

PART 185, 8NYCRR (REGULATIONS OF THE COMMISSIONER OF EDUCATION)

Disclaimer

as effective July 29, 2020

§ 185.1 Definitions.

As used in this Part:

(a) *Records management officer* means the local officer charged with the responsibility to develop and coordinate the local records management program in accordance with section 57.19 of the Arts and Cultural Affairs Law.

(b) *Records management program* means an ongoing, coordinated, administrative effort to systematically manage a local government's records from initial creation to final disposition. A records management program includes, but is not limited to: the legal disposition of obsolete records; the identification and administration of and access to records of enduring value; filing and indexing systems; the use of computer or other technology in information creation, manipulation and storage; the storage and management of inactive records no longer needed for the conduct of day-to-day business in the office; the microfilming of records; the oversight of the creation and use of forms, correspondence and other records and the provision for protecting vital records.

(c) *Records of enduring value (archival records)* means those records worthy of permanent retention and special administration because of the importance of the information they contain for continuing administrative, legal, or fiscal purposes, or for historical or other research.

(d) *Custody* means the control of, and responsibility for, records owned by the local government, regardless of their location.

(e) *Vital records* means those records of a local government that are essential to its continuing operation. Vital records is not used in this context to mean official birth, death, or marriage records which are State records and duplicate those held by the State.

(f) *State Archives* means the New York State Archives, the organizational unit within the State Education Department which has responsibility to administer the local government records management program.

(g) *Electronic records* means those records stored on electronic media that can be read or processed only by means of a computer.

(h) *Electronic information system* means a computer-based system that supports the acquisition, creation, storage, processing, management of, and/or access to records.

§ 185.2 Designation and responsibilities of records management officers.

(a) *Designation of records management officer.*

(1) Each local government, except towns, villages and fire districts, shall designate one local officer to be records management officer.

(2) The governing body of each local government, except towns, villages, fire districts, shall notify the commissioner of the name, title or position in the local government, and contact information of the designated records management officer within one month of such designation.

(3) Each local government established, or notified by the commissioner that it constitutes a local government (as defined in section 57.17, Arts and Cultural Affairs Law), after April 30, 1989 shall designate a local officer as records management officer within 60 days of its establishment, or after the commissioner's notification. The governing body of each local government established, or notified by the commissioner that it constitutes a local government, after April 30, 1989 shall notify the commissioner of the name, title or position in the local government, and contact information of the designated records management officer within one month of such designation or notification.

(4) Municipal housing authorities and the Utica Transit Authority, the disposition and reproduction of whose records are subject to sections 59 and 60 of the Public Housing Law and sections 68 and 69 of the Transportation Law respectively, shall not be required to designate a records management officer pursuant to this section.

(5) Bronx, Kings, New York, Queens and Richmond counties shall not be required to designate a records management officer pursuant to this section.

(6) Community school districts located in New York City shall not be required to designate a records management officer pursuant to this section.

(7) The governing body of each town, village or fire district, shall notify the commissioner of the name and contact information of the town clerk, village clerk or fire district secretary, respectively, within one month of that person's taking office.

(b) *Vacancy in the position of records management officer.*

(1) Whenever a vacancy shall occur in the position of records management officer, a replacement shall be designated within 60 days.

(2) Within one month of such designation, the governing body of each local government shall notify the Commissioner of Education of the records management officer's name, title or position in the local government, and contact information.

(c) *Duties of the records management officer.* The records management officer shall initiate, coordinate and promote the systematic management of the local government's records in consultation and cooperation with other local officers. Duties of the records management officer shall include, but need not be limited to the following:

(1) recommending and guiding the development and application of records management practices for local government employees;

(2) coordinating the continuous disposition of obsolete records in accordance with legal requirements through the adoption and use of records retention and disposition schedules;

(3) recommending to the commissioner suitable retention periods for any records not covered by records retention and disposition schedules;

(4) coordinating the storage and management of inactive records, those no longer needed for the conduct of the day-to-day business of the local government;

(5) reviewing and making recommendations on requests for records storage equipment;

(6) participating in the development of, reviewing proposals for, or coordinating any micrographics or electronic information systems; and

(7) organizing or coordinating a program for the identification, administration and use of records of enduring value.

§ 185.3 Local Government Records Advisory Council.

(a) *Membership of the Local Government Records Advisory Council.*

(1) The council shall consist of 27 members selected with consideration to achieving balanced representation and diversity.

(2) In addition to selected members, the Commissioner of the New York City Department of Records, a representative of the chief administrative judge, and the New York City Clerk are permanent, statutory members of the Council. The New York City Clerk is a non-voting member of the Council.

