclosure is made. Receipt of the prior consent would then allow a school to disclose personal information for authentication purposes with the records of independent sources such as credit reporting agencies or testing companies.

Schools may also choose to use other processes to authenticate identity. For example, a school may require the eligible student to present photographic identification issued by a government agency. Such photographic identification includes, but is not limited to, a State-issued driver's license, a federally-issued passport,

and other Military, Federal, or State-issued identification cards.

Change: None.

Issuing a PIN or Password

Comments: One commenter stated that schools that issue a PIN to students as outlined in the FSA Standards can result in a PIN that is recorded and accessible to school officials. The commenter is concerned that this conflicts with FERPA policy that a PIN is not acceptable for use under FERPA if persons other than the student have access to the PIN.

Discussion: The process described in the FSA Standards does not permit school officials to access a student's PIN or password. In addition, the FSA Standards permit an eligible student to change an assigned password or PIN to one of their own choosing. Under the FSA Standards, all of the passwords or PINs, whether assigned or student-selected, are maintained in a secure database in an encrypted manner that is not generally accessible to school officials or other parties.

A school that uses a similar methodology would remain in compliance with requirements for the acceptance of an electronic signature under FERPA. However, a school may not use a PIN or password process that results in a PIN or password that is visible and easily accessible to persons other than the eligible student because that type of process results in an insecure PIN or password. Schools retain the maximum flexibility to implement any appropriate methodology.

Change: None.

Use of Current Systems

Comments: Several commenters asked whether it is acceptable to use existing systems that include sign-on capability, such as campus e-mail, admissions, enrollment, and fee payment systems. Several commenters also asked if it is acceptable to permit eligible students to provide notice of directory information opt-outs by use of electronic signatures.

Discussion: As explained in the preamble to the NPRM, the requirements for an electronic signature apply in circumstances where a signed and dated written consent is required under FERPA (page 44420). Such consent is generally required under FERPA when information from education records is to be disclosed to a third party, as in the issuance of a transcript to a prospective employer. Consent is not a requirement for

disclosure of an eligible student's own records to the student. A school that wishes to use its current system for situations where FERPA consent is required must determine whether it provides the required level of security.

The majority of the systems mentioned by the commenters are designed for communication between a school and an eligible student. Systems that permit eligible students to view, alter, or update the student's own records by electronic means are not the subject of these regulations. A school must ensure that the eligible student and not some other party is the receiver of the information, but the method a school uses to do so is not prescribed by these regulations.

Change: None.

Third-Party Presentation of Electronic Signature

Comments: Several commenters asked whether the proposed regulations are applicable when a third party, not the eligible student, presents the electronic signature claimed to be that of the eligible student. Two commenters expressed strong support for acceptance of electronic signatures presented by third parties, primarily when the third party is a government entity or another educational agency or institution.

Discussion: Educational agencies and institutions are responsible to ensure that education records are disclosed only in accordance with FERPA. Any disclosure of education records to a third party, even in accordance with a student's consent, is permitted but not required under FERPA. Each agency or institution must have the flexibility to decide whether a request for disclosure meets the requirements of FERPA and whether the institution wishes to make the requested disclosure.

The FERPA regulations do not require that an eligible student provide his or her consent directly to the educational agency or institution, and these regulations do not impose a different requirement for electronic signatures. We would support an agency's or institution's decision to only accept electronic signatures presented on behalf of the eligible student by certain third parties, such as Federal or State agencies.

Change: None.

Application of Standards of Other Privacy Laws

Comments: One commenter suggested that the standards of the Health Insurance

Portability and Accountability Act of 1996 (HIPAA) Privacy Rule for "protected health information" be applied to personally identifiable information contained in students' education records. The commenter was concerned because personally identifiable information from students' education records are disclosed by educational agencies and institutions to outside third parties who have grants to do research. The commenter stated that educational agencies and institutions do not recognize the concern for privacy of such data.

Discussion: The HIPAA Privacy Rule, which is administered by the Department of Health and Human Services, excludes from the definition of "protected health information" two categories of records that are relevant here: "education records" covered by FERPA (34 CFR 99.3 "Education records") and records described under FERPA's medical treatment records provision (34 CFR 99.3 "Education records"). See 45 CFR 160.103(a). The HIPAA Privacy Rule does not cover such records because Congress, through FERPA, specifically has addressed how these records should be protected. As such, FERPA provides ample protections for these records and schools should ensure that health information, as well as other education records on students, are not disclosed to outside third parties without the consent of the student or under one of the exceptions to FERPA's general prior consent rule.

