





TO: The Honorable the Members of the Board of Regents

FROM: Mark Schaming 

SUBJECT: Proposed Amendment of Sections 185.5 and 185.15 and Repeal of Sections 185.11, 185.12, 185.13, and 185.14 of the Regulations of the Commissioner of Education and Repeal of Appendices H, I, J, K, and L and Addition of a Revised Appendix L Relating to Revising Records Retention and Disposition Schedule LGS-1 and Removing Superseded Records Retention and Disposition Schedules

DATE: March 3, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of sections 185.5 and 185.15 and repeal of sections 185.11, 185.12, 185.13, and 185.14 of the Regulations of the Commissioner of Education and repeal of appendices H, I, J, K, and L and addition of a revised appendix L relating to revising records retention and disposition schedule LGS-1 and removing superseded records retention and disposition schedules?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is presented to the Full Board for adoption at the March 2022 Board of Regents meeting. A copy of the proposed rule is included (Attachment A).

Procedural History

The proposed amendment was presented to the Cultural Education Committee for discussion at its November 2021 meeting. A Notice of Proposed Rule Making was published in the State Register on December 1, 2021, for a 60-day public comment period. Following publication in the State Register, the Department received no comments on the proposed rule. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on March 30, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents, including the revised schedule LGS-1.

Background Information

Article 57-A of the Arts and Cultural Affairs Law defines the oversight and advisory services to be provided to local governments by the Commissioner of Education for planning and administering programs for the creation, maintenance, preservation, reproduction, retention, and disposition of their records; to advise local governments on the development of micrographics systems, automated data processing systems, and other systems that rely on technology to create, store, manage, and reproduce information or records; and to advise local governments on the preservation and use of vital records and records of enduring value for historical or other research purposes.

At the July 2020 meeting of the Board of Regents, the Department revised and updated requirements for the management and oversight of local government records, by adding a new records retention and disposition schedule, LGS-1, for use by 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 miscellaneous local governments.

The July amendment to section 185.5 of the Commissioner's regulations required that the governing body of each affected local government adopt the new records retention schedule LGS-1 no later than January 1, 2021. Therefore, since the prior records retention and disposition schedules, MU-1, ED-1, CO-2, and MI-1, have been superseded by LGS-1, the Department now proposes to repeal sections 185.11, 185.12, 185.13, and 185.14 of the Commissioner's regulations as well as Appendices H, I, J, K which contained the superseded schedules.

Additionally, the Department now proposes revisions to the LGS-1 records retention and disposition schedule. These revisions include:

- a reduction of the retention period for state assessments from 2 years to 1 year (item 908 and 948c) and elimination of unused exams item (item 913);
- a reduction of the retention period for license plate reader data from 20 years to 1 year (item 1241) to align with NYS Municipal Police Training Council's [License Plate Readers Model Policy](#) (March 2021);

- a reduction of retention periods for negative health screening reports and logs relating to COVID-19 and other screening programs from 1 year to 30 days (item 792);
- updates to cooperative extension records items, as proposed by Cornell University and NYS Office of Temporary and Disability Assistance, to reflect policy and program requirements (items 244-249);
- technical corrections, such as typographical errors (items 200, 575, 636, 644, 645, 948), truncation of text (item 291, 1234), clarification of text (Library/Library System section note, items 910 and 915), and omission of cross references to previous schedule items, (items 43, 254, and 513); and
- restoration of items (items 280b and 1036d) and heading (Public Safety: Law Enforcement: Motor Vehicles (including watercraft)) that appeared in previous schedules or memos which were inadvertently omitted.

Therefore, the proposed amendment repeals Appendices L and replaces with a revised Appendix L containing the above revisions.

Non-substantial Revision

The Department proposes to make a non-substantial revision to the proposed regulation removing the reference to the January 1, 2021 date by which the governing body of local governments were required to adopt the new LGS-1 records retention and disposition schedule. Since this date has passed, the reference to such date is no longer needed in regulation. Therefore, the regulation will now reference the revised LGS-1 records retention and disposition schedule adopted by the governing body of each affected local government.

Related Regent's Items

November 2021: [Proposed Amendment of Sections 185.5 and 185.15 and Repeal of Sections 185.11, 185.12, 185.13, and 185.14 of the Regulations of the Commissioner of Education and Repeal of Appendices H, I, J, K, and L and Addition of a Revised Appendix L Relating to Revising Records Retention and Disposition Schedule LGS-1 and Removing Superseded Records Retention and Disposition Schedules](https://www.regents.nysed.gov/common/regents/files/1121ced2revised.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1121ced2revised.pdf>)

July 2020: [Proposed Amendment of Section 185.5 and Addition of Section 185.15 of the Regulations of the Commissioner of Education Relating to Local Government Records Management](https://www.regents.nysed.gov/common/regents/files/720brca1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/720brca1.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That sections 185.5 and 185.15 be amended, and sections 185.11, 185.12, 185.13, and 185.14 of the Regulations of the Commissioner of Education be

repealed and appendices H, I, J, K, and L be repealed, and a revised appendix L be added, as submitted, effective March 30, 2022.

Timetable for Implementation

If adopted at the March meeting, the proposed amendment will become effective on March 30, 2022.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to section 207 of the Education Law and sections 57.19, 57.25 and 57.29 of the Arts and Cultural Affairs Law.

1. Paragraph (1) of subdivision (b) of section 185.5 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 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 on August 1, 2020, [shall be] and adopted [no later than January 1, 2021] by the governing body of each affected local government, may continue to be used by such local governments to legally dispose of records on and after August 1, 2020, until superseded. [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 LGS-1 (2020; rev. 2022) 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)](b) 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.

2. Sections 185.11, 185.12, 185.13, and 185.14 of the Regulations of the Commissioner of Education are REPEALED.

3. Section 185.15 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 185.15. Records retention and disposition schedule LGS-1, 2020; rev. 2022 (see Appendix L of this Title).

4. Appendices H, I, J, K, and L of Title 8 of the New York Code of Rules and Regulations are REPEALED and a new Appendix L is added.