

## **Electronic Communications Use and Retention**

### **Retention Guidelines**

These regulations provide guidance in the implementation of policy #[3543.31](#) regarding the retention of electronic records and information. These regulations supplement and do not replace LEARN's policy and regulations pertaining to student records ([#5125](#)).

Content and function of electronic messages determine the message's retention period. The determination of record status shall be on the same basis as is used for paper records. LEARN will comply with all of the minimum standards set forth in the Municipal Records Retention Schedule, M8 of the Connecticut Records Administration. Electronic messages sent and received by public officials fall within three broad categories:

- 1. Transitory messages, including copies posted to several persons and casual and routine communications similar to telephone conversations.**
- 2. Public Records with a less than Permanent Retention Period; and**
- 3. Public Records with a Permanent or Permanent/Archival Retention Period.**

Retention guidelines for each of these categories are as follows:

### **Transitory Messages-No Retention Requirement**

Public officials and employees receiving such communications may delete them at will immediately without obtaining the approval of the Office of the Public Records Administration and State Archives or LEARN's Custodian of Records. Transitory messages are not essential to the fulfillment of statutory obligations or to the documentation of LEARN functions.

Examples include, but are not limited to:

Messages that address routine administrative, curricular and co-curricular matters, announcements of meetings, schedules of events, etc.

Messages that take the place of informal discussion and which if they were printed would not be retained in school records.

Messages that transmit generic information and are not specific to a student's educational program.

Messages that address personal matters unrelated to LEARN.

Voice mail is transitory in nature and may be deleted at will. However, there are times when such messages may require a longer retention period, such as in the case where the message may be potentially used as evidence in a trial, such as a bomb threat, or in some other illegal activity. Voice mail may also be subject to the discovery process in litigation.

### **Less than Permanent Messages-Retention Requirement**

Follow retention schedule for equivalent hard copy records as specified in the *Municipal Records Retention Schedule*, M8 of the Connecticut Records Administration, retention schedule. The record must be in hard copy or electronic format, which can be retrieved and interpreted for the legal retention period.

When there is a doubt about the retrievability of an electronic record over the life span of that record, the record should be printed out.

LEARN may delete or destroy the records only after making and retaining a hard copy or after receiving signed approval from the Office of the Public Records Administrator.

Examples include, but are not limited to:

Messages that address significant aspects of a specific student's educational program including, but not limited to, health, discipline, special education program, interaction with DCF, and communication with parents relating to specific aspects of the student's interaction with LEARN.

Messages that address and/or provide information used in making policy decisions, concerning curricular or co-curricular activities, personnel actions, or that relate to the business transactions of LEARN.

Messages that address activities of significant interest in the community relating to LEARN.

### **Permanent or Permanent /Archival-Retention Requirement**

Records must be retained permanently.

Retention may be in the form of a hard-copy printout or stored on microfilm that meets microfilm standards issued in General Letter 96-2 of the Public Records Administrator. The information must be eye readable without further direction.

Examples include, but are not limited to:

Policy and Procedures manuals

Physician's standing orders

Nursing protocols

Public officials and LEARN employees are advised that e-mail messages sent as part of their workdays are not "private" but are discoverable communications and may be subject to FOI. Since messages may be retained at different locations or levels of the system, users must remember that their communications can be retrieved during formal discovery processes.

Discretion, therefore, is an important consideration when using technology to send, record, and/or retain communications.

### **Maintenance/Retention of Electronic Mail**

Records created using an e-mail system and electronically stored information will be saved/archived by LEARN for their required retention period by one of the following methods approved by LEARN's Record's Custodian:

1. Print message or record and store in appropriate hard copy file.
2. Place in computer folders and save on hard drive.
3. Save to removable disk which is then stored in an appropriate location.
4. Transfer to an automated records management software application.
5. Manage at the server by an automated classification system.

A review shall take place periodically, but at least annually, for the purpose of reviewing electronically stored information. LEARN's Record Custodian and LEARN's Technology Administrator are responsible for this review.

No system-wide process for automatic deletion of electronic information will be implemented without notice to any individual who may have such information and each such individual will verify that they have reviewed and archived information that must be retained. Following this review, all e-mails and/or electronically stored information that have not been archived according to LEARN policies and procedures shall be designated for deletion or archiving, and the affected LEARN employees will be notified about the procedures to be followed to implement this process. The Records Custodian or his/her designee shall follow up with notified employees to ensure compliance.

In addition, the Records Custodian, in cooperation with the LEARN Systems Administrator, shall ensure that any process for automatic deletion of electronic information from the system will not delete information

stored in folders and/or system locations that have been designated as appropriate for archiving electronically stored information.

### **Holds on the Destruction of Paper Records and Electronic Information**

Upon receipt of notice that LEARN is involved in litigation as a party to a lawsuit LEARN is issued a subpoena by a party to a lawsuit in which it is not a party, or if LEARN receives information that would lead a reasonable person to anticipate the possibility of litigation, the Records Custodian shall immediately take steps to ensure that paper records and electronically stored information related to the litigation or potential litigation are preserved from deletion or destruction. Action 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 LEARN'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 LEARN Information Technology 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 LEARN's Information Technology personnel to ensure compliance with the "litigation hold."

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 LEARN 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 shall reissue the "litigation hold" memorandum, as deemed necessary, and will ensure that the "litigation hold" memorandum is provided to new employees who may have access to relevant information. The Records Custodian shall ensure that all steps taken by LEARN to identify and preserve relevant information are documented.

Legal Reference: Connecticut General Statutes

The Freedom of Information Act.

[1-15](#) Application for copies of public records.

[1-200](#) Definitions.

[1-210](#) to [1-213](#) Access to public records.

[1-211](#) Access to computer stored records.

[1-214](#) Public contracts as part of public records.

[1-225](#) to [1-240](#) Meetings of public agencies.

[7-109](#) Destruction of documents.

[10-15b](#) Access of parent or guardians to student's records.

[10-154a](#) Professional communications between teacher or nurse & student.

[10-209](#) Records not to be public.

[10-221](#) Boards of education to prescribe rules.

[11-8a](#) Retention, destruction and transfer of documents.

[11-8b](#) Transfer or disposal of public records. State Library Board to adopt regulations.

[31-48d](#) Employers engaged in electronic monitoring required to give prior notice to employees.

[46b-56](#) (e) Access to Records of Minors.

Connecticut Public Records Administration Schedule V Disposition of Education Records (Revised 1983).

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

Federal Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended, added by section 513 of P.L. 93 568, codified at 20 U.S.C.1232g).

Department of Education. 34 C.F.R. Part 99 (May 9, 1980 45 FR 30802) regs. implementing FERPA enacted as part of 438 of General Education Provisions Act (20 U.S.C. 1232g) parent and student privacy and other rights with respect to educational records, as amended 11/21/96.

Rules 34 and 45 of the Federal Rules of Civil Procedure (2006 Amendments).

USA Patriot Act of 2001, PL 107-56, 115 Stat. 272, Sec 507, 18 U.S.C. §2332b(g)(5)(B) and 2331.

Regulation adopted: January 14, 2021

LEARN