

Records in Independent Schools: What, How Long, and How?

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Among all the general school administration questions that NAIS gets every year, the front runner in frequency is usually related to records retention. Schools are curious about whether they really need to keep all those old admissions records, or if they really need every single piece of paper related to a student's records. This publication is designed to help schools approach their records keeping issues, from almost every aspect of the school. Some retention questions are easier to approach than others. This document is designed to provide some answers, resources, and questions for schools approaching their retention guidelines.

State Law

The most important aspect of records retention that largely will not be covered here is state law. Most of the guidance provided will relate to state law. Federal law provides guidelines on most areas, and some areas are more general common sense (e.g., keeping a school's bylaws, articles of incorporation and other documents permanently). However, other areas also have over-lapping state guidelines. States may not lessen a federal requirement, but they may extend it. Further, states may have regulations where the federal government has none. For example, federal law does not, in itself, require that a school keep a transcript for any length of time. However, many states require that schools keep student transcripts forever.

State Statutes of Limitations on Actions

Of course, another important side of record keeping is having the information you need when you need it. Often, schools need it only if someone is looking for it. Generally, this is when either the student would like a copy, or the school would like a copy because it needs to look back at its records. For the latter, a school may want this information largely because it is being sued for whatever actions it took at the time of an incident. In many schools, the time period that such records are kept is determined by the state statute of limitations. A statute of limitations is the period of time during which an individual may bring an action against another party. States limit these periods by statute so that eventually the threat of a suit on whatever the matter is may not be brought. The following chart provides a brief overview that is believed accurate as of spring 2005.

Because various statutes of limitations exist in each state, this chart is not intended to provide a complete overview of statutory limitations and may not reflect subsequent changes in the law. Schools must work with legal counsel to ensure that the proper statutes of limitation are taken into account when designing a records retention program.

State or Territory	Bodily Injury	Property Damage	Unwritten Contract	Written Contract
Alabama	2 yrs	2yrs	6 yrs	6yrs
Alaska	2 yrs	2 yrs	3 yrs	3 yrs
Arizona	2 yrs	2 yrs	3 yrs	6yrs
Arkansas	3yrs	3yrs	3yrs	3yrs
California	2yrs	3yrs	2yrs	4yrs
Connecticut	2yrs	2yrs	3 or 6 yrs	6yrs
Colorado	2yrs	2yrs	4yrs	4yrs
Delaware	2yrs	2yrs	3yrs	3yrs
District of Columbia	3yrs	3yrs	3yrs	3yrs

