

*School Law FYI*

## ***Changes to Public School Records Retention Schedules***

BRIAN P. GOODMAN, MICHAEL J. JULKA | 05.24.23

School districts across the State recently received information from the Department of Public Instruction (DPI) regarding records retention which attempted to outline some changes and actions districts may need to consider. This has led to a lot of questions and confusion about what districts may need to do, when they need to act, and how they go about addressing these changes. Prior to this DPI email, many districts had given little thought to their records retention or records destruction. This FYI will attempt to explain what has happened and what steps districts should consider taking. There is likely not a one-size fits all solution, but this FYI will attempt to outline the issues and set forth possible options that districts could consider. This is also a suitable time for districts to make sure their records retention and destruction practices align with their policies and state law requirements.

### ***Background on Public Records Retention***

State law requires school districts to keep all school district records for not less than 7 years unless a shorter period of time is fixed by the Public Records Board (PRB). This state law makes a specific exception for pupil records, the retention of which is governed under the state pupil records law.

School boards are not required to adopt a records retention schedule. Moreover, if they decide to do so, they are not required to adopt a particular records retention schedule. However, in 2010 many boards adopted the DPI Records Retention Schedule for School Districts (2010 SDGRS) that was approved by the PRB. This

provided a variety of retention periods for most school district records. Districts had to adopt the 2010 SDGRS by policy or board action; have completed the appropriate notification form; and, have forwarded the form to the State Historical Society. The procedures found on the notification form must have been properly followed in order for the district to have received the legal benefit of the 2010 SDGRS. Board action alone was insufficient.

### ***2023 General Records Retention Schedule for School Districts***

Recently, PRB directed DPI to make a records schedule for school districts that did not overlap with other state records schedules. For example, the 2010 SDGRS covered a variety of human resources documents. However, PRB has a separate general Human Resources Records Schedule. Therefore, DPI was directed not to cover human resources records in its 2023 General Records Retention Schedule for School Districts (2023 SDGRS). PRB also directed DPI to not include a wide variety of other records that were covered by other statewide and local governmental agency record schedules. To learn more about the various state and local records retention schedule, [view the Statewide General Records Schedules](#) and [the Local Unit General Records Schedules](#). Additionally, the 2023 SDGRS also eliminates multiple series of prior records categories which simply no longer exist.

The result of PRB's direction to DPI is that the 2023 SDGRS covers fewer school district records than the 2010 SDGRS covered. In response, DPI shared a "crosswalk" document with districts that shows which records covered under the 2010 SDGRS are now covered by another records schedule. School boards would have to adopt, in whole, or at least in part, the portion of as many as 10 other schedules corresponding to the 2010 SDGRS to fill the gap created by the 2023 SDGRS. [This crosswalk](#) has been electronically updated since it was initially sent out to districts and now includes the retention period for the record listed in the corresponding portion of the other records retention schedule.

Complicating the issue further, the 2010 SDGRS was automatically replaced by the 2023 SDGRS. Therefore, boards which adopted the 2010 SDGRS do not need to do anything to adopt the 2023 SDGRS. However, this also means that school boards that adopted the 2010 SDGRS cannot rely on the records schedules in the 2010 SDGRS to destroy records because some of those records are not included in the 2023 SDGRS. Instead, school districts should generally hold off on the destruction of those records until the district acts on one of four options outlined in the section below. There is no explicit deadline for taking one of these actions. However, until some action is taken, districts will be limited in their ability to destroy certain records.

## ***Four Ways to Respond to the 2023 SDGRS***

Each school district should determine whether it currently has a retention schedule that has been approved by PRB. This may help you determine which option is best for your district. If a district is unsure as to whether such an approved schedule exists, the district should review its board policies and minutes, or contact the State Historical Society for confirmation. **If a district confirms that its approved records retention schedule is the 2010 SDGRS, it should consider the following four options in response to the DPI issuance of the 2023 SDGRS:**

### **OPTION 1: THE SCHOOL BOARD ADOPTS ONLY PARTS OF THE RECORDS SCHEDULES LISTED IN THE GRS CROSSWALK OTHER THAN THE 2023 SDGRS**

If chosen, the district then has to complete the Notification of General Records Schedule Adoption for each of the other schedules and select “Opt In with Revisions.” The district has to list the specific record retention series titles and numbers that the district is using from that schedule. (Or it could do the opposite and list the names and numbers of the series for which the district is NOT adopting; the forms allow for either option). A potential detrimental factor here is that this will complicate the process of adopting the schedules. However, if districts work carefully with legal counsel, this can be done compliantly.