(3) Members shall be appointed for four-year terms provided that the initial appointment to the council, commencing September 1, 1988 shall be for one, two, three or four years. Terms shall be staggered so that approximately an equal number of the council shall be appointed in any subsequent year.

(4) The commissioner shall designate the chairperson of the Local Government Records Advisory Council. The chairperson shall serve a two-year term and may be reappointed.

(5) Members of the council shall serve without compensation but shall be reimbursed for necessary travel expenses.

(b) *Duties of the Local Government Records Advisory Council.* The Local Government Records Advisory Council shall meet at least three times each year and shall have the following responsibilities:

(1) reviewing and providing advice on proposed changes in state legislation, regulations and standards relating to local government records;

(2) reviewing and providing advice on local government records retention and disposition procedures and on the records retention and disposition schedules for local governments;

(3) reviewing and advising on the development and delivery of State Archives services to local governments;

(4) encouraging organizations, groups and individuals to work for improved local government records management programs; and

(5) carrying out any other responsibilities assigned in statute.

(c) *Secretariat of the Local Government Records Advisory Council.* Government Records Services of the State Archives shall serve as secretariat of the Local Government Records Advisory Council, and the director of Government Records Services or a designee shall serve as its secretary.

§ 185.4 Development and use of records retention and disposition schedules.

(a) When establishing retention periods, the commissioner shall consider the following:

(1) the administrative, legal, fiscal, research, and historical value of the information contained in the records;

(2) their importance for documenting local government;

(3) their statewide significance;

(4) the requirements of State and Federal agencies;

(5) costs to local governments for maintaining the records; and

(6) any other requirements imposed by law.

(b) Once the commissioner has issued a schedule and the local government has reviewed and adopted the schedule by formal resolution of the governing body, the schedule shall be used on a continuing basis by local officers to dispose of records. Consent to use the schedule shall remain in effect until the local government rescinds its authorizing resolution, the commissioner's consent is withdrawn, or the schedule is superseded and replaced by the commissioner.

§ 185.5 Issuance of records retention and disposition schedules.

(a) The following records retention and disposition schedules issued by the Commissioner of Education prior to August 1, 2020, and adopted by resolution of the governing body of a local government, may continue to be used by that local government to legally dispose of records after August 1, 2020 in accordance with section 57.25 of the Arts and Cultural Affairs Law, until superseded pursuant to subdivision (b) of this section. All of the schedules are published by The University of the State of New York, The State Education Department, Albany, NY 12234, and are available at the State Archives, 9A47 Cultural Education Center, Albany, NY 12230:

(1) records retention and disposition schedule MU-1 (1988; rev. 2003), as set forth in section 185.11 of this Part and Appendix H of this Title, for cities, towns, villages and fire districts;

(2) records retention and disposition schedule MI-1 (1988; rev. 2006), as set forth in section 185.14 of this Part and Appendix K of this Title, for all local governments except those covered by records retention and disposition schedules CO-2, MU-1 and ED-1;

(3) records retention and disposition schedule ED-1 (1988; rev. 2004), as set forth in section 185.12 of this Part and Appendix I of this Title, for school districts, boards of cooperative educational services, teacher resource and computer training centers and county vocational education and extension boards;

(4) records retention and disposition schedule CO-2 (1990; rev. 2006), as set forth in section 185.13 of this Part and Appendix J of this Title, for records of counties.

(b) The following records retention and disposition schedule, issued by the Commissioner of Education in accordance with section 57.25 of the Arts and Cultural Affairs Law, shall be adopted no later than January 1, 2021 by the governing body of each affected local government. Upon adoption, such schedule shall supersede the retention and disposition schedules listed in subdivision (a) of this section. This schedule is published by The University of the State of New York, The State Education Department, Albany, NY 12234, and is available at the State Archives, 9A47 Cultural Education Center, Albany, NY 12230:

(1) Records retention and disposition schedule for New York local government records (LGS-1), as set forth in section 185.15 of this Part and Appendix L of this Title, is adopted for records of cities, towns, villages, fire districts, counties, school districts, boards of cooperative educational services, teacher resource and computer training centers, county vocational education and extension boards, and other local governments.

(c) Notwithstanding any other provision of this section to the contrary, a local government may adopt and use a records retention and disposition schedule or individual schedule items in lieu of or in conjunction with a schedule issued by the commissioner provided that the consent of the commissioner is obtained pursuant to this subdivision. The commissioner may grant such consent upon a finding that the local records retention and disposition schedule or schedule item(s) is substantially equivalent to the applicable schedule(s) issued by the commissioner or meets standards of the commissioner as specified in section 185.4 of this Part. Such consent shall remain in effect until the commissioner withdraws permission to use the schedule or the local government indicates it is no longer using the schedule.