Florida	4yrs	4yrs	4yrs	5yrs
Georgia	2yrs	4yrs	4yrs	6yrs
Hawaii	2yrs	2yrs	1yr	6yrs
Idaho	2yrs	3yrs	4yrs	5yrs
Illinois	2yrs	5yrs	5yrs	10yrs
Indiana	2yrs	2yrs	6yrs	6yrs
Iowa	2yrs	5yrs	5yrs	10yrs
Kansas	2yrs	2yrs	3yrs	5yrs
Kentucky	1yr	2yr	5yrs	10yrs
Louisiana	1yr	1yr	Varies	Varies
Maine	6yrs	6yrs	6yrs	6yrs
Maryland (from day after occurrence)	3yrs	3yrs	3yrs	3yrs
Massachusetts	3yrs	3yrs	6yrs	6yrs
Michigan	3yrs	3yrs	6yrs	6yrs
Minnesota	6yrs	6yrs	6yrs	6yrs
Mississippi	3yrs	3yrs	3yrs, sometimes 1yr	3yrs
Missouri	5yrs	5yrs	10 or 5 yrs	10 or 5 yrs
Montana	3yrs	2yrs	5yrs	8yrs
Nebraska	4yrs	4yrs	4yrs	5yrs
Nevada	2 yrs	3 yrs	4 yrs	6 yrs
New Hampshire	3yrs	3yrs	3yrs	20yrs
New Jersey	2 yrs	6 yrs	6 yrs	6 or 20 yrs
New Mexico	3 yrs	4 yrs	4yrs	6 yrs
New York	3 yrs	3 yrs	6yrs	6 yrs
North Carolina	3 yrs	3 yrs	3 yrs	3 yrs
North Dakota	2 yrs	2 yrs	6 yrs	6 yrs
Ohio	2 yrs	2 yrs	6 yrs	15 yrs
Oklahoma	2 yrs	2 yrs	3 yrs	5 yrs
Oregon	2 yrs	6 yrs	6 yrs	6 yrs
Pennsylvania	2 yrs	2 yrs	4 yrs	4 yrs
Puerto Rico	3 yrs	10 yrs	10 yrs	10 or 20 yrs
Rhode Island	3 yrs	3 yrs	3 yrs	3 yrs
South Carolina	3 yrs	6 yrs	6 yrs	6 yrs
South Dakota	1 yrs	3 yrs	6 yrs	6 yrs
Tennessee	2 yrs	2 yrs	4 yrs	4 yrs
Texas	4 yrs	3 yrs	4 yrs	6 yrs
Utah	3 yrs	3 yrs	6 yrs	6 yrs
Vermont	2 yrs	2 yrs	3 yrs	5 yrs
Virginia	2 yrs	3 yrs	3 yrs	6 yrs
Washington	2 yrs	2 yrs	5 yrs	10 yrs
West Virginia	3 yrs	6 yrs	6 yrs	6 yrs
Wisconsin	4 yrs	4 yrs	8 yrs	10 yrs
Wyoming	4 yrs	4 yrs	8 yrs	10 yrs

Student Claims: Expanding the Statute of Limitations

On top of these statutes of limitation, schools must also look at other potential laws that might affect a claim against the school. Many states have extended the statute of limitations for students, meaning that the state has determined that if an incident happened to a minor, the minor may bring a suit once he reaches majority age. Often these statutes provide for suit until the minor reaches majority age plus whatever the statute of limitations is. For example, a student falls down a flight of stairs as a result of the janitor leaving a bucket of water and a broom in the middle of the third step. The student graduates two years later at the age of 18. The student files a lawsuit against the school two years later. In New York the personal injury statute of limitations is three years. However, with the infancy tolling statute the student need not bring a lawsuit until three years after he turns majority age. Each school should check with their school's attorney to determine what the status of such a law might be in their state.

Student Claims: Sexual Abuse Records

A very special sub-category in the infancy tolling statute area involves any kind of sexual abuse claim. Almost every state in the country has some tolling provision for these kinds of claims. The records relating to these issues should be very complete and held in the utmost confidence for however long is required.

Education Records FAQs**Q: What do I do with all the education records once the students have graduated?**

Many schools are faced with rooms upon rooms, if not almost entire buildings, filled with student records. Some schools have found that these files are filled with everything from phone messages to transcripts, to copies of old English papers. Generally, a school is only required to save transcripts and attendance records of former students, although there may be reasons to keep more of the file for a set period of time after the student leaves.

These requirements are set by state law. Most states do not define what a transcript must contain. Schools are probably best served by thinking about transcripts as what will serve the student best when he or she needs the information. This usually includes grades, honor roll information, and other distinctions the student may have achieved. Permanently retaining information beyond these basic pieces of information in terms of the base education record is up to the school, even if there are shorter-term requirement.

Schools should bear in mind the information already covered, however, in terms of different kinds of suits that may be brought against the school. For this reason, many schools save the entire education record for the length of the statute of limitations and then pare down that file to the basics at that time. If there is something in a student's file that would require longer retention (a sexual abuse allegation or something similar), the school may want to retain the pertinent documents for a longer period.

Q: I have a room filled with old applicant records of every kind. They date back to 1963. Can I destroy them?

Admissions files are the most frequent conundrum at schools. Many times the process of these files is at the heart of the question, so a look at the variations on the records is helpful.

Student applies, gets in, and accepts his place at the school.

In these situations many schools want to know what to hold onto in the admissions office, what to pass

on to the regular file, and what to destroy. Most of this is up to the particular school, but there are a variety of options.

