Washington County School District
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Saint George, Utah 84770
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District Policy 3220

District Records: Restrictions and Access

Files and Records Management Washington County School District - Adopted 4-9-91; 6-13-00; Revised 11-11-14; Revised 1-13-2015; Revised 9-12-2017

1. Purpose:

The Washington County School District adopts this policy to establish guidelines for open government information, recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the District. This policy is intended to apply to all schools in the District relating to information practices including classification access, appeals, management and retention of documents.

2. Policy:

2.1. In adopting this policy, the District recognizes the enactment of Government Records Access and Management Act (Sections 63G-2-101 et seq., Utah Code Annotated) and the application of that act to the district records. The purpose of these policies is to conform to Section 63G-2-701 which provides that each political subdivision may adopt a policy relating to information practices including classification designation, access, denials, segregation, appeals, management, retention and amendment of records. The intent of this policy is to provide modifications to the general provisions of state law, where allowed, to best meet the public needs, operation, management capabilities and resources of the District.

2.2. COMPLIANCE WITH STATE LAW: In adopting this policy, the District recognizes that the following sections of the Government Records Access Management Act apply to the District and adopts by reference these provisions as part of this policy. Any inconsistency or conflict between this policy and the following reference statues shall be governed by the statute.

Part 1 - General Provisions: 63G-2-101, Short title; 63G-2-102, Legislative intent; 63G-2-103, Definitions; 63G-2-104, Administrative procedures Act not applicable; 63G-2-105, Confidentiality agreements.

Part 2 - Access to Records: 63G-2-201, Right to inspect records and receive copies of records; 63G-2-203, Fees; 63G-2-206, Access to private, controlled and protected documents; 63G-2-205, Denials; 63G-2-206, Sharing records.

Part 3 - Classification: 63G-2-301, Records that must be disclosed; 63G-2-302, Private records; 63G-2-303, Controlled records; 63G-2-304, Protected records; 63G-2-305, Procedure to determine classification; 63G-2-306, Duty to evaluate records and make designations and classifications; 63G-2-307, Segregation of records; 63G-2-308, Business confidentiality claims.

Part 4 - Claims.

Part 5 - State Records Committee.

Part 6 - Accuracy of Records: 63G-2-601, Rights of individuals on whom data is maintained; 63G-2-602, Disclosure to subject of records--context of use; 63G-2-602, Request to amend.

Part 7 - Applicability to political subdivisions: The judiciary and the legislature: 63G-2-701, Political subdivisions to enact ordinances in compliance with chapter.

Part 8 - Remedies: 63G-2-801, Criminal penalties; 63G-2-802, Injunction - attorneys' fees; 63G-2-803, No liability for certain decisions of a governmental entity; 63G-2-804, Disciplinary action.

3. Procedure:

3.1. DEFINITIONS. As used in this Resolution, the following definitions shall be applicable:

3.1.1. "Act" shall refer to the Government Records Access and Management Act, 63G-2-1, et seq., Utah Code Annotated 1953, as amended.

3.1.2. "Superintendent" means the Superintendent of the Washington County School District as defined in district bylaws.

3.1.3. "District" shall refer to the Washington County School District or any public or private entity, which pursuant to contract with the District has agreed to produce and maintain public district records.

3.1.4. "Computer software program" means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals, or other source materials explaining how to operate the software program. "Software" does not include the original data or record, which is manipulated by the software.

3.1.5. "Controlled" records shall be those defined as controlled under the provisions of the Act.

3.1.6. "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.

3.1.7. "Dispose" means to destroy or render irretrievable or illegible a record or the information contained in it by any physical, electronic, or other means, including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.

3.1.8. "Non-public" records shall refer to those records defined as private, controlled, or protected under the provisions of the Act.

3.1.9. "Private" records shall refer to those records classified as private under the provisions of the Act

3.1.10. "Protected" records shall refer to those records classified as protected under the provisions of the Act.

3.1.11. "Public" records shall refer to those records, which have not been classified as non-public in accordance with the provisions of the Act.

3.1.12. "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the District where all the information in the original is reproducible by some mechanical, electronic, photographic, or other means.

3.1.13. "Record" does not mean:

3.1.13.1. Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working.

3.1.13.2. Materials that are legally owned by an individual in his private capacity.

3.1.13.3. Materials to which access is limited by the laws of copyright or patent.

3.1.13.4. Junk mail or commercial publications received by the District or by an officer or employee of the District.

3.1.13.5. Personal notes or daily calendars prepared by any district employee for personal use or the personal use of a supervisor or such notes, calendars, or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open Meeting Act.

