

Business/Non-Instructional Operations

Printing and Duplicating Copyrighted Material

Photocopying, Computer Software Duplication, and Videotaping for Education Purposes

This policy is intended to mandate restrictions on illegal violations of the fair use doctrine so as to ensure that teacher behavior within these areas of the instructional process is legal and ethical.

The Board of Education recognizes that it is illegal for anyone to duplicate copyrighted printed, audio or visual materials, and computer software unless copying falls within the bounds of fair use. Any duplication of copyrighted materials by District employees, therefore, must be done with permission of the copyright holder or within the bounds of “fair use” as described below. Appropriate administrative regulations shall provide guidelines for employee compliance with this policy.

1. Copyright Law

“Congress shall have the power to promote the progress of science and the useful arts by securing to authors and inventors for limited times the exclusive right to their writings and inventions.” (Article I., Section 3, U.S. Constitution)

The following exclusive rights are enumerated by law:

- a. To reproduce the copyrighted work...;
- b. To prepare derivative works based upon the copyrighted work;
- c. To distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- d.Perform the copyrighted work publicly; and
- e.To display the copyrighted work publicly (17USC106).

2. Fair Use Doctrine

In describing the purpose of “fair use,” Congress specifically mentions education and permits certain uses of copyrighted material without the copyright holder’s permission provided that four criteria are used to consider when determining if the classroom use is “fair.” These four criteria are:

- a. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- b. The nature of the copyrighted work;
- c. The amount and substantiality of the portion used in relation to the copyrighted works as a whole; and
- d. The effect of the use upon the potential market for or value of the copyrighted work (17USC107).

Business/Non-Instructional Operations

Printing and Duplicating Copyrighted Material

Photocopying, Computer Software Duplication, and Videotaping for Education Purposes (continued)

The exclusive rights and fair use doctrine are the same for computer software, and copyrighted television programs as is for other copyrighted works.

(cf. 6162.6 - Use of Copying Devices)

Business/Non-Instructional Operations

Office Services/Records and Reports

Electronic Communications Use and Retention

This policy applies to the retention, storage, and destruction of electronic information and records within the District and does not supersede any state or federal laws, or any other District policies regarding confidentiality, information dissemination, or standards of conduct. Generally, electronic information should be used only for legitimate District business; however, brief and occasional e-mail messages may be sent and received pursuant to policy 4118.4/4218.4 and policy 4118.5/4218.5.

Electronic communications is transmittal of a communication between two or more computers or electronic devices, whether or not the message is converted to hard copy format, whether or not the message is viewed upon receipt or stored for later retrieval, and whether or not the transmittal is through a local, district or global computer network.

Electronic communications, including records made with other software and sent in e-mail, which are sent or received by the Board of Education or District employees pertaining to the business of the schools may be subject to public disclosure and inspection as public records under the Connecticut Freedom of Information Act and discovery in litigation as evidence in support of a claim. The Superintendent or his/her designee shall be responsible for implementing administrative regulations concerning the placing of a “hold” on electronic and paper records that may reasonably be anticipated to be subject of discovery in the course of litigation.

Use of electronic mail should conform to the same standards of judgment, propriety and ethics as other forms of school business-related communications.

The District is obligated to respect and, where necessary, to protect confidential data. The Board recognizes technical and legal limitations may restrict the District’s ability to protect confidentiality. Electronic communication is recognized as similar to a paper document for legal purposes. The Board understands it may be legally compelled to disclose electronic information including business or personal use of e-mail to community members in accordance with the Freedom of Information Act. Such information will be disclosed to governmental authorities or, in the context of litigation, to other third parties. E-mail may also contain information that should be retained in the official records of the District.

Electronic communication on District computers or electronic communication systems shall be retained only as long as necessary. The same record retention policy that applies to paper records applies to electronically stored information, including e-mail communications. Therefore, like paper records, the content and function of an electronic record, including e-mail communications, determines the retention period for that document and will be retained in accordance with the *Management and Retention Guide for State and Municipal Government Agencies* (General Letter 98-1) administered by the Connecticut State Library, Public Records Administrator.

Business/Non-Instructional Operations

Office Services/Records and Reports

Electronic Communications Use and Retention (continued)

In addition to the Board's retention guidelines, all District employees have a duty to preserve all paper records and electronic information, including records and electronic information that might otherwise be deleted or destroyed, that relate to any matter that is currently in litigation or may be anticipated to involve litigation. The Superintendent or his/her designee shall develop administrative regulations to preserve such records and electronically stored information that could potentially be related to any matter currently in litigation or which may be anticipated to result in future litigation.

