

TIP JAR

Paper Laws, Electronic Records: *An Overview of Record Retention Laws for California School Employees*

Now that the California Supreme Court has directly addressed the universe of records accessible under the Public Records Act, it is more important than ever that school district employees and elected officials familiarize themselves with their obligations in retaining school district records to ensure that emails, texts and other electronic communications made or stored in private devices and accounts are maintained in accordance with these obligations. This article outlines California regulations governing record retention for school districts, and provides practical tips and resources for school employees when retaining and destroying records.

What is a “record”?

Regulations promulgated by the Superintendent of Public Instruction in the 1970s govern the retention and destruction of school district records in California. The regulations define a “record” for K-12 school districts as all records, maps, books, papers and documents of a school district required by law to be prepared or retained, or which are prepared or retained as necessary or convenient to the discharge of official duty. It is important to remember that these regulations have not been updated in more than 40 years, and are a poor fit for many 21st century document retention questions.

How long does a school district need to retain each record?

The contents of a particular record will determine how long a school district must maintain that record. Records must be retained or may be destroyed based on the following classifications:

- **Class 1 – Permanent Records:** Permanent records are records deemed important enough to require permanent retention. Examples include personnel records, payroll documents and school board minutes.
- **Class 2 – Optional Records:** Optional records are records that the superintendent or designee determines are worthy of temporary preservation but do not require permanent retention. Optional records must be retained until they are reclassified as disposable records. Once this reclassification occurs, the school district must follow the timeline for destruction of disposable records discussed below.
- **Class 3 – Disposable Records:** Disposable records are those records that are not classified as permanent or optional. Disposable records cannot be destroyed until either: (1) after the third July 1 succeeding the completion of all legally required audits, or (2) after the ending date of any retention period required by any agency other than the state, whichever date is later.
- **Continuing Records:** All records must be classified prior to destruction. But the regulations provide restrictions on *when* a record may be classified as Class 1, Class 2 or Class 3. For example, certain records,

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known as “continuing records,” may not be classified as permanent, optional or disposable until their “usefulness ceases.” Continuing records are those records that remain active and useful for administrative, legal, fiscal or other purpose.

If records may be destroyed, what is the proper manner of destruction?

Neither the Education Code nor regulations address the procedures for the actual destruction of records belonging to a school district. However, regulations do prescribe steps for community colleges to follow, detailed below:

1. The superintendent (or designee) submits a list of documents that may be destroyed to the board, certifying that none of the documents in the list are included in conflict with the Education Code or the regulations.
2. The superintendent (or designee) recommends that the documents in the list be destroyed.
3. The board may either approve or disapprove the proposal. Alternatively, the board may approve the proposal in part, ordering certain documents in the list be reclassified. This will be an action on the agenda that must be recorded in the board minutes. The list of documents that are approved for destruction must be attached to the board minutes.
4. The records that the board has ordered destroyed may be destroyed by shredding, burning or pulping. The superintendent (or designee) must supervise this process.

Retaining emails as records

Because they have not been updated since their adoption, the regulations applicable to school and community college districts do not specifically address the retention of emails, and thus do not account for the intricacies and unique issues that email retention raises. A school district’s staff may exchange thousands, tens of thousands or even hundreds of thousands of emails per day, and the notion of a single person reviewing each one of those emails on a yearly basis is unrealistic. Therefore, school districts may wish to consider establishing or updating their own policies to provide clear guidelines for school district employees on how to handle the retention of school district emails, and to reflect *City of San Jose’s* expansion of what must be disclosed under the Public Records Act.

These policies are generally adopted to supplement existing record retention regulations. To help school districts in preparing such policies, Lozano Smith has created guidance which provides optional policy language for school districts addressing email retention. A copy of this guidance is available at no cost to school districts by emailing Lozano Smith’s Client Services department at clientservices@lozanosmith.com. Additionally, districts may wish to train employees on implementation of these new policies.

These regulations raise many questions. For instance, can a school district retain electronic copies of old records and destroy the physical originals? How does a district comply with these rules while also complying with the Family Educational Rights and Privacy Act and other state and federal laws? The answers to these questions are surprisingly complicated and frequently require consultation with legal counsel, so proceed with caution before you hit “delete.”