3.1.13.6. Proprietary computer software programs as defined in subsection (3) above that are developed or purchased by or for the District for its own use.

3.1.14. District records officer: The Business Administrator of the Washington County School District is hereby designated as the Records Officer of the District.

3.2. PUBLIC RIGHT TO RECORDS.

3.2.1. Members of the public shall have the right to see, review, examine, and take copies, in any format maintained by the District, of all District governmental records defined as "public" under the provisions of this Policy, upon the payment of the lawful fee and pursuant to the provisions of this Policy and the Act.

3.2.2. The District has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or

kept.

3.2.3. When a record is temporarily held by a custodial district agency, pursuant to that custodial agency's statutory functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this policy. The record shall be considered a record of the District and any requests for access to such records shall be directed to the District rather than the custodial agency pursuant to these procedures.

3.2.4. FEES

3.2.4.1. Paper copies of records shall be charged at the rate of $.25 per copy to cover the cost of paper and supplies. If an appropriate requester requests to have copies of more than 50 pages of records, the District in its sole discretion may provide the requester with facilities to make copies and require the requester to make copies himself at his own expense.

3.2.4.2. In addition to the cost of paper and supplies, when the District is required to compile a record, the requestor shall pay the actual cost incurred as follows:

• the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

• the cost of staff time for search retrieval, and other direct administrative costs for complying with a request; and

3.2.4.3. The District will charge an hourly rate (less the first quarter hour of staff time) equal to the salary of the lowest paid employee who, in the discretion of the Superintendent, has the necessary skill and training to perform the request.

3.2.4.4. A person who believes that there has been an unreasonable denial of a fee waiver under subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied.

3.2.4.5. The District will require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50; or the requester has not paid fees from previous requests. Any prepaid amount in excess of fees due shall be returned to the requester.

3.3. PUBLIC, PRIVATE, CONTROLLED, AND PROTECTED RECORDS.

3.3.1. Public records shall be those District records as defined in the Act, 63G-2-201 (UCA 1953, as amended). Public records shall be made available to any person. All District records are considered public unless they are (1) expressly designated, classified, or defined otherwise by the District in accordance with policies and procedures established by this Policy, (2) are so designated, classified or defined by the Act, or (3) are made non-public by other applicable law.

3.3.2. Private records shall be those District records classified as "private," as defined in the Act 63G-2-302 (UCA 1953, as amended) and as designated, classified, or defined in procedures established pursuant to this policy. Private records shall be made available to the following

persons: The subject of the record, the parent or legal guardian of a minor who is the subject of the record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a power of attorney or a notarized release from the subject of the record or his legal representative, or any person possessed of and serving a legislative subpoena or a court order issued by a court of competent jurisdiction.

Private Documents. The District hereby designates all documents identified in 63G-2-302 as "private data," including specifically but not limited to: (1) All personnel records contained in a personnel file, applications, nominations, recommendations, or proposals for employment, advancement or appointment; (2) Any employee evaluation or document related to or used in conjunction with an evaluation; (3) Records showing military status; (4) Records touching upon an individual's eligibility for unemployment benefits, social services, or welfare benefits; (5) Records touching upon an individual's personal finances; or (6) Medical records.

3.3.3. Controlled records shall be those district records classified as "controlled," as defined in the Act, 63G-2-304 (UCA 1953 as amended) and as designated, classified, or defined in procedures established in this policy. Controlled records shall be made available to a physician, psychologist, or licensed social worker who submits a notarized release from the subject of the record or any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction.

3.3.4. Protected records shall be those district records classified as "protected," as defined in the Act, 63G-2-305 (UCA 1953 as amended) and as designated, classified or defined in procedures established in this policy. Protected records shall be made available to the person who submitted the information in the record, to a person who has power of attorney or notarized release from any persons or governmental entities whose interests are protected by the classification of the record, or to any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of competent jurisdiction.

> 3.3.4.1. The District hereby designates as "protected data" all records identified in Utah Code Ann. 63G-2-305, including but not limited to: (1) Any document disclosing a trade secret; (2) Test questions; (3) Any document the disclosure of which may give an unfair advantage to a person or entity proposing to enter into a contract; (4) Records touching upon the value of real property owned by the District; (5) Teacher certification records; (6) Any record that may jeopardize the life or safety of an individual if disclosed; (7) Any records which may jeopardize the security of district property or programs; (8) Records touching upon audits, audit techniques, procedures and policies; (9) Records touching upon issues of potential litigation; (10) Records touching upon collective bargaining strategy; (11) Records touching upon occurrences covered by the Division of Risk Management; (12) Records touching upon deliberations of the Board of Education acting in a judicial or review of prior decision capacity; or (13) Records touching upon evaluations, appointment, retention decisions, or promotions generated in a meeting closed in accordance with the Utah Open and Public Meetings; (14) Records not placed in an employee's personnel file which are maintained by individual supervisors or administrators; (15) All evaluations and other personnel records are hereby designated as protected records, and it is hereby determined that disclosure of such document would constitute a clearly warranted invasion of personal privacy; (16) Records created or maintained for administrative enforcement purposes for discipline if the records could be