1. School gives teachers of the new student a chance to review the application and then destroy all but the pertinent, current information. The documents destroyed include the recommendations, essays, etc.
2. School does not let the teachers view the file and only pass on the pertinent information on the theory that the student deserves an entirely fresh start at the school. The rest of the information is destroyed.
3. School holds onto the entire file and passes all the information for keeping in the student's official file.
4. School keeps everything in the admissions office until such time as someone comes digging.

Student applies, gets in, and goes some place else

Student applies and does not get in, and goes some place else

Schools in these situations keep the entire file, destroy the entire file, destroy parts of the file, or keep pertinent information in the database in the event the student reapplies.

So, which among these are the right approaches?

Most state laws do not absolutely require that a school retain the entire admissions file for all candidates. From a school perspective, it really depends on the school's culture and how much storage space may be available. From a legal perspective the school needs to consider where the legal issues may arise. Generally, these are from students that apply and do not get into the school for one reason or another. When this happens there are usually two basic pressure points: was there any discrimination of any kind or was it the teacher recommendations received by the school? Schools that decide to immediately destroy the application records must have some way of illustrating that their process is nondiscriminatory. Some ways of doing this are having admissions policies in place addressing the consideration of various characteristics, having a summary profile of each class of applicants as well as the admitted applicants, and the attending class, and other similar steps. In the event that schools are going to destroy admissions files before the end of the statute of limitations for such claims, schools should work with legal counsel to determine what sorts of documents they will have in place to help the school in the event of such a litigation threat.

On the reference front, many schools prefer not to be in a position to have to turn over teacher recommendations. For this reason, most schools have a parent waiver line on the reference form itself. However, in the event of a subpoena, these forms will have to be turned over.

Q: What about discipline hearing records and results?

Schools make a variety of policy decisions relating to disciplinary records in terms of disclosure to other schools. However, a more complicated question often arises about what to do with the records of the process itself. Many schools have separate discipline files relating to the event, the process, and the outcome. As a practical matter, once the statute of limitations is over, there is a question of what to do with the records. Most schools will keep these documents indefinitely in some capacity or another (e.g., maintaining an anonymous summation of the incident for reference purposes). This is helpful in that it provides the school with a history of its own precedent in handling disciplinary issues. Whether the school keeps the entire record permanently, including the names of all involved or creates a summary or redacted version of the same is largely up to the school.

Q. I just got a subpoena for all information relating to a student's file. The student graduated five

years ago, and I don't know what this is for. What should I send them?

Most subpoenas are written very broadly: "All documents, memorandum, or other materials in hard copy or electronic format that mention the individual in question in any capacity." Unless there is a specific privilege that would enable the school to keep the document from being subpoenaed (e.g., a psychiatrist's notes from an interview with the student), the school will have to turn them over. Some schools make the mistake of thinking that this subpoena can only possibly apply to the student's "official" file. This is not the case. Regardless of where the information is kept (a teacher's desk, the admission office, the dean's office, etc.), all the relevant documents must be provided unless there is a legitimate legal reason for not providing them. Any school that receives a subpoena should contact legal counsel before responding.

Q. What if there is a pencil note on one of the documents, could I just erase it? It's my note.

No. Any destruction or alteration of any of the documents in question is against the law.

Everything Else

So many schools are looking for the ultimate in records retention guidelines on all the other documents that arise as well. Unfortunately one document is unlikely to fill in all the potential holes in this area. However, the following sections should hopefully get you started. The following table is based on NAIS's records retention system, which largely follows guidance that has been issued by the IRS and other agencies as well as laws and regulations implemented by the District of Columbia.