§ 185.6 Special approvals for disposition of records.

(a) *Records not listed on a records retention and disposition schedule.* Records not listed on a records retention and disposition schedule shall not be disposed of without the approval of the commissioner. Whenever a local government record is identified as not being listed on a records retention and disposition schedule, the commissioner, in accordance with section 57.25(2) of the Arts and Cultural Affairs Law, will determine the minimum length of time the record needs to be retained and issue an amendment to all appropriate schedules.

(b) *Records damaged by natural or manmade disasters.* Local governments may apply to the commissioner to dispose of records whose retention periods have not expired in cases where those records have been damaged by natural or manmade disaster, and when the information contained in those records is substantially destroyed or obliterated or the records constitute a human health or safety risk. Those records may be disposed of following application to the commissioner and after the consent of the commissioner has been granted

(c) *Disposition of records predating 1910.* No local government may dispose of records predating 1910 without special approval of the commissioner. In determining whether such approval shall be granted, the commissioner shall consider whether the records for which disposition is sought substantially duplicate information contained in other records being retained, possess significant intrinsic value, have significant and enduring value for research and are in appropriate physical condition for use in research. This provision shall also apply to the disposition of original records predating 1910 which have been reproduced by microphotography or other means.

(d) *Disposition of employee disciplinary, investigative and performance evaluation records.* Notwithstanding any minimum retention period set forth in a records retention and disposition schedule issued by the commissioner pursuant to this Part, a local government may dispose of, or remove certain information from specified employee disciplinary, investigative and performance evaluation records, prior to the time when the appropriate minimum retention period has expired, when this disposition or removal is based on a provision of a collective bargaining agreement in effect between a local public employer and a public employee labor organization.

§ 185.7 Replacing original records with microforms or electronic images.

(a) *Negative microphotographic film.* When a microform will replace an original record having a legal minimum retention period of 10 years or longer and when the local government still must maintain it for at least 10 years to meet this requirement, or when the records being microphotographed are identified on a records retention and disposition schedule as having a permanent retention period, only a polyester-based black and white silver gelatin microform shall be used as the original camera negative film.

(b) *Preservation of the camera negative.* When a microform will replace an original record, the camera negative shall be used only to produce duplicate copies of the film. Once the duplicates have been made, the camera negative film must be placed in an offsite storage facility that meets standards established by the Commissioner of Education for security, fire protection and environmental control to ensure the preservation of the information on the microform.

(c) *Microforms to meet quality standards.* When a microform will replace an original record, the microform shall meet quality standards established by the commissioner for resolution and density to ensure that the film and copies made from it will be clear and legible and to ensure the long-term viability of the film.

(d) *Targeting and certification of microforms.* When a microform will replace an original record, the following measures must be taken to ensure access to the information contained on the microform, and the quality and legal admissibility of the microform itself:

(1) The records to be filmed shall be arranged and identified to ensure reasonable access to individual documents.

(2) Each discrete roll of original negative film and each discrete original negative fiche shall begin with a target identifying the records being filmed and certifying that the records are being filmed in the normal course of business. Each shall end with a signed declaration by the camera operator identifying the date of filming and the office for whom the film is being produced.

(3) In addition, each roll of film must have the following targets at the beginning of the roll: density target, resolution target and start target.

(4) In addition, each roll of film shall have an end target at the end of each roll.

(5) Where needed, roll film shall contain retake and correction targets.

(e) *Inspection of microforms.* A representative sample of all microforms shall be quality inspected to ensure that the film images meet quality standards set by the commissioner. Each batch of processed film shall be tested to ensure that processing chemicals which could cause image deterioration are washed from the film. Film and film images that do not meet standards must be reshot before the original document may be destroyed.

(f) *Digital images of public records.* Digital images of public records may be stored on electronic media, and such electronic records may replace paper originals or micrographic copies of these

records. In order to ensure accessibility and intelligibility for the life of these records, local governments must follow the procedures described in section 185.8 of this Part.

§ 185.8 Retention and preservation of electronic records.

(a) A local government shall ensure that records retention requirements are incorporated into any plan and process for design, redesign, or substantial enhancement of an information system that stores electronic records.

(b) A local government shall ensure that electronic records are not rendered unusable because of changing technology before their retention and preservation requirements are met. In the case of archival electronic records, a local government, in consultation with the State Archives, must determine that the records will remain usable and accessible by ensuring that the records are retained in currently available file formats and by creating adequate documentation of the records and their systems as defined in subdivision (c) of this section.

