

Records Retention

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TO: Nebraska Department of Education Staff

FROM: Dr. Matthew L. Blomstedt, Commissioner of Education

SUBJECT: Records Retention

CONTACT: General Counsel's Office at 471-0310 or 471-0311

PURPOSE

This Administrative Memorandum specifies the policies and procedures for retaining, storing, and disposing of Department records.

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GENERAL STATEMENT OF POLICY

NDE staff members are directed to retain and/or dispose of records only in conformity with the requirements of the applicable state records retention schedules adopted pursuant to the Records Management Act (*Sections 84-1201 through 84-1227 of the Revised Statutes of Nebraska*), or as otherwise specifically required by a law, a regulation, or a Litigation Hold notice.

State records retention schedules are approved by the Nebraska Secretary of State, who serves as State Records Administrator, and the schedules provide your only authority to dispose of records. **State Agencies General Records Schedule #124** deals with the categories of records common to most state government agencies, and covers most types of records maintained by NDE. **Department of Education Schedule #39** deals with a few categories of records that are unique to NDE (*see the following Records Retention Schedules section*). If a record does not fit under a records retention schedule, it must be retained until a schedule revision is adopted that allows for its destruction.

Records retention schedules are designed to serve as your records management directions for storing and disposing of agency records, ***regardless of the media on which they reside***, including paper, microfilm, diskettes, optical disks, CDs, DVDs, servers, computer hard drives, etc. E-mail records are subject to records retention and disposal requirements (see *the following E-MAIL section*).

Pursuant to Section 84-1207.01 of the *Revised Statutes of Nebraska*, the Commissioner of Education has designated the Deputy Commissioner of Education to serve as the NDE Records Officer. The Deputy Commissioner is assisted in the overall coordination of NDE records management activities by the NDE General Counsel's Office.

The General Counsel's Office should be contacted when questions arise regarding the retention, storage, or disposal of NDE records.

RECORDS RETENTION SCHEDULES

Retention and disposal of records are subject to the records retention schedules approved by the Secretary of State, as State Records Administrator. Requirements for categories of records that are common to most state government agencies are contained in the State Agencies General Records **Schedule 124**. Agencies can also create specific agency schedules to deal with records not covered by Schedule 124, or to add additional requirements for categories of records that would otherwise be covered by Schedule 124. **Schedule 39** is the specific agency schedule for NDE. Most records at NDE are covered by Schedule 124. Some NDE teams will not have any records covered by Schedule 39, and most will use only a few of its sections. When a record fits descriptions in sections of both Schedules 39 and 124, the Schedule 39 section applies to the record.

Copies of Schedule 124 and Schedule 39, plus all of the other schedules for state agencies and political subdivisions, are available on the Nebraska Secretary of State's website at: http://www.sos.state.ne.us/records-management/retention_schedules.html. The Secretary of State's website also includes additional reference information and training materials regarding records management.

Schedule 124 can be directly accessed at:

<http://www.sos.ne.gov/records-management/pdf/124-state-agencies-general-records-20141230.pdf>.

Schedule 39 can be directly accessed at:

<http://www.sos.ne.gov/records-management/pdf/39-education-2015.pdf>.

(Note: Public School districts primarily use Schedules 10 and 24 for their records. Educational Service Units primarily use Schedules 95 and 24 for their records)

LITIGATION HOLDS

In the event of pending or potential litigation, these and all other routine instructions for disposing of records may be temporarily suspended for any or all NDE programs. See **Administrative Memorandum #712**.

DEFINITIONS OF RECORDS

“Records” and “Public Records” are defined in the Records Management Act at Section 84-1202 of in the [Revised Statutes of Nebraska](#) as follows:

“Record means any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business.”

“Public Records includes all records and documents, regardless of physical form, of or belonging to this state or any agency, branch, department, board, bureau, commission, council, subunit, or committee of this state except when any other statute expressly provides that particular information or records shall not be made public. Data which is a public record in its original form shall remain a public record when maintained in computer files.”

<http://uniweb.legislature.ne.gov/laws/statutes.php?statute=84-1202>.

Records retention and disposition requirements apply to all records, ***regardless of the media on which they reside***, including paper, microfilm, microfiche, diskettes, optical disks, CDs, DVDs, servers, computer hard drives, etc. Records include e-mail. “Nonrecord material” is not considered to be records for records retention and disposal purposes (*see the following NONRECORD MATERIAL section*),

NONRECORD MATERIAL

The Records Management Act contains the following reference to “ **Nonrecord material**”:

84-1215. Nonrecord material; destruction; procedure; personal and political papers; preservation.

(1) If not otherwise prohibited by law, nonrecord materials, not included within the definition of records as contained in section 84-1202, may be destroyed at any time by the state or local agency in possession thereof without the prior approval of the administrator or board. The administrator may formulate procedures and interpretations to guide in the disposal of nonrecord materials, but nothing therein shall be contrary to any provision of law relating to the transfer of materials of historical value to the State Archives of the Nebraska State Historical Society.