The responsible authority for the maintenance and security of records shall be the Superintendent of Schools or his/her designee. The Superintendent shall designate a Records Custodian who will be responsible for implementation of District policies and administrative regulations pertaining to the preservation of paper records and electronically stored information, including e-mails and to respond to requests to inspect electronic mail pursuant to the Freedom of Information Act.

When security of certain financial, student, and other confidential information must be maintained, employees shall take appropriate security measures such as the use of personal identification passwords and/or encryption codes. Employees shall safeguard the confidentiality of passwords and codes and shall take reasonable steps to insure that computer terminals do not become available for unauthorized use.

Users are responsible for appropriate access to and use of electronic mail systems. Illegal or improper use of the electronic mail systems, including, but not limited to, pornography, obscenity, harassment, solicitation, gambling and violating copyright or intellectual property rights are prohibited.

Use of the electronic mail systems for which the District will incur an expense without written permission of a supervisor is prohibited.

Violation of this policy shall constitute just cause for appropriate disciplinary action.

(cf. 4118.4/4218.4 – Electronic Monitoring)

(cf. 4118.5/4218.5 – Acceptable Computer Network Use)

(cf. 9327 – Electronic Mail Communications)

(cf. 9330 – Board/School District Records)

(cf. 5125 – Student Records; Confidentiality)

Business/Non-Instructional Operations

Office Services/Records and Reports

Electronic Communications Use and Retention (continued)

Legal Reference: Connecticut General Statutes
 The Freedom of Information Act.
 1-15 Application for copies of public records.
 1-200 Definitions.
 1-210 to 1-213 Access to public records.
 1-211 Access to computer stored records.
 1-214 Public contracts as part of public records.
 1-225 to 1-240 Meetings of public agencies.
 7-109 Destruction of documents.
 10-15b Access of parent or guardians to student's records.
 10-154a Professional communications between teacher or nurse & student.
 10-209 Records not to be public.
 10-221 Boards of education to prescribe rules.
 11-8a Retention, destruction and transfer of documents.
 11-8b Transfer or disposal of public records. State Library Board to adopt regulations.
 31-48d Employers engaged in electronic monitoring required to give prior notice to employees.
 46b-56 (e) Access to Records of Minors.
 Connecticut Public Records Administration Schedule V - Disposition of Education Records (Revised 1983).
 General Letters 98-1, 96-2 and 2001-1 of the Public Records Administrator Record Retention Schedules Towns, Municipalities, and Boards of Education.
 Federal Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended, added by section 513 of P.L. 93-568, codified at 20 U.S.C.1232g.).
 Department of Education 34 C.F.R. Part 99 (May 9, 1980 45 FR 30802) regs. implementing FERPA enacted as part of 438 of General Education Provisions Act (20 U.S.C. 1232g) parent and student privacy and other rights with respect to educational records, as amended 11/21/96.
 Rules 34 and 45 of the Federal Rules of Civil Procedure (2006 Amendments).
 USA Patriot Act of 2001, PL 107-56, 115 Stat. 272, Sec 507, 18 U.S.C. §2332b(g)(5)(B) and 2331.
 PL 107-110 "No Child Left Behind Act of 2001" Sections 5208 and 9528.

Policy adopted: May 13, 2009

ANDOVER PUBLIC SCHOOLS
 Andover, Connecticut

Business/Non-Instructional Operations

Office Services/Records and Reports

Electronic Communications Use and Retention

Retention Guidelines

These regulations provide guidance in the implementation of policy #3543.31 regarding the retention of electronic records and information. These regulations supplement and do not replace District policy and regulations pertaining to student records (#5125).

Content and function of electronic messages determine the message's retention period. The determination of record status shall be on the same basis as is used for paper records. The District will comply with all of the minimum standards set forth in the *Municipal Records Retention Schedule, M8* of the Connecticut Records Administration. Electronic messages sent and received by public officials fall within three broad categories:

1. Transitory messages, including copies posted to several persons and casual and routine communications similar to telephone conversations.
2. Public Records with a less than Permanent Retention Period; and
3. Public Records with a Permanent or Permanent/Archival Retention Period.