expected to interfere with investigations, disciplinary, or enforcement proceedings, or if it reasonably could be expected to disclose the identity of a source who is not generally known outside of the District.

3.3.4.2. Student records shall be designated "education records" and the disclosure of such education records shall be governed pursuant to 20 U.S.C. 12-32(g) and 34 C.F.R. 99, et seq., and 34 C.F.R. 300, et seq. The District may not release information related to educational records without parental consent, except as provided by the Family Educational Rights and Privacy Act (FERPA).

3.3.4.3. All student records shall be designated as "protected."

3.3.4.4. Any document which is copyrighted, either by formal filing under federal copyright laws or by informal claim of copyright, or which is covered by a patent, trademark or other protective designation, shall not be copied or provided to any person without an order of a court of competent jurisdiction ordering such disclosure.

3.3.5. Under circumstances set out by the Act, it may be appropriate to disclose non-public records to persons other than those set out in this section. The determination to so release records shall be at the discretion of the Superintendent, consistent with the Act, and upon the advice of the district's attorney.

3.4. PRIVACY RIGHTS.

3.4.1. The District recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records. The District also recognizes that the Act and the Utah case law establish a presumption that governmental records will generally be considered open and public, with certain specific exceptions. In circumstances where a record's public or non-public status is not specifically established by the Act or another statute, by this policy, or by policies established or designations made under this policy, the public's right to access and the record subject's right of privacy must be compared. In accordance with decision of the Utah Supreme Court, District records which have not been specifically made public by statute and which refer to names or readily identifiable individuals which deal with matters of a delicate nature which could engender shame or humiliation in the subject of that record, in accordance with accepted standards of social propriety, shall generally not be classified as public records and release thereof may constitute a clearly unwarranted invasion of privacy, in accordance with the Act and procedures established in this policy. Under circumstances and procedures established by this policy, certain items of data may be rendered non-public, although other items of data in the record, or the record itself, may be classified public.

3.4.2. The District may, as determined appropriate by the Superintendent, notify the subject of a record that a request for access to the subject's record has been made.

3.4.3. The District may require that the requester of records provide a written release, notarized within thirty (30) days before the request, from the subject of the records in question before access to such records is provided.

3.5. DESIGNATION, CLASSIFICATION, AND RETENTION. All District records and records series of any format shall be designated, classified, and scheduled for retention according to the provisions

of the Act and this policy. Any records or record series generated in the future shall also be so designated, classified, and scheduled for retention. Records designation classification and scheduling for retention shall be conducted under the supervision of the District Records Officer.

3.6. PROCEDURES FOR RECORDS REQUEST.

3.6.1. Under circumstances in which a District is not able to immediately respond to a records request, the requester shall fill out and present to the District a written request containing the requester's name, mailing address, daytime telephone number, a specific description of the records requested and showing the requesters status as one entitled to access to such records. The date and time of the request shall be noted on the written request form and all time frames provided under this policy shall commence from that time and date. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.

3.6.2. The District may respond to a request for a record by approving the request and providing the records, denying the request, or such other appropriate response as may be established by policies and procedures. If a request is denied in whole or in part, the agency shall provide a notice of denial to the requester. The denial notice shall include information regarding the appeals process and such other information as may be required by this Section and the Act.

3.6.3. In most circumstances and excepting those eventualities set out below, the District shall respond to a written request for a public record within ten business days after that request.

3.6.3.1. Extraordinary circumstances shall justify the District's failure to respond to a written request for a public record within ten business days and shall extend the time for response thereto that time reasonably necessary to respond to the request, as determined by the Records Officer. Extraordinary circumstances shall include but not be limited to the following:

3.6.3.1.1. Some other governmental entity is currently and actively using the record requested.

3.6.3.1.2. The record requested is for either a voluminous quantity of records or requires the District to review a large number of records or perform extensive research to locate the materials requested.