With regard to the commenter's statement that educational agencies and institutions do not recognize the concern for privacy of student information, it has been our experience that the majority of the Nation's schools do comply with FERPA and strive to protect the privacy of information contained in student records. FERPA is not a public open records or freedom of information statute. Rather, the purpose of FERPA is to protect the privacy interests of parents and eligible students in records maintained by educational agencies and institutions on the student. These privacy concerns should not be viewed as barriers to be minimized and overcome but important public safeguards to be protected and strengthened.

Change: None.

[FR Doc. 04-9054 Filed 4-20-04; 8:45 am]

BILLING CODE 4000-01-P



U.S. Department of Health
and Human Services



U.S. Department of Education

**Joint Guidance on the Application of the
Family Educational Rights and Privacy Act (FERPA)
And the *Health Insurance Portability and
Accountability Act of 1996 (HIPAA)*
To Student Health Records**

November 2008

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I. Introduction

The purpose of this guidance is to explain the relationship between the *Family Educational Rights and Privacy Act (FERPA)* and the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)* Privacy Rule, and to address apparent confusion on the part of school administrators, health care professionals, and others as to how these two laws apply to records maintained on students. It also addresses certain disclosures that are allowed without consent or authorization under both laws, especially those related to health and safety emergency situations. While this guidance seeks to answer many questions that school officials and others have had about the intersection of these federal laws, ongoing discussions may cause more issues to emerge. Contact information for submitting additional questions or suggestions for purposes of informing future guidance is provided at the end of this document. The Departments of Education and Health and Human Services are committed to a continuing dialogue with school officials and other professionals on these important matters affecting the safety and security of our nation's schools.

II. Overview of *FERPA*

FERPA is a Federal law that protects the privacy of students' "education records." (See 20 U.S.C. § 1232g; 34 CFR Part 99). *FERPA* applies to educational agencies and institutions that receive funds under any program administered by the U.S. Department of Education. This includes virtually all public schools and school districts and most private and public postsecondary institutions, including medical and other professional schools. If an educational agency or institution receives funds under one or more of these programs, *FERPA* applies to the recipient as a whole, including each of its components, such as a department within a university. See 34 CFR § 99.1(d).

Private and religious schools at the elementary and secondary level generally do not receive funds from the Department of Education and are, therefore, not subject to *FERPA*. Note that a private school is not made subject to *FERPA* just because its students and teachers receive services from a local school district or State educational agency that receives funds from the Department. The school itself must receive funds from a program administered by the Department to be subject to *FERPA*. For example, if a school district places a student with a disability in a private school that is acting on behalf of the school district with regard to providing services to that student, the records of that student are subject to *FERPA*, but not the records of the other students in the private school. In such cases, the school district remains responsible for complying with *FERPA* with respect to the education records of the student placed at the private school.

An educational agency or institution subject to *FERPA* may not have a policy or practice of disclosing the education records of students, or personally identifiable information from education records, without a parent or eligible student's written consent. See 34 CFR § 99.30. *FERPA* contains several exceptions to this general consent rule. See 34 CFR § 99.31. An "eligible student" is a student who is at least 18 years of age or who attends a postsecondary institution at any age. See 34 CFR §§ 99.3 and 99.5(a). Under *FERPA*, parents and eligible students have the right to inspect and review the student's education records and to seek to have them amended in certain circumstances. See 34 CFR §§ 99.10 – 99.12 and §§ 99.20 – 99.22.

The term "education records" is broadly defined to mean those records that are: (1) directly related to a student, and (2) maintained by an educational agency or institution or by a party acting for the

agency or institution. See 34 *CFR* § 99.3. At the elementary or secondary level, a student's health records, including immunization records, maintained by an educational agency or institution subject to *FERPA*, as well as records maintained by a school nurse, are "education records" subject to *FERPA*. In addition, records that schools maintain on special education students, including records on services provided to students under the *Individuals with Disabilities Education Act (IDEA)*, are "education records" under *FERPA*. This is because these records are (1) directly related to a student, (2) maintained by the school or a party acting for the school, and (3) not excluded from the definition of "education records."

At postsecondary institutions, medical and psychological treatment records of eligible students are excluded from the definition of "education records" if they are made, maintained, and used only in connection with treatment of the student and disclosed only to individuals providing the treatment. See 34 *CFR* § 99.3 "Education records." These records are commonly called "treatment records." An eligible student's treatment records may be disclosed for purposes other than the student's treatment, provided the records are disclosed under one of the exceptions to written consent under 34 *CFR* § 99.31(a) or with the student's written consent under 34 *CFR* § 99.30. If a school discloses an eligible student's treatment records for purposes other than treatment, the records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements.

