

RETENTION OF RECORDS GUIDELINES

1. INTRODUCTION

- 1.1 While there is an understandable reluctance to keep filing cabinets full of old records it is important to realise that some records are required to be kept by legislation and they may be used in evidence in litigation or criminal proceedings.
- 1.2 The increasing amount of civil claims being lodged is placing more emphasis on the necessity to retain records. Present trends for claims include; failure to diagnose dyslexia; “educational negligence”; bullying injuries to children; and employees’ stress related claims.
- 1.3 Under the Limitation Act 1980, personal injury actions must be commenced within three years of the injury occurring. This appears to give a clearly defined time to keep records associated with an injury. However, for some complaints e.g. asbestosis and noise damage, the employee may not realise he or she has contracted it until several years after the exposure. Claims for the failure to recognise a condition such as dyslexia for example, could also fall under this category. Retention of information is therefore crucial to the defence.
- 1.4 Very great care must be taken in compiling records. They should be accurate and when not factually verifiable, based upon sound professional knowledge and judgement.
- 1.5 Under the Data Protection Act 2018 (“DPA 2018”), the Trust is responsible for ensuring that the collation, retention, storage and security of all personal information they produce and hold meets the provisions of the DPA 2018 as outlined under the Trust’s Data Protection Policy.

2. EDUCATION RECORDS

- 2.1 Governing bodies of Trusts are required to have arrangements for keeping and updating a record of each registered student’s academic achievements, skills and abilities, and progress in Trust.

The starting point for defining an education record is The Education (Trust Records) Regulations, 1989 (Statutory Instrument No 1261). The Regulations were accompanied by a Circular with the same title (Circular 17/89, 27 July 1989).

Education records include information about pupils (and former pupils):

- processed by, or on behalf of, the governing body or a teacher; and
- originating from or supplied by teachers or other employees to the school.

The most significant features are:

- curricular record has to be kept for every student and it has to be updated annually.
- Trusts are expected to keep “other educational records” which may relate, for example, to exclusions.
- all information which one member of staff passes to another is a part of the child’s record. Only notes, which a teacher keeps for his/her own use, are not part of the record.
- Trusts have to disclose the records to an entitled person unless they fall into one of the strictly defined exempt categories.
- ‘entitled persons’ are parents (if the student is under 16); parents or the student if the student is 16 or 17; the student him/herself if he/she is over 18.
- an entitled person may ask for part of a record to be amended or deleted. If the Trust disagrees, the entitled person may add his/her own note to the record.
- the record must be passed to the student’s next Trust/college when the Head/Governors request it.
- the exemptions to disclosure include those circumstances where disclosure may cause serious harm to the student or any other person, information about child abuse and information from a non-LA employee.
- the Regulations apply only to manual records. The Data Protection Act covers records held on computer.

Schools must also keep curricular records on every pupil. Curricular records form a ‘subset’ of a pupil’s educational record. They are a formal record of a pupil’s academic achievements, skills, abilities and the progress they make at a school. They must be updated once a year.

2.2 What Information Should be Held?

The information which must be recorded for individual students is set out in Section 537A of the 1996 Education Act and regulations made in accordance with that section, namely the Education (Individual Students’ Achievements) (Information) Regulations 1993 and the Education (Individual Students’ Achievement) (Information) (Amendment) Regulations 1998.

3. DISPOSAL OF RECORDS

3.1 Where records have been identified for destruction, they are always to be shredded, either in house or with a specialist shredding company.

3.2 A list of records that have been destroyed is to be maintained in the following format :

- File Reference or other unique identifier
- File title or brief description
- Number of files
- The name of the person authorising disposal

3.3 Where records have been identified as being worthy of permanent preservation, they are to be transferred to the Archives. A similar record to that in 3.2 is also to be maintained.

4. STORAGE OF RECORDS

4.1 Physical storage of records is important and care is always to be taken to safeguard the integrity of all archived records. It is also important how the record is generated in the first place. Using a log book rather than a form for each individual record could reduce the volume of paper produced.