Retention guidelines for each of these categories are as follows:

- **Transitory Messages-No Retention Requirement**
 - Public officials and employees receiving such communications may delete them at will immediately without obtaining the approval of the Office of the Public Records Administration and State Archives or the District's Custodian of Records. Transitory messages are not essential to the fulfillment of statutory obligations or to the documentation of district functions.
 - Examples include, but are not limited to:
 - Messages that address routine administrative, curricular and co curricular matters, announcements of meetings, schedules of events, etc.
 - Messages that take the place of informal discussion and which if they were printed would not be retained in school records.
 - Messages that transmit generic information and are not specific to a student's educational program.
 - Messages that address personal matters unrelated to the District.
 - Voice mail is transitory in nature and may be deleted at will. However, there are times when such messages may require a longer retention period, such as in the case where the message may be potentially used as evidence in a trial, such as a bomb threat, or in some other illegal activity. Voice mail may also be subject to the discovery process in litigation.

Business/Non-Instructional Operations**Office Services/Records and Reports****Electronic Communications Use and Retention****Retention Guidelines (continued)**

- **Less than Permanent Messages-Retention Requirement**

- Follow retention schedule for equivalent hard copy records as specified in the *Municipal Records Retention Schedule, M8* of the Connecticut Records Administration, retention schedule. The record must be in hard copy or electronic format, which can be retrieved and interpreted for the legal retention period.
- When there is a doubt about the retrievability of an electronic record over the life span of that record, the record should be printed out.
- The District may delete or destroy the records only after making and retaining a hard copy or after receiving signed approval from the Office of the Public Records Administrator.
- Examples include, but are not limited to:
 - Messages that address significant aspects of a specific student's educational program including, but not limited to, health, discipline, special education program, interaction with DCF, and communication with parents relating to specific aspects of the student's interaction with the school district.
 - Messages that address and/or provide information used in making policy decisions, concerning curricular or co-curricular activities, personnel actions, or that relate to the business transactions of the District.
 - Messages that address activities of significant interest in the community relating to the District.

- **Permanent or Permanent /Archival-Retention Requirement**

- Records must be retained permanently.
- Retention may be in the form of a hard-copy printout or stored on microfilm that meets microfilm standards issued in General Letter 96-2 of the Public Records Administrator. The information must be eye readable without further direction.
- Examples include, but are not limited to:
 - Policy and Procedures manuals
 - Physician's standing orders
 - Nursing protocols

Business/Non-Instructional Operations

Office Services/Records and Reports

Electronic Communications Use and Retention

Retention Guidelines (continued)

Public officials and District employees are advised that e-mail messages sent as part of their workdays are not “private” but are discoverable communications and may be subject to FOI. Since messages may be retained at different locations or levels of the system, users must remember that their communications can be retrieved during formal discovery processes.

Discretion, therefore, is an important consideration when using technology to send, record, and/or retain communications.

Maintenance/Retention of Electronic Mail

Records created using an e-mail system and electronically stored information will be saved/archived by the District for their required retention period by one of the following methods approved by the District’s Record’s Custodian:

1. Print message or record and store in appropriate hard copy file.
2. Place in computer folders and save on hard drive.
3. Save to removable disk which is then stored in an appropriate location.
4. Transfer to an automated records management software application.
5. Manage at the server by an automated classification system.

A review shall take place periodically, but at least annually, for the purpose of reviewing electronically stored information. The District’s Record Custodian and the District’s Technology Administrator are responsible for this review.

No system wide process for automatic deletion of electronic information will be implemented without notice to any individual who may have such information and each such individual will verify that they have reviewed and archived information that must be retained. Following this review, all e-mails and/or electronically stored information that have not been archived according to District policies and procedures shall be designated for deletion or archiving, and the affected District employees will be notified about the procedures to be followed to implement this process. The Records Custodian or his/her designee shall follow up with notified employees to ensure compliance.

In addition, the Records Custodian, in cooperation with the District Systems Administrator, shall ensure that any process for automatic deletion of electronic information from the system will not delete information stored in folders and/or system locations that have been designated as appropriate for archiving electronically stored information.

Business/Non-Instructional Operations**Office Services/Records and Reports****Electronic Communications Use and Retention (continued)****Holds on the Destruction of Paper Records and Electronic Information**

Upon receipt of notice that the District is involved in litigation as a party to a lawsuit, the District is issued a subpoena by a party to a lawsuit in which it is not a party, or if the District receives information that would lead a reasonable person to anticipate the possibility of litigation, the Records Custodian shall immediately take steps to ensure that paper records and electronically stored information related to the litigation or potential litigation are preserved from deletion or destruction. Action 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 the District’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 to be sent to the District Instructional Technology 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 the District’s Instructional Technology personnel to ensure compliance with the “litigation hold.”

