

Holds on the Destruction of Electronic and Paper Records

I. Records Custodian

These regulations are designed to assist in implementation of Board Policy #3543.311 regarding holds on the destruction of paper records and electronic information. The LEARN Executive Director shall designate a Records Custodian who will be responsible for implementation of LEARN policies and regulations for the preservation of paper records and electronically stored information, including e-mails.

II. 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 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 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to identify and preserve relevant documents until notified via a subsequent memorandum that the litigation hold is no longer in effect.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 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 LEARN’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 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 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 LEARN to identify and preserve relevant information are documented.

Legal References: General Letters 98-1, 96-2 and 2001-1 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 (4th Cir. 2001)

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