The *FERPA* regulations and other helpful information can be found at:
<http://www.ed.gov/policy/gen/guid/fpco/index.html>.

III. Overview of *HIPAA*

Congress enacted *HIPAA* in 1996 to, among other things, improve the efficiency and effectiveness of the health care system through the establishment of national standards and requirements for electronic health care transactions and to protect the privacy and security of individually identifiable health information. Collectively, these are known as *HIPAA*'s Administrative Simplification provisions, and the U.S. Department of Health and Human Services has issued a suite of rules, including a privacy rule, to implement these provisions. Entities subject to the *HIPAA* Administrative Simplification Rules (see 45 *CFR* Parts 160, 162, and 164), known as "covered entities," are health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with covered transactions. See 45 *CFR* § 160.103. "Health care providers" include institutional providers of health or medical services, such as hospitals, as well as non-institutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See 45 *CFR* § 160.103 (definitions of "health care provider" and "transaction") and 45 *CFR* Part 162, Subparts K–R.

The *HIPAA* Privacy Rule requires covered entities to protect individuals' health records and other identifiable health information by requiring appropriate safeguards to protect privacy, and setting limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.

IV. Where *FERPA* and *HIPAA* May Intersect

When a school provides health care to students in the normal course of business, such as through its health clinic, it is also a “health care provider” as defined by *HIPAA*. If a school also conducts any covered transactions electronically in connection with that health care, it is then a covered entity under *HIPAA*. As a covered entity, the school must comply with the *HIPAA* Administrative Simplification Rules for Transactions and Code Sets and Identifiers with respect to its transactions. However, many schools, even those that are *HIPAA* covered entities, are not required to comply with the *HIPAA* Privacy Rule because the only health records maintained by the school are “education records” or “treatment records” of eligible students under *FERPA*, both of which are excluded from coverage under the *HIPAA* Privacy Rule. See the exception at paragraph (2)(i) and (2)(ii) to what is considered “protected health information” (PHI) at 45 *CFR* § 160.103. In addition, the exception for records covered by *FERPA* applies both to the *HIPAA* Privacy Rule, as well as to the *HIPAA* Security Rule, because the Security Rule applies to a subset of information covered by the Privacy Rule (i.e., electronic PHI). Information on the *HIPAA* Privacy Rule is available at: <http://www.hhs.gov/ocr/hipaa/>. Information on the other *HIPAA* Administrative Simplification Rules is available at: <http://www.cms.hhs.gov/HIPAAGenInfo/>.

V. Frequently Asked Questions and Answers

1. Does the *HIPAA* Privacy Rule apply to an elementary or secondary school?

Generally, no. In most cases, the *HIPAA* Privacy Rule does not apply to an elementary or secondary school because the school either: (1) is not a *HIPAA* covered entity or (2) is a *HIPAA* covered entity but maintains health information only on students in records that are by definition “education records” under *FERPA* and, therefore, is not subject to the *HIPAA* Privacy Rule.

- *The school is not a HIPAA covered entity.* The *HIPAA* Privacy Rule only applies to health plans, health care clearinghouses, and those health care providers that transmit health information electronically in connection with certain administrative and financial transactions (“covered transactions”). See 45 *CFR* § 160.102. Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See the definition of “transaction” at 45 *CFR* § 160.103 and 45 *CFR* Part 162, Subparts K–R. Thus, even though a school employs school nurses, physicians, psychologists, or other health care providers, the school is not generally a *HIPAA* covered entity because the providers do not engage in any of the covered transactions, such as billing a health plan electronically for their services. It is expected that most elementary and secondary schools fall into this category.
- *The school is a HIPAA covered entity but does not have “protected health information.”* Where a school does employ a health care provider that conducts one or more covered transactions electronically, such as electronically transmitting health care claims to a health plan for payment, the school is a *HIPAA* covered entity and must comply with the *HIPAA* Transactions and Code Sets and Identifier Rules with respect to such transactions. However, even in this case, many schools would not be required to comply with the *HIPAA* Privacy Rule because the school maintains health information only in student health records that are “education records” under *FERPA* and, thus, not “protected health information” under

HIPAA. Because student health information in education records is protected by *FERPA*, the *HIPAA* Privacy Rule excludes such information from its coverage. See the exception at paragraph (2)(i) to the definition of “protected health information” in the *HIPAA* Privacy Rule at 45 *CFR* § 160.103. For example, if a public high school employs a health care provider that bills Medicaid electronically for services provided to a student under the *IDEA*, the school is a *HIPAA* covered entity and would be subject to the *HIPAA* requirements concerning transactions. However, if the school’s provider maintains health information only in what are education records under *FERPA*, the school is not required to comply with the *HIPAA* Privacy Rule. Rather, the school would have to comply with *FERPA*’s privacy requirements with respect to its education records, including the requirement to obtain parental consent (34 *CFR* § 99.30) in order to disclose to Medicaid billing information about a service provided to a student.