Records Retention Schedule			
Record	Retention	Record	Retention
Accident reports/claims (settled cases)	7 years	Financial Statements (interim/internal)	Permanently
Accounts receivable and payable - ledgers and schedules	7 Years	General Journal or Ledger	Permanently
Annual Reports	Permanently	Government Reports	6 Years
Articles of incorporation	Permanently	Income Tax Returns and Canceled Checks (federal, state, & local)	Permanently
Auditors' reports/work papers	Permanently	Insurance policies (expired)	Permanently
Authorization and appropriations for expenditures	3 Years	Insurance policies (current) - accident reports, claims, etc.	Permanently
Bank reconciliations / statements	7 Years	Inventory List	Permanently
Bank Deposit Slips	3 Years	Invoices (to customers, from vendors)	7 Years
Budgets	3 Years	Journals	Permanently
Cash disbursement journals	Permanently	Leases	10 Years
Cash receipts journal	Permanently	Manuscripts	2 Years
Chart of Accounts	Permanently	Medical Records	30 Years
Checks (cancelled), general	7 Years	Membership Records	3 Years

Checks (canceled) for important payments, i.e. taxes, purchases of property, special contracts, etc. Checks should be filed with the papers pertaining to the underlying transaction.	Permanently	Minutes (Board and committees with board authority)	Permanently
to the underlying transaction	Permanently	Minutes (Committees without board authority)	5 Years
Claims and Litigation files	10 Years	Occupational Inquiry and Illness Records	5 Years
Constitution and By-laws	Permanently	Patents, copyrights, licenses, agreements, bills of sale, permits, etc.	3 Years or Life of Document
Continuing Education documents	2 Years	Payroll records and summaries (Including payment to pensioners)	7 Years
Contracts (general)	10 Years	Payroll Tax Returns	4 Years
Contracts (government)	7 Years	Pension/ Profit-Sharing Plans	Permanently
Contracts (sales), UCC	7 years	Personnel records (terminated)	7 Years
Contracts and leases still in effect	Permanently	Petty cash vouchers	3 Years
Copyright, patent, and trademark registrations	Permanently	Property records, including costs, depreciation reserves, year-end trail balances, depreciation schedules, blueprints, and plans	Permanently
Correspondence (general)	3 Years	Publications	Permanently
Correspondence (legal and important matters)	Permanently	Purchases, including Title Abstracts, Opinions, Insurance Policies, Sales Agreements, Mortgages, and Deeds	20 Years
Correspondence (routine with customers and/or vendors)	3 Years	Purchase orders - Purchasing Dept. Copy	7 years
Deeds, mortgages, and bills of sales	Permanently	Retirement and pension records	Permanently
Depreciation schedules	Permanently	Rosters	Permanently
Duplicate deposit slips	3 Years	Sales and Used Tax Returns	10 Years
Employee Expense Reports	3 Years	Sales records	7 Years
Employee Payroll Records (W-2, W-4, Annual Earnings, etc.)	6 Years	Subsidiary ledgers	7 Years
Employee Pension Records, including service, eligibility, personal information, pensions paid	6 Years	Tax returns and worksheets, revenue agents, and other documents relating to determination of income tax liability	Permanently
Employment applications	4 Years	Time books/cards	7 Years
Employee Contracts	10 Years	Trademark registrations and copyrights	Permanently

Expense analyses/expense distribution schedule	7 Years	Training manuals	Permanently
Financial Statements (Annual)	Permanently	Voucher register and schedules	7 Years
		Withholding tax statements	7 Years

Some of these time periods are generally going to be longer than those required by law as individual decisions were made as to the usefulness of maintaining these files longer than required.

Some documents that are commonly found in schools are not included in this list, but many schools will find that these pieces of information should be kept either permanently or for six or seven years (usually the upper end of the statute of limitations).

Electronic Records

It is impossible to ignore the fact that more and more information is being created and provided in electronic format. Of course, these communications are all part of the records retention approach as well. The general rule of thumb in this area is that however long something would be kept in paper is how long should be kept electronically. This means that an email relating to an employment issue should be retained for however long a similar paper document on the same issue should be retained, and the easiest way to do this may very well be either printing the email out and putting it in the paper file or creating a document out of the email and putting that document in the appropriate electronic file. Often email systems have a back-up process that ensures communications are not truly deleted for some time. In most cases the sent emails are most easily recalled. However, these systems do not back up these communications indefinitely and a conscious decision should be made about how long the documents are retrievable.

