

SUMMARY OF CHANGES

To better assist local government agencies in the retention, destruction, and transfer of their public records, Washington State Archives is continuing to implement improvements to records retention schedules.

All *previously approved* disposition authorities for records that are covered by Version 8.1 are **revoked**, including those listed in all general **and** agency unique retention schedules. Agencies should take measures to ensure that the retention and disposition of public records is in accordance with current approved records retention schedules.

This revision guide has been prepared as a helpful tool for school and educational service district staff. It highlights changes to records retention requirements as approved by the Local Records Committee on December 18, 2014 pursuant to RCW 40.14.070. **This guide is NOT the records retention schedule, itself.** Rather, it is provided as a “crosswalk” to be used while transitioning from the previous version (8.1) to the current approved version (8.2).

Changes include:

- ✓ 3 records series revised for clarity and user ease:
 - SD2014-020, *Employee Sexual Misconduct Accusations/Investigations – Sustained and Unfounded*; and,
 - SD2014-021, *Employee Verbal Abuse/Physical Abuse Accusations/Investigations – Sustained and Unfounded*.
 - SD2012-071, *Heath Care/Services Provided to Students*
- ✓ 1 correction made to the *Revision #* for Disposition Authority Number (DAN) SD51-04-05. (This alteration is NOT considered a revision for numbering purposes.)

Details provided in table(s) on pages 2-4.

For assistance and advice in applying records retention schedules,

please contact Washington State Archives at:

recordsmanagement@sos.wa.gov

or contact your Regional Archivist.

REVISED RECORDS SERIES

The records series listed below have been revised; changes and rationale are provided.

DAN	Title	Previous Version 8.1 Retention	Proposed Version 8.2 Retention	Version 8.2 Change and/or rationale
SD2014-020 p.25	Employee Sexual Misconduct Accusations/ Investigations – Sustained and Unfounded	Retain until subject of allegation(s) reaches age 80 <i>or</i> <u>If subject of allegation(s) dies prior to reaching age 80, retain</u> for 30 years after date of death <i>or</i> 30 years after date of separation from employment, <i>whichever is earlier then</i> Destroy.	Retain until subject of allegation(s) reaches age 80 <i>or</i> <u>If subject of allegation(s) dies prior to reaching age 80, retain</u> for 30 years after date of most recent accusation(s) & completion of investigation/decision not to investigate or 30 years after date of separation from employment, <i>whichever is earlier then</i> Destroy.	Language modified so that if the accused dies before reaching the age of 80, records relating to accusations and/or investigations (including decisions not to investigate) are retained for 30 years after the most recent accusation(s)/investigation(s) OR 30 years after the accused separated from employment with the district – <i>whichever is earlier.</i> Also, “Note” removed referencing employee’s Personnel File, GS50-04B-06. Washington State Archives recommends retaining these records separately from the Personnel File. See page 3 for additional background information.
SD2014-021 p. 26	Employee Verbal Abuse/Physical Abuse Accusations/ Investigations – Sustained and Unfounded	Retain until subject of allegation(s) reaches age 80 <i>or</i> <u>If subject of allegation(s) dies prior to reaching age 80, retain</u> for 10 years after date of death <i>or</i> 10 years after date of separation from employment, <i>whichever is earlier then</i> Destroy.	Retain until subject of allegation(s) reaches age 80 <i>or</i> <u>If subject of allegation(s) dies prior to reaching age 80, retain</u> for 10 years after date of most recent accusation(s) & completion of investigation/decision not to investigate <i>or</i> 10 years after date of separation from employment, <i>whichever is earlier then</i> Destroy.	Language modified so that if the accused dies before reaching the age of 80, records relating to accusations and/or investigations (including decisions not to investigate) are retained for 10 years after the most recent accusation(s)/investigation(s) OR 10 years after the accused separated from employment with the district – <i>whichever is earlier.</i> Also, “Note” removed referencing employee’s Personnel File, GS50-04B-06. Washington State Archives recommends retaining these records separately from the Personnel File. See page 3 for additional background information.
SD51-04-05 p. 52	Attendance	<i>No change.</i>	<i>No change.</i>	Disposition Authority Number (DAN) Revision # corrected <i>from</i> Rev. 1 <i>to</i> Rev. 2.
SD2012-071 p. 67	Health Care/ Services Provided to Students	<i>No change.</i>	<i>No change.</i>	Description enhanced to provide clarity for users and specifically includes “concussion/head injury”.

BACKGROUND INFORMATION

To help ensure the safety of Washington's school children, the 2005 Legislature established RCW 28A.400.301 requiring the **disclosure to prospective employers** of records relating to teacher sexual misconduct investigations. Because certain investigations *may* qualify for a privacy exemption from **public disclosure** pursuant to RCW 42.56.230(3), job applicants for teaching positions in Washington's K-12 schools are **required** to sign releases permitting former employers to share information about these records with hiring districts.

Investigations of teacher physical or verbal abuse accusations do not qualify for the privacy exemption, and **may be shared** with hiring districts without a special release. For guidance on the **disclosure** of misconduct/abuse accusation/investigation records, records managers should consult with legal counsel.

RCW 28A.400.301 does **not** restrict the **retention** of records documenting sexual misconduct or physical/verbal abuse *allegations* or *investigations*.