2. How does *FERPA* apply to health records on students maintained by elementary or secondary schools?

At the elementary or secondary school level, students’ immunization and other health records that are maintained by a school district or individual school, including a school-operated health clinic, that receives funds under any program administered by the U.S. Department of Education are “education records” subject to *FERPA*, including health and medical records maintained by a school nurse who is employed by or under contract with a school or school district. Some schools may receive a grant from a foundation or government agency to hire a nurse. Notwithstanding the source of the funding, if the nurse is hired as a school official (or contractor), the records maintained by the nurse or clinic are “education records” subject to *FERPA*.

Parents have a right under *FERPA* to inspect and review these health and medical records because they are “education records” under *FERPA*. See 34 *CFR* §§ 99.10 – 99.12. In addition, these records may not be shared with third parties without written parental consent unless the disclosure meets one of the exceptions to *FERPA*’s general consent requirement. For instance, one of these exceptions allows schools to disclose a student’s health and medical information and other “education records” to teachers and other school officials, without written consent, if these school officials have “legitimate educational interests” in accordance with school policy. See 34 *CFR* § 99.31(a)(1). Another exception permits the disclosure of education records, without consent, to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 34 *CFR* §§ 99.31(a)(10) and 99.36.

3. Does *FERPA* or *HIPAA* apply to elementary or secondary school student health records maintained by a health care provider that is not employed by a school?

If a person or entity acting on behalf of a school subject to *FERPA*, such as a school nurse that provides services to students under contract with or otherwise under the direct control of the school, maintains student health records, these records are education records under *FERPA*, just as they would be if the school maintained the records directly. This is the case regardless of whether the health care is provided to students on school grounds or off-site. As education records, the information is protected under *FERPA* and not *HIPAA*.

Some outside parties provide services directly to students and are not employed by, under contract to, or otherwise acting on behalf of the school. In these circumstances, these records are not “education records” subject to *FERPA*, even if the services are provided on school grounds, because the party creating and maintaining the records is not acting on behalf of the school. For example, the records created by a public health nurse who provides immunization or other health services to students on school grounds or otherwise in connection with school activities but who is not acting on behalf of the school would not be “education records” under *FERPA*. In such situations, a school that wishes to disclose to this outside party health care provider any personally identifiable information from education records would have to comply with *FERPA* and obtain parental consent. See 34 *CFR* § 99.30.

With respect to *HIPAA*, even where student health records maintained by a health care provider are not education records protected by *FERPA*, the *HIPAA* Privacy Rule would apply to such records only if the provider conducts one or more of the *HIPAA* transactions electronically, e.g., billing a health plan electronically for his or her services, making the provider a *HIPAA* covered entity.

4. Are there circumstances in which the *HIPAA* Privacy Rule might apply to an elementary or secondary school?

There are some circumstances in which an elementary or secondary school would be subject to the *HIPAA* Privacy Rule, such as where the school is a *HIPAA* covered entity and is not subject to *FERPA*. As explained previously, most private schools at the elementary and secondary school levels typically do not receive funding from the U.S. Department of Education and, therefore, are not subject to *FERPA*.

A school that is not subject to *FERPA* and is a *HIPAA* covered entity must comply with the *HIPAA* Privacy Rule with respect to any individually identifiable health information it has about students and others to whom it provides health care. For example, if a private elementary school that is not subject to *FERPA* employs a physician who bills a health plan electronically for the care provided to students (making the school a *HIPAA* covered entity), the school is required to comply with the *HIPAA* Privacy Rule with respect to the individually identifiable health information of its patients. The only exception would be where the school, despite not being subject to *FERPA*, has education records on one or more students to whom it provides services on behalf of a school or school district that is subject to *FERPA*. In this exceptional case, the education records of only those publicly-placed students held by the private school would be subject to *FERPA*, while the remaining student health records would be subject to the *HIPAA* Privacy Rule.

5. Where the *HIPAA* Privacy Rule applies, does it allow a health care provider to disclose protected health information (PHI) about a troubled teen to the parents of the teen?