Schools must then train all staff that are involved in electronic communications to either store the information electronically or produce paper copies of particularly sensitive or necessary communications. While daunting, most schools will find that the emails being sent are largely administrative in nature and do not need to be retained for any reason or for any particular length of time.

Storage of electronic records is another issue that has moved to the forefront. Just as paper documents need to be protected from mold, water, excessive heat, etc., electronic documents must be protected from the same, and a back-up system is virtually imperative. Some schools have been venturing into the world of almost entirely electronic records, often to a fair amount of expense when they have taken on the task of creating electronic documents from paper files. A back-up system or server to maintain a copy of these records should be in place.

Schools that ignore the notion of electronic records as a way of the future do so at their own storage peril. Eventually, most businesses will move into the electronic age. Planning now to get there in the long run will save costs.

Federal Law on Electronic Documents

In December 2006 the new federal rules on Electronic Discovery (“EDiscovery”) were adopted. These rules codify much of current law and govern the discovery process during litigation in federal court. The

rules require that the parties meet early in litigation to agree to an electronic discovery timetable during which the parties will determine when, how, and what will be shared between the parties during the court of litigation. Schools should be aware that these discovery rules reach every corner of electronic documents in the school's possession, as well as those that may be retrievable through forensic approaches.

One of the most important parts of the federal rules provides organizations with a safe harbor in the event that a document is mistakenly destroyed. If an organization has a pre-established electronic records retention policy and the efile is destroyed during the ordinary course of the destruction of files, before the organization should have known to stop the destruction process, then the organization may well be within the safe harbor of the rules. For this reason, it is important that schools establish a written records retention policy that addresses electronic documents and follow that policy.

Destroying Documents

The most exciting thing about document retention is actually the destruction of the documents that no longer need to be kept. Although a prolonged process, freeing up huge file rooms of generations of admissions files is ultimately a fulfilling task. However, schools need to have a document destruction routine in place so that the destruction takes place the same way, at the same time, each time. Confidential documents need to be shredded or burned, either by appropriate school personnel or an outside company that specializes in such work.

Each time large groups of documents are on the docket to be destroyed; a point person who is aware of all document destruction should be notified. This is particularly important in light of the new document destruction law enacted through Sarbanes Oxley. Section 1519 makes it a crime knowingly to destroy a document with the intent to obstruct or influence "the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . . or in relation to or contemplation of any such matter or case." This is an extremely broad statute that can trigger a variety of concerns relating to what may seem to be a pretty innocuous document destruction issue. Generally, the point person to whom future document destructions are reported should be in a position to know if there are any potential issues that may be on the horizon. A good example of this circumstance is if the school is aware of a potential EEOC complaint and some personnel related documents are up for destruction.

Implementing a Records Retention System

- A. Make a List of the Documents Routinely Created
 - a. Each office / department
 - b. Electronic or Paper
 - c. Technology group should report on how long electronic documents (both actual e-files and e-mail) are maintained, and how long it may be practical to do so in various formats.
- B. Check with Your School's Attorney
 - a. Statute of limitations for various records in your state
 - b. Student records requirements for your state
 - c. General overview of your eventual document retention and destruction plan
- C. Check with Your School's Accountant / Auditor
 - a. These individuals are also priceless when it comes to input on document retention. They may have helpful input on both the front and back end of your planning.
- D. Name a Point Person / Office for Document Destruction Notification

- a. Create a process that flows through this person or office at all times
 - b. Identify the individual in charge of the electronic archiving and destruction of documents
- E. Train Staff
 - a. Implementing new policies and systems does not happen overnight, and document retention is not the most scintillating topic, so this may take more time. However, getting everyone on board early will help the process.
- F. Routinely review the timetables and practices in effect.
 - a. Schools should review both their retention schedules and processes every few years to ensure that nothing substantial has changed that would impact the way records are handled.

