

Maintenance and Retention of Commission Records Procedures

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I. Purpose

The Mid-Atlantic Region Commission on Higher Education (MARCHE), doing business as the Middle States Commission on Higher Education (MSCHE or the Commission) seeks to ensure that it maintains and retains appropriate records in order to support its business and operational needs and meet all applicable laws and regulations. The purpose of these procedures is to implement the *Maintenance and Retention of Commission Records Policy*. The accompanying *Records Retention Schedule* specifically prescribes the timetable for the retention and disposal of Commission records based on business and operational needs and applicable laws and regulations.

II. Procedures for Maintenance and Retention of Records

- A. The Commission will maintain and retain appropriate records in accordance with applicable records retention laws and regulations. The accompanying *Records Retention Schedule* prescribes the timetable for the retention and disposal of Commission records.
- B. The Commission will retain the institutional record, as defined in Section VIII, for at least the last full accreditation review. As part of the institutional record, the Commission will retain a permanent record of all accreditation actions taken for each pre-applicant, applicant, candidate, accredited or former member institution including all correspondence that is significantly related to those decisions in accordance with federal regulation *34 CFR § 602.15(b)(1-2)*.
- C. The Commission will maintain organizational or corporate records to support its business and operational needs and meet legal and regulatory requirements related to its responsibilities as a Pennsylvania non-stock, non-member nonprofit corporation.
- D. The Commission will designate a staff member to serve as the records officer with the responsibility to maintain and make necessary modifications to the *Records Retention Schedule*.
- E. The Commission will monitor relevant developments to maintain compliance with applicable

records management policies, laws, and regulations.

- F. The Commission will utilize third party back-up software to ensure the appropriate retention of Commission records for disaster recovery and business continuity requirements.
1. Electronic records are assigned retention policies to ensure their protection during the designated retention period.
 2. Electronic records that are required to be retained permanently are protected systematically.
 3. Systems of record are backed-up daily using third-party cloud-to-cloud solutions appropriate for the software.
 4. Back-up copies of records will be retained according to their usefulness for disaster recovery and business continuity requirements, but not longer than the retention period identified in the Records Retention Schedule.
- G. The Commission staff are expected to retain records until destruction of those records is appropriate under this policy and procedures. All records must be retained for at least the period of time set forth in the *Records Retention Schedule*.
1. All Commission staff are responsible for remaining familiar with the policy and these procedures and properly maintaining records in compliance with these procedures.
 2. Records are to be retained in electronic form. Hardcopy forms of records are not required to be retained so long as an electronic copy has been created and preserved.
 3. The Commission staff will save all electronic records to a central location and designated repository to ensure that all electronic records are backed up daily.
 4. The Commission staff will not store copies of electronic records to any device, local hard drive, or temporary or portable drive, except for short-term business or operational needs.
 5. Any such exceptions will be fully documented, and any copies will become subject to these procedures once the business or operational need has concluded.
- H. The Commission staff will retain all relevant correspondence of record, as defined in Section VIII, into the institutional record and the proper repository as designated in the *Records Retention Schedule*.
1. It is the responsibility of each Commission staff member to consult with the records officer and determine whether an email constitutes correspondence of record in accordance with the definition.
 2. If any Commission staff member is unsure of the relevance of a particular record, the record should be retained until advised otherwise.
- I. It is the responsibility of each Commission staff member to ensure the maintenance of his or her email according to this policy and procedures.
1. Emails may be deleted by the Commission staff as desired, provided that (1) they are not required to be maintained by the *Records Retention Schedule*, (2) they do not constitute correspondence of record, (3) any records attached to such emails are preserved pursuant to the *Records Retention Schedule*, and (4) they are not subject to a litigation hold.
 2. The Commission will establish an automatic retention policy for email which will expire eight years after the date of creation.

3. When subject to a litigation hold, the Commission may suspend automated email deletion programs or the recycling of back-up media until a decision is made about what documents and information must be retained, and possibly for the duration of the litigation.
 4. The Commission will destroy all emails of separated or terminated employees six (6) months after such employee has left the Commission.
- J. The Commission will convey expectations and provide training for records maintenance, retention, and disposal to Commission representatives.