In most cases, yes. If the teen is a minor, the *HIPAA* Privacy Rule generally allows a covered entity to disclose PHI about the child to the child’s parent, as the minor child’s personal representative, when the disclosure is not inconsistent with state or other law. For more detailed information, see 45 *CFR* § 164.502(g) and the fact sheet regarding personal representatives at: <http://www.hhs.gov/ocr/hipaa/guidelines/personalrepresentatives.pdf>. In some cases, such as when a minor may receive treatment without a parent’s consent under applicable law, the parents are not treated as the minor’s personal representative. See 45 *CFR* § 164.502(g)(3). In such cases where

the parent is not the personal representative of the teen, other *HIPAA* Privacy Rule provisions may allow the disclosure of PHI about the teen to the parent. For example, if a provider believes the teen presents a serious danger to self or others, the *HIPAA* Privacy Rule permits a covered entity to disclose PHI to a parent or other person(s) if the covered entity has a good faith belief that: (1) the disclosure is necessary to prevent or lessen the threat and (2) the parent or other person(s) is reasonably able to prevent or lessen the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct. See 45 *CFR* § 164.512(j)(1)(i).

In addition, the Privacy Rule permits covered entities to share information that is directly relevant to the involvement of a family member in the patient's health care or payment for care if, when given the opportunity, the patient does not object to the disclosure. Even when the patient is not present or it is impracticable, because of emergency circumstances or the patient's incapacity, for the covered entity to ask the patient about discussing his or her care or payment with a family member, a covered entity may share this information with the family member when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient. See 45 *CFR* § 164.510(b).

6. Where the *HIPAA* Privacy Rule applies, does it allow a health care provider to disclose protected health information (PHI) about a student to a school nurse or physician?

Yes. The *HIPAA* Privacy Rule allows covered health care providers to disclose PHI about students to school nurses, physicians, or other health care providers for treatment purposes, without the authorization of the student or student's parent. For example, a student's primary care physician may discuss the student's medication and other health care needs with a school nurse who will administer the student's medication and provide care to the student while the student is at school.

7. Does *FERPA* or *HIPAA* apply to records on students at health clinics run by postsecondary institutions?

FERPA applies to most public and private postsecondary institutions and, thus, to the records on students at the campus health clinics of such institutions. These records will be either education records or treatment records under *FERPA*, both of which are excluded from coverage under the *HIPAA* Privacy Rule, even if the school is a *HIPAA* covered entity. See the exceptions at paragraphs (2)(i) and (2)(ii) to the definition of "protected health information" at 45 *CFR* § 160.103.

The term "education records" is broadly defined under *FERPA* to mean those records that are: (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. See 34 *CFR* § 99.3, "Education records."

"Treatment records" under *FERPA*, as they are commonly called, are:

records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records

can be personally reviewed by a physician or other appropriate professional of the student's choice.

See 20 *U.S.C.* § 1232g(a)(4)(B)(iv); 34 *CFR* § 99.3, "Education records." For example, treatment records would include health or medical records that a university psychologist maintains only in connection with the provision of treatment to an eligible student, and health or medical records that the campus health center or clinic maintains only in connection with the provision of treatment to an eligible student. (Treatment records also would include health or medical records on an eligible student in high school if the records otherwise meet the above definition.)

"Treatment records" are excluded from the definition of "education records" under *FERPA*. However, it is important to note, that a school may disclose an eligible student's treatment records for purposes other than the student's treatment provided that the records are disclosed under one of the exceptions to written consent under 34 *CFR* § 99.31(a) or with the student's written consent under 34 *CFR* § 99.30. If a school discloses an eligible student's treatment records for purposes other than treatment, the treatment records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements, including the right of the eligible student to inspect and review the records.

While the health records of students at postsecondary institutions may be subject to *FERPA*, if the institution is a *HIPAA* covered entity and provides health care to *nonstudents*, the individually identifiable health information of the clinic's *nonstudent* patients is subject to the *HIPAA* Privacy Rule. Thus, for example, postsecondary institutions that are subject to both *HIPAA* and *FERPA* and that operate clinics open to staff, or the public, or both (including family members of students) are required to comply with *FERPA* with respect to the health records of their student patients, and with the *HIPAA* Privacy Rule with respect to the health records of their *nonstudent* patients.

8. Under *FERPA*, may an eligible student inspect and review his or her "treatment records"?

Under *FERPA*, treatment records, by definition, are not available to anyone other than professionals providing treatment to the student, or to physicians or other appropriate professionals of the student's choice. However, this does not prevent an educational institution from allowing a student to inspect and review such records. If the institution chooses to do so, though, such records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements.