### **OPTION 2: THE SCHOOL BOARD ADOPTS THE FULL VERSION OF ALL THE RECORDS SCHEDULES LISTED IN THE GRS CROSSWALK OTHER THAN THE 2023 SDGRS**

To do so, the school board should approve each of those records schedules. Then, the district has to complete the Notification of General Records Schedule Adoption for each of the other schedules and select to “Opt In” to the entire schedule. Some of these other schedules reference documents that a school might never create or possess. Therefore, this option constitutes a broad approach whereby boards will have, in practice, adopted a large quantity of record schedules, only some of which are relevant to the district. Additionally, some of the various schedules might overlap with respect to a certain record, creating a situation where the district will have to be careful and seek legal counsel before destroying a certain type of record to ensure compliance. Given the large quantity of schedules the district has adopted, it could also be hard, in practice, to administer records retention under this approach.

However, the fact that particular records are identified on a schedule does not require districts to actually have such records.

### **OPTION 3: A SCHOOL BOARD COULD CREATE ITS OWN RECORDS RETENTION SCHEDULE**

By law, each individual district can request that the PRB approve a records retention schedule that uniquely reflects the district's records retention policy goals. This is probably the most complicated option and will take the most time but allows for the most local control by a school district. This should be done in consultation with legal counsel due to the complexity of the process and product.

### **OPTION 4: A SCHOOL BOARD COULD ADOPT A POLICY THAT ALL RECORDS MUST BE MAINTAINED FOR 7 YEARS, EXCEPT FOR PUPIL RECORDS WHICH WILL BE RETAINED CONSISTENT WITH STATE PUPIL RECORDS LAW**

While this might seem like the simplest option, there are potential issues with this approach. Seven years is a long time to maintain and store records in either physical or electronic form. As records shift to electronic form, more and more records are being created. While electronic storage is less expensive than it has been in the past, there is a point at which the volume of storage needed might exceed a district's budget for storage.

### ***Records Destruction***

Before destroying any records, regardless of which records schedules the school board adopts, a district is required to give the State Historical Society at least 60 days written notice so it can determine if any of those records should be preserved. The State Historical Society can grant permission for a district to destroy records before the end of the 60-day period.

Additionally, districts should never destroy documents that are subject to a request for inspection (such as under the Wisconsin Public Records Law), relevant to an audit, or subject to a subpoena. Additionally, records should not be destroyed if they might be relevant to any pending or threatened litigation (sometimes referred to as documents "under a litigation hold").

These concerns might lead some districts to decide to just hold onto most of their records. However, if records are retained beyond when they could be destroyed under a records retention schedule, the district will likely have to produce them in

response to a Wisconsin Public Records Law request, and possibly during a lawsuit. Lawfully destroying records in accordance with an approved retention schedule allows districts to maintain the records they need and to destroy those records that are no longer needed. It is a balanced approach that incorporates consistency and practicality.

## ***Conclusion***

If a district's school board adopted and received approval for the 2010 SDGRS, it is automatically replaced by the 2023 SDGRS, and the district should proceed accordingly with next steps.

If a district has no current approved retention schedule, it should consider the 2023 SDGRS and additional schedules (in whole or in part) for approval.

If a district has an approved individualized retention schedule, it is unaffected by the adoption of the 2023 SDGRS. However, the district may wish to review the 2023 SDGRS for updated information regarding record identification and record retention.

The 2023 SDGRS provides an opportunity for districts to carefully evaluate its current approach to records retention and take steps to implement a comprehensive and legally compliant approach to records retention and destruction.

If your district has questions about records retention or destruction, please contact the authors of this article or any member of the Boardman Clark School Law Practice Group.

DISCLAIMER: Boardman & Clark LLP provides this material as information about legal issues and not to give legal advice. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.

---

## ***Primary Authors***



**Brian P. Goodman**  
(608) 283-1722



**Michael J. Julka**  
(608) 286-7238

## ***School Law Practice Group Members***

**Brian P. Goodman**  
(608) 283-1722

**Steve Zach**  
(608) 283-1736

**Tess O'Brien-Heinzen**  
(608) 283-1798

**Daniel T. Fahey**  
(608) 286-7216

**Michael J. Julka**  
(608) 286-7238

**Richard F. Verstegen**  
(608) 286-7233

**Matthew W. Bell**  
(608) 286-7239

**Eric B. Hagen**  
(608) 286-7225

**William L. Fahey**  
(608) 286-7234

**David P. Weller**  
(608) 286-7235

**Christopher T.  
Schmidt**  
(608) 286-7157

**Sarah Ghazi-Moradi**  
(608) 286-7165

**Eileen A. Brownlee**  
(608) 822-3251

**Jennifer S. Mirus**  
(608) 283-1799

**Sherrice Perry**  
(608) 286-7242

**Douglas E. Witte**  
(608) 283-7529

**Rhonda R. Hazen**  
(608) 283-1724