






THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Mark Schaming 

SUBJECT: 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

DATE: July 2, 2020

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend Section 185.5 and add Section 185.15 of the Regulations of the Commissioner of Education relating to local government records management?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at its July 2020 meeting. A copy of the proposed amendment is included as Attachment A.

Procedural History

The proposed amendment was presented for discussion by the Cultural Education Committee at the March 2020 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on March 18, 2020. Following the 60-day public comment period required under the State Administrative Procedure Act, the

Department did not receive any comments on the proposed amendment. Supporting materials are available upon request to the Secretary of the Board of Regents, including schedule LGS-1.

Background Information

The purpose of the proposed amendment of section 185.5 and the addition of section 185.15 of the Regulations of the Commissioner of Education is to revise and update requirements for the management and oversight of local government records.

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.

The proposed amendment to section 185.5 and addition of section 185.15 of the Regulations of the Commissioner of Education provides for a new records retention and disposition schedule 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 (LGS-1). Additionally, the proposed amendment would allow cities, towns, villages, and fire districts to continue to use schedule MU-1, miscellaneous local governments to continue to use schedule MI-1, school districts, boards of cooperative educational services, teacher resource and computer training centers and county vocational education and extension boards to continue to use schedule ED-1, and counties to continue to use schedule CO-2 until January 1, 2021. The proposed amendment requires that no later than January 1, 2021 the new records retention schedule LGS-1 shall be adopted by the governing body of each affected local government. Upon adoption, schedule LGS-1 shall supersede retention and disposition schedules MU-1, MI-1, ED-1, and CO-2.

Non-Substantive Amendments to schedule LGS-1

Following publication of the proposed rule in the State Register on March 18, 2020 the Department has made non-substantive technical and clarifying amendments to the LGS-1 schedule as follows:

- Correction of a retention period to reflect existing published guidance in item 280 of the schedule;
- Correction of a reference to an obsolete system in item 1120 of the schedule;
- Correction of typographical errors to cross-referenced items in items 55 and 636;
- Clarifying changes that account for a remaining degree of arson in the penal law in item 1208;

- Removal of an extraneous, limiting word within item 1220; and
- Made references to New York Codes Rules and Regulations consistent in items 826 and 827.

Related Regents Items

[Amendment of Sections 185.1, 185.2, 185.3, 185.5, 185.6, 185.7, 185.8, 185.9 and 185.10 of the Regulations of the Commissioner of Education - Local Government Records Management](https://www.regents.nysed.gov/meetings/2007Meetings/December2007/1207cea1.htm)

(<https://www.regents.nysed.gov/meetings/2007Meetings/December2007/1207cea1.htm>)

[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/320ced3.pdf)

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Recommendation

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

VOTED: That Section 185.5 be amended and Section 185.15 be added to the Commissioner's Regulations, as submitted, effective August 1, 2020.

Timetable for Implementation

If adopted at the July 2020 Regents meeting, the proposed amendment will become effective as a permanent rule on August 1, 2020.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to section 207 of the Education Law and sections 57.19, 57.25 and 57.9 of the Arts and Cultural Affairs Law

Title 8 of the New York Codes, Rules and Regulations is amended by: amending section 185.5; adding a new section 185.15; and by adding a new Appendix L. Rule text for sections 185.5 and 185.15 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 [March 9, 1990] 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 [March 9, 1990] 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, shall be adopted no later than January 1, 2021 by the governing body of each affected local government. 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 [CO-2 (1990; rev. 2006)] for New York local government records (LGS-1), as set forth in section [185.13]185.15 of this Part and Appendix [J]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) 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.

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