9. Under *FERPA*, may an eligible student's treatment records be shared with parties other than treating professionals?

As explained previously, treatment records, by definition, are not available to anyone other than professionals providing treatment to the student, or to physicians or other appropriate professionals of the student's choice. However, this does not prevent an educational institution from using or disclosing these records for other purposes or with other parties. If the institution chooses to do so, a disclosure may be made to any party with a prior written consent from the eligible student (see 34 *CFR* § 99.30) or under any of the disclosures permitted without consent in 34 *CFR* § 99.31 of *FERPA*.

For example, a university physician treating an eligible student might determine that treatment records should be disclosed to the student's parents. This disclosure may be made if the eligible student is claimed as a dependent for federal income tax purposes (see 34 *CFR* § 99.31(a)(8)). If the eligible student is not claimed as a dependent, the disclosure may be made to parents, as well as other appropriate parties, if the disclosure is in connection with a health or safety emergency. See 34 *CFR* §§ 99.31(a)(10) and 99.36. Once the records are disclosed under one of the exceptions to *FERPA*'s general consent requirement, the treatment records are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements as "education records" under *FERPA*.

10. Under what circumstances does *FERPA* permit an eligible student's treatment records to be disclosed to a third-party health care provider for treatment?

An eligible student's treatment records may be shared with health care professionals who are providing treatment to the student, including health care professionals who are not part of or not acting on behalf of the educational institution (i.e., third-party health care provider), as long as the information is being disclosed only for the purpose of providing treatment to the student. In addition, an eligible student's treatment records may be disclosed to a third-party health care provider when the student has requested that his or her records be "reviewed by a physician or other appropriate professional of the student's choice." See 20 *U.S.C.* § 1232g(a)(4)(B)(iv). In either of these situations, if the treatment records are disclosed to a third-party health care provider that is a *HIPAA* covered entity, the records would become subject to the *HIPAA* Privacy Rule. The records at the educational institution continue to be treatment records under *FERPA*, so long as the records are only disclosed by the institution for treatment purposes to a health care provider or to the student's physician or other appropriate professional requested by the student.

If the disclosure is for purposes other than treatment, an eligible student's treatment record only may be disclosed to a third party as an "education record," that is, with the prior written consent of the eligible student or if one of the exceptions to *FERPA*'s general consent requirement is met. See 34 *CFR* § 99.31. For example, if a university is served with a court order requiring the disclosure of the mental health records of a student maintained as treatment records at the campus clinic, the university may disclose the records to comply with the court order in accordance with the provisions of § 99.31(a)(9) of the *FERPA* regulations. However, the mental health records that the university disclosed for non-treatment purposes are no longer excluded from the definition of "education records" and are subject to all other *FERPA* requirements as "education records" under *FERPA*.

11. Are all student records maintained by a health clinic run by a postsecondary institution considered "treatment records" under *FERPA*?

Not all records on eligible students that are maintained by a college- or university-run health clinic are treatment records under *FERPA* because many such records are not made, maintained, or used only in connection with the treatment of a student. For example, billing records that a college- or university-run health clinic maintains on a student are "education records" under *FERPA*, the disclosure of which would require prior written consent from the eligible student unless an exception applies. See 34 *CFR* § 99.30. In addition, records relating to treatment that are shared with persons other than professionals providing treatment to the student are "education records" under *FERPA*. Thus, to the extent a health clinic has shared a student's treatment information with

persons and for purposes other than for treatment, such information is an “education record,” not a treatment record under *FERPA*.

12. Does *FERPA* or *HIPAA* apply to records on students who are patients at a university hospital?

Patient records maintained by a hospital affiliated with a university that is subject to *FERPA* are not typically “education records” or “treatment records” under *FERPA* because university hospitals generally do not provide health care services to students on behalf of the educational institution. Rather, these hospitals provide such services without regard to the person’s status as a student and not on behalf of a university. Thus, assuming the hospital is a *HIPAA* covered entity, these records are subject to all of the *HIPAA* rules, including the *HIPAA* Privacy Rule. However, in a situation where a hospital does run the student health clinic on behalf of a university, the clinic records on students would be subject to *FERPA*, either as “education records” or “treatment records,” and not subject to the *HIPAA* Privacy Rule.

13. Where the *HIPAA* Privacy Rule applies, does it permit a health care provider to disclose protected health information (PHI) about a patient to law enforcement, family members, or others if the provider believes the patient presents a serious danger to self or others?