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 District 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 shall reissue the “litigation hold” memorandum, as deemed necessary, and will ensure that the “litigation hold” memorandum is provided to new employees who may have access to relevant information. The Records Custodian shall ensure that all steps taken by the District to identify and preserve relevant information are documented.

Business/Non-Instructional Operations

Office Services/Records and Reports

Electronic Communications Use and Retention (continued)

(cf. 4118.4/4218.4 – Electronic Monitoring)
(cf. 4118.5/4218.5 – Acceptable Computer Network Use)
(cf. 9327 – Electronic Mail Communications)
(cf. 9330 – Board/School District Records)
(cf. 5125 – Student Records; Confidentiality)

Legal Reference: Connecticut General Statutes

The Freedom of Information Act.

1-15 Application for copies of public records.

1-200 Definitions.

1-210 to 1-213 Access to public records.

1-211 Access to computer stored records.

1-214 Public contracts as part of public records.

1-225 to 1-240 Meetings of public agencies.

7-109 Destruction of documents.

10-15b Access of parent or guardians to student's records.

10-154a Professional communications between teacher or nurse & student.

10-209 Records not to be public.

10-221 Boards of education to prescribe rules.

11-8a Retention, destruction and transfer of documents.

11-8b Transfer or disposal of public records. State Library Board to adopt regulations.

Business/Non-Instructional Operations

Office Services/Records and Reports

Electronic Communications Use and Retention

Legal Reference: Connecticut General Statutes (continued)

31-48d Employers engaged in electronic monitoring required to give prior notice to employees.

46b-56 (e) Access to Records of Minors.

Connecticut Public Records Administration Schedule V - Disposition of Education Records (Revised 1983).

General Letters 98-1, 96-2 and 2001-1 of the Public Records Administrator Record Retention Schedules Towns, Municipalities, and Boards of Education.

Federal Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended, added by section 513 of P.L. 93-568, codified at 20 U.S.C.1232g).

Department of Education. 34 C.F.R. Part 99 (May 9, 1980 45 FR 30802) regs. implementing FERPA enacted as part of 438 of General Education Provisions Act (20 U.S.C. 1232g) parent and student privacy and other rights with respect to educational records, as amended 11/21/96.

Rules 34 and 45 of the Federal Rules of Civil Procedure (2006 Amendments).

USA Patriot Act of 2001, PL 107-56, 115 Stat. 272, Sec 507, 18 U.S.C. §2332b(g)(5)(B) and 2331.

PL 107-110 “No Child Left Behind Act of 2001” Sections 5208 and 9528.

Regulation approved: May 13, 2009

ANDOVER PUBLIC SCHOOLS
Andover, Connecticut

A sample notice regarding “litigation holds.”

NOTICE REGARDING A LITIGATION HOLD
CONCERNING PAPER AND ELECTRONIC DOCUMENTS

This memorandum places a “litigation hold” on all documents, both paper and electronically stored information, concerning **[identify the matter that is subject to the litigation hold]**. Materials that fall under this litigation hold include, but are not limited to, e-mail, word processing documents, spreadsheets, databases, calendars, voice mail, internet usage files and network access information **[the school district can be more specific in the identification of documents if that information is available]**. All District employees are to immediately suspend any and all document destruction, including any scheduled document destruction or electronic information deletion programs, for any materials that might fall within the parameters of this memorandum. If you have questions as to what materials are subject to the litigation hold, you are to contact the Superintendent.

If in possession of materials subject to this litigation hold you shall take steps to preserve and store these materials. Paper documents are to be copied and segregated in a separate hard copy file. Electronic information is to be stored in computer folders and saved on the network drive and/or saved to a removable disk which is to be clearly marked and stored in a safe and appropriate location **[the school district can develop its own set of storage guidelines for identified materials]**. Under no circumstances are you to destroy or delete materials, documents or electronic information that might be subject to this litigation hold without the written permission of the Superintendent.

You must give prompt attention to the issues addressed in this memorandum, specifically the responsibility to identify and preserve documents and electronic information concerning **[the matter that is subject to the litigation hold]**. Serious consequences may result from the failure of District employees to take immediate and reasonable precautions to properly preserve information. Therefore, you must acknowledge your receipt and understanding of this memorandum in writing or via e-mail.

The restrictions put into place by this memorandum are ongoing until you receive notice in a memorandum from the Superintendent that the litigation hold is no longer in effect. You are encouraged to direct any questions concerning this memorandum to the Superintendent.