(2) Members of the Legislature and other officials are encouraged to offer their personal and political papers of public interest to the State Archives for preservation subject to any reasonable restrictions concerning their use by other persons.

<http://nebraskalegislature.gov/laws/statutes.php?statute=84-1215>.

“Nonrecord Material” is described in the State Agencies General Records **Schedule 124, Section 124-82**, as follows:

“The following materials are declared to be nonrecord material, regardless of media on which they reside:

- a. Books, periodicals, newspapers, and catalogues acquired and saved as a general reference resource;
- b. Extra copies of documents saved only for convenience or reference for which no action is recorded or taken (i.e. reading files);
- c. Identical or convenience copies of reports, memoranda, etc., for which your office was not the originator or the office of record, and which have not been annotated by your office;

- d. Stocks of publications, reproduced documents, or other printed materials preserved for supply purposes;
- e. Blank forms;
- f. Junk mail, spam, tickler files “to-do” and task lists that serve as a reminder that an action is required on a given date or that a reply to action is expected;
- g. Materials received documenting employee fringe activities (carpool locators, employee recreation and welfare activities, blood donors, charitable funds, community notices, holiday and social meetings, etc.).”

Schedule 124, Section 124-82, further states that:

“NONRECORD MATERIAL may be destroyed at any time by the Agency” and that: “No RECORDS DISPOSITION REPORT (RMA03006B) is required.”

“**COMMUNICATIONS, NONRECORD**” is described in **Schedule 124, Section 124-34** as follows:

“Communications not related to state government transactions or activities and are not included in another agency specific schedule.”

Schedule 124, Section 124-34, further states:

“No retention required” and “Also see NONRECORD MATERIAL, Item 124-82”.

E-MAIL

Electronic messages (e-mail) transmitted through the NDE Local Area Networks are considered records and as such are subject to the state’s records management requirements. Retention and disposition of e-mail depends on the function and content of the individual messages. Anyone who creates or receives e-mail is responsible for managing the records that are part of his or her electronic messaging system.

PUBLIC INSPECTION

All Department records are generally considered public records and are subject to public inspection, unless there is specific authority in state or federal law or regulation that allows or requires the record to be withheld. If staff believes that a record should not be released pursuant to a public records request, they should consult with the General Counsel’s Office. There are specific time limits in state law for responding in writing to written records requests. See **Administrative Memorandum #606, “Public Access to Records and Reproduction Costs”**.

See also the public records laws in Sections 84-712 through 84-712.09 of the *Revised Statutes of Nebraska* at:

<http://nebraskalegislature.gov/laws/browse-chapters.php?chapter=84>.

RECORDS DISPOSAL REPORT

The Records Disposition Report is found on the last page of each schedule. Staff should note that Schedule 124 specifies that disposal of “Nonrecord Material” does not require a Records Disposition Report. Schedule 124 provides examples of “Nonrecord Material”.

After records have met their scheduled retention periods:

- (1) Staff should complete and sign a Records Disposition Report, retain a copy, and
- (2) Submit the original and one copy to the General Counsel's Office,
- (3) Unless there appears to be an obvious problem with the Records Disposition Report, the General Counsel's Office will submit the original report to the Records Management Division and inform staff.
- (4) Staff may then dispose of the records.

STATE RECORDS CENTER STORAGE

Staff should contact the General Counsel's Office with requests to store records or when seeking the recovery of records stored at the State Records Center. The General Counsel's Office will coordinate the storage and recovery of records with the State Records Center. Staff should note that there is a monthly storage fee for each box in storage that is charged to the team responsible for storing the records.

Once the record retention period has been met for records that are being stored at the State Records Center, the Center will send a notice and authorization form to NDE, usually on a quarterly basis. If there is a need to extend the retention period for the records, the disposal date can be revised. The General Counsel's Office will coordinate the signing of the authorizations with the appropriate Office Administrator, Officer, and/or Deputy Commissioners, and will submit the disposal authorizations to the Deputy Commissioner for final approval as NDE Records Officer.

FAILURE TO FOLLOW RECORDS REQUIREMENTS

Failure to follow the records retention and disposal requirements of NDE Administrative Memorandums, state records retention schedules, applicable laws and regulations, or litigation holds may result in disciplinary or corrective action taken against an employee, and could have an impact on litigation involving the state and/or the individual staff member. In addition, several state statutes specifically provide criminal penalties for offenses involving records, including the following (with links to those sections of the *Revised Statutes of Nebraska* on the Legislature's website):

28-911. Abuse of public records; penalty; public record, defined.

<http://nebraskalegislature.gov/laws/statutes.php?statute=28-911>.

84-1213. Records; property of state or local agencies; protected; willfully mutilate, destroy, transfer, remove, damage, or otherwise dispose of; violation; penalty.

<http://nebraskalegislature.gov/laws/statutes.php?statute=84-1213>.