The *HIPAA* Privacy Rule permits a covered entity to disclose PHI, including psychotherapy notes, when the covered entity has a good faith belief that the disclosure: (1) is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others and (2) is to a person(s) reasonably able to prevent or lessen the threat. This may include, depending on the circumstances, disclosure to law enforcement, family members, the target of the threat, or others who the covered entity has a good faith belief can mitigate the threat. The disclosure also must be consistent with applicable law and standards of ethical conduct. See 45 *CFR* § 164.512(j)(1)(i). For example, consistent with other law and ethical standards, a mental health provider whose teenage patient has made a credible threat to inflict serious and imminent bodily harm on one or more fellow students may alert law enforcement, a parent or other family member, school administrators or campus police, or others the provider believes may be able to prevent or lessen the chance of harm. In such cases, the covered entity is presumed to have acted in good faith where its belief is based upon the covered entity’s actual knowledge (i.e., based on the covered entity’s own interaction with the patient) or in reliance on a credible representation by a person with apparent knowledge or authority (i.e., based on a credible report from a family member or other person). See 45 *CFR* § 164.512(j)(4).

For threats or concerns that do not rise to the level of “serious and imminent,” other *HIPAA* Privacy Rule provisions may apply to permit the disclosure of PHI. For example, covered entities generally may disclose PHI about a minor child to the minor’s personal representative (e.g., a parent or legal guardian), consistent with state or other laws. See 45 *CFR* § 164.502(b).

14. Does *FERPA* permit a postsecondary institution to disclose a student’s treatment records or education records to law enforcement, the student’s parents, or others if the institution believes the student presents a serious danger to self or others?

An eligible student's education records and treatment records (which are considered education records if used or made available for any purpose other than the eligible student's treatment) may be disclosed, without consent, if the disclosure meets one of the exceptions to *FERPA*'s general consent rule. See 34 *CFR* § 99.31. One of the permitted disclosures is to appropriate parties, which may include law enforcement or parents of a student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 34 *CFR* §§ 99.31(a)(10) and 99.36.

There are other exceptions that apply to disclosing information to parents of eligible students that are discussed on the "Safe Schools & FERPA" Web page, as well as other information that should be helpful to school officials, at:

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html/>.

15. Are the health records of an individual who is both a student and an employee of a university at which the person receives health care subject to the privacy provisions of *FERPA* or those of *HIPAA*?

The individual's health records would be considered "education records" protected under *FERPA* and, thus, excluded from coverage under the *HIPAA* Privacy Rule. *FERPA* defines "education records" as records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. 34 *CFR* § 99.3 ("education records"). While *FERPA* excludes from this definition certain records relating to employees of the educational institution, to fall within this exclusion, such records must, among other things, relate exclusively to the individual in his or her capacity as an employee, such as records that were created in connection with health services that are available only to employees. Thus, the health or medical records that are maintained by a university as part of its provision of health care to a student who is also an employee of a university are covered by *FERPA* and not the *HIPAA* Privacy Rule.

16. Can a postsecondary institution be a "hybrid entity" under the *HIPAA* Privacy Rule?

Yes. A postsecondary institution that is a *HIPAA* covered entity may have health information to which the Privacy Rule may apply not only in the health records of nonstudents in the health clinic, but also in records maintained by other components of the institution that are not education records or treatment records under *FERPA*, such as in a law enforcement unit or research department. In such cases, the institution, as a *HIPAA* covered entity, has the option of becoming a "hybrid entity" and, thus, having the *HIPAA* Privacy Rule apply only to its health care unit. The school can achieve hybrid entity status by designating the health unit as its "health care component." As a hybrid entity, any individually identifiable health information maintained by other components of the university (i.e., outside of the health care component), such as a law enforcement unit, or a research department, would not be subject to the *HIPAA* Privacy Rule, notwithstanding that these components of the institution might maintain records that are not "education records" or treatment records under *FERPA*.

To become a hybrid entity, the covered entity must designate and include in its health care component all components that would meet the definition of a covered entity if those components were separate legal entities. (A covered entity may have more than one health care component.) However, the hybrid entity is not permitted to include in its health care component other types of components that do not perform the covered functions of the covered entity or components that do

not perform support activities for the components performing covered functions. That is, components that do not perform health plan, health care provider, or health care clearinghouse functions and components that do not perform activities in support of these functions (as would a business associate of a separate legal entity) may not be included in a health care component. Within the hybrid entity, most of the *HIPAA* Privacy Rule requirements apply only to the health care component, although the hybrid entity retains certain oversight, compliance, and enforcement obligations. See 45 *CFR* § 164.105 of the Privacy Rule for more information.