3.6.3.1.3. The District is currently processing either a large number of records requests or is subject to extraordinary seasonal workloads in the processing of other work

3.6.3.1.4. The request involves an analysis of legal issues to determine the proper response to the request.

3.6.3.1.5. The request involves extensive editing to separate public data in a record from that which is not public.

3.6.3.1.6. Providing the information request requires computer programming or other formal manipulation.

3.6.3.2. When a record request cannot be responded to within ten (10) days, the Records Officer shall give the requester an estimate of the time required to respond to the request.

3.6.4. The failure or inability of a District to respond to a request for a record within the time frames set out herein, or the District's denial of such a request, shall give the requester the right to appeal as provided in Section 2.

3.6.5. Any district record which is subject to pending litigation or audit or has been requested in accordance with this Policy and the Act, that is disposable by approved retention schedules, may not be disposed of until the litigation or audit has been resolved or the request is granted and fulfilled, or 60 days after the request is denied if no appeals are filed, or 60 days after all appeals are completed, pursuant to Section 2.

3.6.6. In response to a request for access, the District may redesignate or reclassify the record or segregate data in the requested record in accordance with this Section and the Act.

3.7. (RESERVED)

3.8. APPEAL PROCESS.

3.8.1. Any person aggrieved by the District's denial or claim of extraordinary circumstances may appeal the determination within 30 days after notice of the District's action to the District Superintendent by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address, phone number, relief sought and if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.

3.8.2. If the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the District Superintendent shall send a notice of the requester's appeal to the affected person and shall send notice of the business confidentiality claim and the schedule for the chief administrative officer's determination to the requester within three business days after receiving notice of the requester's appeal.

3.8.3. The District Superintendent shall make a determination on the appeal within five business days after receipt of the appeal. The District Superintendent shall make a determination on the appeal within 12 business days after District sends the requester's notice of appeal to a person who submitted a claim of business confidentiality. The District Superintendent shall send written notice to all participants.

3.8.4. If the District Superintendent affirms the denial in whole or in part, the denial shall include a statement that the requester has a right to appeal the denial to either the records committee or in district court, the time limits for filing an appeal, and the name and business address of the executive secretary of the records committee.

3.8.5. The District Superintendent may order the disclosure of information properly classified as private or protected if, after careful consideration and weighing the various interests and public policies, the Superintendent determines that the interests favoring access are greater than or equal to the interests favoring restriction of access.

3.9. REASONABLE ACCOMMODATION. Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the

Americans with Disabilities Act upon request of the applicant.

3.10. RECORDS AMENDMENTS. Government records held by the District may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the District having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by the Act or other state or federal law.

3.10.1. The employee has the right to request removal of file materials from the District Personnel file which he or she feels are not justified and which are not indicated in subparagraph 3.10.2, if, after four years from the date of the material(s), there have been no additional similar incidents. These materials will be removed to a restricted incident file which only the Superintendent, Personnel Director, and Elementary or Secondary Director can access.

3.10.2. No record(s) shall be removed from an employee's personnel file if the material(s) involves any of the following:

• Conduct which violates any provision of federal, state or local law.

• Sexual contact with a student or other person under the age of 18.

• Conduct involving the use or control of illegal drugs or alcohol.

• Conviction of a crime related to the educator's job.

• Other disciplinary records or documentation in the file that evidence conduct of a serious nature sufficient to justify retaining the records, as determined by the Superintendent.

3.11. PENALTIES.

3.11.1. District employees who knowingly refuse to permit access to records in accordance with the Act and this policy, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records or allow other persons to do so in violation of the provisions of the Act, this policy or other law or regulation may be subject to criminal prosecution and disciplinary action, including termination.

3.11.2. In accordance with the Act, neither the District nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain the record, even if it may be subsequently determined that the requester had no such authority.

3.12. RECORDS OFFICER. There shall be appointed a District Records Officer to oversee and coordinate records access, management, and archives activities. The Records Officer shall make reports of records services activities to the Board of Education as requested. The Business Administrator of the Washington County School District is hereby designated as the District's Records Officer.

3.13. RECORDS MAINTENANCE

3.13.1. Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve district records safety and accurately over the long term. The Records Office shall be responsible for monitoring the application and use of technical processes in the creation, duplication, and disposal of district records. The Records Officer shall monitor compliance with required standards of quality, permanence, and admissibility pertaining to the creation, use, and maintenance of records.

3.13.2. All District records shall remain the property of the District unless federal or state legal authority provides otherwise. Property rights to district records may not be permanently transferred from the District to any private individual or entity, including those legally disposable obsolete, district records. This prohibition does not include the providing of copies of district records otherwise produced for release or distribution under this Section.

3.13.3. Custodians of any district records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the District Records Officer.