

Policy Options For Retaining Email Records

The use of email and other electronic communication between school administrators, professional staff, employees and the public has increased tremendously, raising complex issues with respect to communication, creation of information and systems, and retrieval and storage of electronic records. School districts often experience confusion over which content should be retained or destroyed according to existing district policies and regulations and disclosure rules under various state and federal laws. Similarly, issues arise regarding how much privacy district employees may expect when using its communication systems and equipment.

The current system of State regulations promulgated by the Superintendent of Public Instruction governs the retention and destruction of school district records. This system has been in place for nearly forty years, and does not explicitly address email and other electronic records. Efforts by the California Department of Education in recent years to update the regulations have been stalled. Districts, therefore, will have to continue to work within the existing system for the foreseeable future.

Existing policies in place are generally silent on issues regarding email retention. Attorneys at Lozano Smith are often asked for model policies governing the retention and disposal of email. In response to this demand, Lozano Smith has created an informative document entitled "School District Email Retention." The document sets forth certain policy options for addressing the complexities raised by the retention of emails and other electronic communications. It offers possible options for adding to existing school board policies and administrative regulations on retention of district records and on employee use of technology.

There is no easy "one size fits all" policy on email retention, and the possibilities and language discussed in our "School District Email Retention" must be tailored to each unique setting. Towards that end, we set out more than one option for possible language that may be appended to a district's existing policies and regulations on the retention of records, including specifics on:

- The district's responsibility and right to disclose electronic communications, with certain exceptions
- The district's right to access and monitor employee communications made using its information systems and equipment
- The expectation of privacy employees may or may not have when using district information systems and equipment
- The definition of a "District Record," including electronic communications
- How long electronic records will be preserved, and in what manner
- The proper disposal of electronic records
- Who is responsible for preserving and purging electronic records

We emphasize that this is a developing and unsettled area of law, and that with each advance in technology, further revisions to a board policy may become necessary. Particularly because

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of the unsettled state of the law, decisions regarding these issues must include public policy considerations, and should be considered broadly by all of the involved decision makers in school districts. We encourage you to consult with your legal counsel, and to coordinate with your policy makers, Superintendent, business officials and IT department before adopting any types of policy changes addressing electronic communications.

If you would like a copy of "School District Email Retention," please contact Harold Freiman (hfreiman@lozanosmith.com), Devon Lincoln (dlincoln@lozanosmith.com), or Darren Kameya (dkameya@lozanosmith.com). If you have any questions about electronic communication retention, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#), or download our [Client News Brief App](#).

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.