In 2008 the Washington Supreme Court heard a case brought by the Seattle Times against the Bellevue School District. *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405* <<http://www.mrsc.org/mc/courts/slip/786038MAJ.htm>> , 164 Wn. 2d 199, (2008). That case concerned whether the school district had to release investigative records in response to a public disclosure request involving teachers accused of misconduct. The court held that school districts could redact the names of teachers from an unsubstantiated investigation if a public records disclosure request is received. The court also held, however, that while the public did not have a legitimate interest in the identity of the teacher when a student's claims against him or her were unsubstantiated, the public does have a legitimate interest in obtaining a copy of the redacted report so they could ascertain **the effectiveness of the school district's response to complaints**.

The minimum retention periods approved by the Local Records Committee for records relating to allegations and/or investigations of sexual misconduct or physical/verbal abuse reflect the conceivable career span of classified, certificated, and substitute employees. Both series cover **substantiated and unsubstantiated** claims, including those investigated by the district **and those where the district decides not to proceed with an investigation**.

Should the subject of the allegations die before reaching the age of 80, the district must still retain records to document **its due diligence in conducting an adequate investigation** until the statutes of limitations have expired for the misconduct/abuse that *may have* occurred, pursuant to RCW 9A.04.080(1)(b).

As with all public records, these records may be destroyed **only if**:

1. They have met their minimum retention requirement (as approved by the Local Records Committee);
2. They are **NOT** subject to an existing public records request in accordance with chapter 42.56 RCW; **and**,
3. They are **NOT** subject to ongoing or reasonably anticipated litigation. Such public records must be managed in accordance with the agency's policies and procedures for legal holds.

Page 4 contains several scenarios relating to employees accused of **sexual misconduct**.

For **physical or verbal abuse** accusations/investigations, simply reduce the retention periods from 30 years to 10 years.

POSSIBLE SCENARIOS – EMPLOYEE SEXUAL MISCONDUCT ACCUSATIONS and/or INVESTIGATIONS

Employee Separates from School/District – Hired in 1969 at age 21 (DOB 1/1/1948)

Age 22	Accused of Sexual Misconduct - Decision not to investigate.	1970
Age 32	Accused of Sexual Misconduct (again) - Investigation; accusations substantiated; employee resigns or is fired.	1980
Age 47	Release received from another school district for <i>former</i> employee's records. Records from 1970 and 1980 provided.	1995
May be Age 80	Employee is or would be 80 on 12/31/2028, but district has no information about individual. After checking with legal counsel and determining that records are not subject to ongoing or reasonably anticipated litigation and that no public records requests exist for these records, these records may be destroyed on 1/1/2028 – the date this (former) employee could/would have turned 80.	2028

Employee Dies at age 50 – Hired in 1969 at age 21 (DOB 1/1/1948)

Age 22	Accused of Sexual Misconduct - Decision not to investigate.	1970
Age 32	Accused of Sexual Misconduct (again) – Investigation – claim not substantiated. Employee continues working for district.	1980
Age 47	Release received from neighboring school district for employee's records. Records from 1970 and 1980 provided; employee continues working for district.	1995
Age 50	Employee dies.	1998
	30 years after the conclusion of the most recent accusation/investigation (including decision not to investigate) AND after checking with legal counsel and determining that records are not subject to ongoing or reasonably anticipated litigation and that no public records requests exist for these records, these records may be destroyed on 12/10/2010.	2010

Employee Teaches to age 85 – Hired in 1969 at age 21 (DOB 1/1/1948)

Age 22	Accused of Sexual Misconduct - Decision not to investigate.	1970
Age 32	Accused of Sexual Misconduct (again) - Investigation; accusations substantiated; employee reprimanded and continues working for district.	1980
Age 47	Release received from neighboring school district for employee's records. Records from 1970 and 1980 provided; employee continues working for district.	1995
Age 80	Employee turns 80 on 1/1/2028 and is still employed by the district. Records are retained as long as the employee works for the district.	2028
Age 85	Employee dies on the job 6/1/2033. After checking with legal counsel and determining that records are not subject to ongoing or reasonably anticipated litigation and that no public records requests exist for these records, these records may be destroyed on 6/1/2033 – the date of the employee's death.	2033

Employee Misconduct Late in Career – Hired in 1969 at age 21 (DOB 1/1/1948)

Age 52	Accused of Sexual Misconduct - Decision not to investigate.	2000
Age 53	Accused of Sexual Misconduct (again) - Investigation; accusations substantiated; employee reprimanded and continues working for district.	2001
Age 57	Accused of Sexual Misconduct (again) - Investigation; accusations substantiated; employee allowed to resign.	2005
Age 70	Release received from neighboring district for <i>former</i> employee's records. Records from 2000, 2001 and 2005 provided; hired by neighboring district.	2020
May be Age 80	After checking with legal counsel and determining that records are not subject to ongoing or reasonably anticipated litigation and that no public records requests exist for these records, these records may be destroyed on 1/1/2028 – the date this (former) employee is or would be 80. IMPORTANT: The school/district may wish to consider retaining these records until 2035 – 30 years after the conclusion of the most recent accusation/investigation – in order to defend its actions. Please consult legal counsel.	2028