VI. Conclusion

The *HIPAA* Privacy Rule specifically excludes from its coverage those records that are protected by *FERPA*. When making determinations as to whether personally identifiable information from student health records maintained by the educational agency or institution may be disclosed, school officials at institutions subject to *FERPA* should refer to *FERPA* and its requirements. While the educational agency or institution has the responsibility to make the initial, case-by-case determination of whether a disclosure meets the requirements of *FERPA*, the Department of Education's Family Policy Compliance Office is available to offer technical assistance to school officials in making such determinations.

For quick, informal responses to routine questions about *FERPA*, school officials may e-mail the Department at FERPA@ed.gov. For more formal technical assistance on the information provided in this guidance in particular or *FERPA* in general, please contact the Family Policy Compliance Office at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, D.C. 20202-8520

You may also find additional information and guidance on the Department's Web site at: <http://www.ed.gov/policy/gen/guid/fpc/index.html>.

For more information on the *HIPAA* Privacy Rule, please visit the Department of Health and Human Services' *HIPAA* Privacy Rule Web site at: <http://www.hhs.gov/ocr/hipaa/>. The Web site offers a wide range of helpful information about the *HIPAA* Privacy Rule, including the full text of the Privacy Rule, a *HIPAA* Privacy Rule summary, over 200 frequently asked questions, and both consumer and covered entity fact sheets.

In addition, if you would like to submit additional questions not covered by this guidance document or suggestions for purposes of informing future guidance, please send an e-mail to OCRPrivacy@hhs.gov and FERPA@ed.gov.



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RCW 40.14.070

Destruction, disposition, donation of local government records — Preservation for historical interest — Local records committee, duties — Record retention schedules — Sealed records.

(1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist

which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its

duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

(a) The records are seventy years old or more;

(b) The local records committee has approved the destruction of the public records; and

(c) The state archivist has determined that the public records have no historic interest.

[2011 c 60 § 18; 2005 c 227 § 1; 2003 c 240 § 1; 1999 c 326 § 2; 1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

Notes:

Effective date -- 2011 c 60: See RCW 42.17A.919.

Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.

Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.



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RCW 40.14.010

Definition and classification of public records.

As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in [RCW 40.14.100](#).

For the purposes of this chapter, public records shall be classified as follows:

(1) Official public records shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or documents required by law to be filed with or kept by any agency of the state of Washington; all legislative records as defined in [RCW 40.14.100](#); and all other documents or records determined by the records committee, created in [RCW 40.14.050](#), to be official public records.

(2) Office files and memoranda include such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda.

[1996 c 71 § 1; 1982 c 36 § 3; 1981 c 32 § 4; 1971 ex.s. c 102 § 1; 1957 c 246 § 1.]



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RCW 40.14.040

Records officers — Designation — Powers and duties.

Each department or other agency of the state government shall designate a records officer to supervise its records program and to represent the office in all contacts with the records committee, hereinafter created, and the division of archives and records management. The records officer shall:

(1) Coordinate all aspects of the records management program.

(2) Inventory, or manage the inventory, of all public records at least once during a biennium for disposition scheduling and transfer action, in accordance with procedures prescribed by the state archivist and state records committee: PROVIDED, That essential records shall be inventoried and processed in accordance with chapter [40.10](#) RCW at least annually.

(3) Consult with any other personnel responsible for maintenance of specific records within his or her state organization regarding records retention and transfer recommendations.

(4) Analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the state archivist and state records committee minimal retentions for all copies commensurate with legal, financial, and administrative needs.

(5) Approve all records inventory and destruction requests which are submitted to the state records committee.

(6) Review established records retention schedules at least annually to insure that they are complete and current.

(7) Exercise internal control over the acquisition of filming and file equipment.

If a particular agency or department does not wish to transfer records at a time previously scheduled therefor, the records officer shall, within thirty days, notify the archivist and request a change in such previously set schedule, including his or her reasons therefor.

[2011 c 336 § 818; 1982 c 36 § 4; 1979 c 151 § 51; 1973 c 54 § 3; 1957 c 246 § 4.]



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RCW 40.16.020**Injury to and misappropriation of record.**

Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both.

[2003 c 53 § 215; 1992 c 7 § 35; 1909 c 249 § 96; RRS § 2348.]

Notes:

Intent -- Effective date -- 2003 c 53: See notes following RCW [2.48.180](#).



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[42.56.001](#) << [42.56.010](#) >> [42.56.020](#)

RCW 42.56.010

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

(3) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

[2010 c 204 § 1005; 2007 c 197 § 1; 2005 c 274 § 101.]