(c) A local government shall develop and maintain up-to-date documentation about all permanent or archival electronic records sufficient to:

- (1) specify all technical characteristics necessary for reading and processing the records;
- (2) identify all defined inputs and outputs from the system;
- (3) define the contents of the files and records;
- (4) determine restrictions on access and use;
- (5) understand the purposes and functions of the system;
- (6) describe update cycles and/or conditions and rules for adding information to the system, changing information in the system, or deleting information; and
- (7) ensure the ongoing retention of records by the local government.

(d) A local government shall prepare and store in a secure off-site facility copies of archival electronic records in order to safeguard against loss.

(e) For electronic media that contain permanent or archival electronic records, a local government shall institute maintenance procedures to:

- (1) verify that the media are free of permanent potentially damaging errors;
- (2) rewind under constant tension all tapes at least every two years;

(3) annually test a three percent statistical sample of all units of media to identify any loss of data and to discover and correct the causes of data loss;

(4) copy immediately onto new media any permanent or archival electronic records stored on media containing a significant number of errors or showing signs of physical degradation;

(5) copy all permanent or archival electronic records onto new media before the media are expected to fail and always before the media are 10 years old; and

(6) prepare external labels to identify each media unit, the name of the organizational unit responsible for the records, and the records title.

§ 185.9 Storage of records in non-local government facility.

Agreements for storage of local government records in facilities other than those owned or maintained by the local government shall meet criteria established by the commissioner and must be approved by the commissioner.

§ 185.10 Local government records management improvement grants.

(a) *Eligibility criteria.* To be eligible to apply for a grant pursuant to section 57.35 of the Arts and Cultural Affairs Law a local government shall have:

(1) designated a records management officer in accordance with section 185.2 of this Part. This requirement shall not apply to Bronx, Kings, New York, Queens and Richmond Counties, to municipal housing authorities, to the Utica Transit Authority nor to community school districts located in New York City; and

(2) adopted the applicable records retention and disposition schedule(s) issued by the commissioner pursuant to section 57.25 of the Arts and Cultural Affairs Law and section 185.5 of this Part. This requirement shall not apply to municipal housing authorities, to the Utica Transit Authority nor to community school districts located in New York City.

(b) *Applications.* The local government shall submit an application, including a proposed budget, in a form prescribed by the commissioner, and by the dates prescribed by the commissioner.

(c) The commissioner shall award grants to eligible applicants in accordance with the operational and expenditure plan adopted pursuant to section 57.35(4) of the Arts and Cultural Affairs Law and the criteria specified in section 57.35(2) of the Arts and Cultural Affairs Law. In addition, the commissioner shall consider the applicant's commitment to provide ongoing support for records management activities after the grant funding ends.

(d) *Types of projects.* Grants awarded in the 1993-4 State fiscal year and thereafter shall include but not be limited to the following activities:

- (1) conducting preliminary records surveys and developing plans for use of the results to guide dispositions of records and other aspects of records management program development;
- (2) conducting or participating in preliminary needs assessments and/or self-studies;
- (3) developing plans for the establishment and/or operation of programs for storing and managing inactive records;
- (4) planning the development of innovative information systems, with emphasis on the management of electronic records and retention of information with continuing research value;
- (5) developing plans for the establishment and/or operation of local government archival programs;
- (6) selectively reformatting records of important value;
- (7) selectively reformatting archival records;
- (8) preparing guides, indexes and other finding aids to make archival records available to the schools, including institutions of higher education, and the public;
- (9) developing and carrying out programs to make copies of archival records available to the schools, including institutions of higher education, and the public;
- (10) carrying out innovative projects to study and develop solutions to local governments records management and archival administration problems identified by the New York State Local Government Records Advisory Council; and
- (11) carrying out emergency projects to rescue or save endangered records.

(e) *Allowable expenditures.* Allowable expenditures for grants shall include:

- (1) project-related personnel costs;
- (2) the cost of retaining consultants to make studies or prepare reports and/or recommendations;
- (3) project-related travel costs, including travel to selected professional conferences and meetings directly related to the project;
- (4) the purchase of supplies and materials directly related to the project;
- (5) capital expenditures for equipment, including computers, directly needed for the projects;
- (6) the cost of producing publications directly related to the projects; and

(7) the cost of contractual services directly needed for the project.

§ 185.11 Records retention and disposition schedule MU-1, 1988; rev. 2003 (see Appendix H of this Title).

§ 185.12 Records retention and disposition schedule ED-1, 1988; rev. 2004 (see Appendix I of this Title).

§ 185.13 Records retention and disposition schedule CO-2, 1990; rev. 2006 (see Appendix J of this Title).

§ 185.14 Records retention and disposition schedule MI-1, 1988; rev. 2006 (see Appendix K of this Title).

§ 185.15. Records retention and disposition schedule LGS-1, 2020 (see Appendix L of this Title).