

Holds on the Destruction of Electronic Information and Paper Records

I. Records Custodian

The Superintendent shall designate a Records Custodian who will be responsible for implementation of Bethany Board of Education (Board) policies and administrative regulations for the preservation of paper records and electronically stored information, including e-mails.

II. Holds

Upon receipt of notice that the Bethany Public School District (District) is involved in litigation as a party to a lawsuit, the District is issued a subpoena by a party to a lawsuit in which it is not a party, or if the District receives information that would lead a reasonable person to anticipate the possibility of litigation, the Records Custodian is to immediately take steps to ensure that any paper records and electronically stored information that could be related to the litigation or potential litigation are preserved from deletion or destruction. Actions to preserve records and electronically stored information shall include, but are not limited to, the postponing or canceling of any automatic deletion of electronically stored information until relevant information and documents can be identified and stored, notification to employees of a "litigation hold" to prevent the deletion and destruction of documents that might be related to the litigation or potential litigation, and the identification of documents and information that are subject to preservation. This litigation hold triggers the duty to preserve documents, such as transitory messages, that otherwise could be deleted under the District's Record Retention Policy.

The Records Custodian shall issue a "litigation hold" memorandum that specifically describes the types of documents and information that must be preserved and describes how those materials are to be identified, maintained, and stored. The memorandum shall specifically state that the duty of preservation is ongoing and that it is the responsibility of employees to continue to identify and preserve relevant documents until notified via a subsequent memorandum that the litigation hold is no longer in effect. All employees who are sent a "litigation hold" memorandum are to acknowledge receipt and understanding of the memorandum in writing, which may be in the form of an e-mail response. A copy of any "litigation hold" memorandum shall be sent to the District IT department.

The Records Custodian shall be responsible for the collection and coordination of the retention of documents that are subject to the litigation hold, including electronically stored information. He/she shall work with the District's IT personnel to ensure compliance with the litigation hold. Specifically, the Records Custodian shall determine the types of electronically stored information that exist and where that information is maintained, identify where both identified paper documents and electronically stored information will be stored, and implement procedures to ensure that District employees are complying with the litigation hold. No system-wide process for automatic deletion of electronic information will be implemented while a litigation hold is in effect without prior notice to the Records Custodian and verification by the Records Custodian that the deletion process will not destroy documents or information that is subject to a litigation hold. The Records Custodian may need to periodically reissue the "litigation hold" memorandum and will ensure that the "litigation hold" memorandum is provided to new employees who may have access to relevant information. Finally, the Records Custodian shall ensure that all steps taken by the District to identify and preserve relevant information are documented.

BUSINESS AND NON-INSTRUCTIONAL OPERATIONS Regulation 3543.311(b)

Legal Reference: General Letters 96-2, 98-1, 2001-1 and 2009-2 of the Public Records Administrator Record Retention Schedules Towns, Municipalities and Boards of Education.

Rules 34 and 45 of the Federal Rules of Civil Procedure

Silvestri v. General Motors Corp., 271 F.3d 583 (Fourth Circuit 2001)

Regulation approved: May 5, 2016

Regulation revised: April 7, 2021

Source: Shipman