III. Procedures for Responding to Third Party Discovery Requests and the Release of Records

- A. The Commission will designate a staff member to serve as the records officer with responsibility for responding to requests for information and the secure and confidential release of records.
- B. The Commission staff will treat Commission records as confidential information in accordance with the *Communication in the Accreditation Process Policy and Procedures*.
- C. An authorized representative (designated key contact) from the member institution must submit a written request using the *Request for Institutional Records Form* to request institutional records from the Commission.
1. The Commission is not a repository or archive for the institution; therefore, the Commission will only be able to produce records available within the parameters of the *Records Retention Schedule*.
 2. The request must be in writing and submitted to records@msche.org.
- D. Unless prohibited to do so, the Commission will promptly notify the institution and request consent to release information and documents from an authorized representative at the institution before releasing any records for at least the following:
1. Mandatory requests or when compelled by law;
 2. When not compelled by law including any improper service of process;
 3. Requests from attorneys.
- E. An authorized representative (designated key contact) from the member institution may voluntarily consent to and authorize the release of information and documents. Confidentiality is deemed waived by the institution in these circumstances.
- F. The institution may decline to authorize the release of information. If the institution does not authorize the Commission to release information and documents, the requesting body could pursue other legal formalities to require the Commission to release information and documents.
- G. The Commission will comply with third party discovery requests or court orders as legally required, including but not limited to subpoenas for production of evidence or for deposition or oral testimony, requests for the production of documentation, records, information, investigative inquiries, and requests from government or regulatory agencies, but only if the Commission retains documents responsive to such requests and only to the extent that such documents are strictly necessary to

comply with the request. Confidentiality is deemed waived by the institution in these circumstances.

- H. Subpoenas, discovery requests, or court orders must be sent to the Commission's registered agent for legal services of process:

Mid-Atlantic Region Commission on Higher Education dba Middle States Commission on
Higher Education
c/o Norwest Registered Agent, LLC
502 W. 7th St., STE 100
Erie, PA 16502

- J. The Commission will compile information in a secure and confidential manner before releasing them to an external party.
1. The Commission will conduct due diligence to redact personally identifiable and other sensitive information in records that are identified as confidential by the institution or the Commission.
 2. The Commission will prepare and transfer records as required in the request.
- K. The Commission may, at its discretion, attempt to recover the costs and expenses related to the fulfillment of discovery requests, including but not limited to reasonable attorney fees and costs, staff time, expenses for deposition, imaging, copying, coding, and/or delivery. in accordance with the Commission's *Dues and Fees Policy and Procedures*.

IV. Procedures for Litigation Holds (or Suspension of Disposal of Records)

- A. The Commission will designate a staff member to serve as the records officer with the responsibility to issue litigation holds as necessary.
- B. In certain situations, the records officer will issue a litigation hold to suspend the disposal of records, at least until the matter is resolved. No records that are subject to a litigation hold can be disposed of under any circumstances.
- C. The Commission will issue a litigation hold for at least the following events:
1. Receipt of a subpoena, summons, judicial or administrative complaint, or other legal request requiring the production of documents;
 2. Learning of a judicial, administrative, or Congressional proceeding or inquiry in which records may be relevant, even if the Commission has not yet been contacted by the authorities;
 3. Voluntary cooperation with governmental authorities; or
 4. Awareness of a complaint or claim which the Commission has reason to believe may result in litigation where records may be relevant, regardless of whether the Commission expects to be a party to the litigation.
- D. When issuing a litigation hold, the records officer will inform the Commission staff of the issuance of a litigation hold and identify the scope of the records that must be retained. The records officer will immediately order a halt to all records disposal under this policy and procedures, communicating the order to all affected constituencies in writing. A record of the litigation hold will be retained.

- E. Any Commission record subject to a litigation hold may not be altered, destroyed, or discarded for any reason, regardless of the retention period(s) set forth in the *Records Retention Schedule*. If any Commission staff member is unsure of the relevance of a particular record, the individual should consult with the records officer and the record should be retained until advised otherwise.
- F. Once all appeals related to the matter that is the subject of the litigation hold have been exhausted, the records officer will inform the Commission staff that the litigation hold has been lifted. A record of the lifting of the litigation hold will be retained.
- G. The Commission staff will then identify any records that would have previously been destroyed according to the *Records Retention Schedule* but for the litigation hold, and properly dispose of such records in accordance with this policy and procedures.
- H. The Commission staff have an obligation to inform the President, Senior Staff, and/or supervisors of potential or actual litigation, external audit, investigation, or similar proceeding involving MSCHE that may have an impact on record retention and/or may require a litigation hold.

V. Procedures for Permanent Disposal or Destruction of Records

- A. The Commission will designate a staff member to serve as the records officer with responsibilities to monitor the retention, protection, and disposal of records at regular intervals throughout the year, no less often than annually, in accordance with the *Records Retention Schedule*.
- B. The Commission will utilize appropriate information and data governance software to manage the systematic protection and destruction of records in accordance with the *Records Retention Schedule*.
 - 1. The Commission will set appropriate retention periods to permanently dispose of records that are no longer required to be retained, no longer serve any useful business purpose, and/or are no longer contractually required to be retained in accordance with the *Records Retention Schedule*.
 - 2. The Commission will establish a permanent retention policy to protect records that are required to be retained permanently in accordance with the *Records Retention Schedule*.
- C. Copies of records that are made by Commission representatives for purposes of their roles with the Commission must be destroyed in a secure manner in accordance with the policy and procedures. The Commission staff will protect the confidentiality of records during the process of disposal or destruction.
- D. The Commission staff will review and destroy materials which do not meet the definition of “records” and have no identified retention requirements when they no longer serve any business purpose, no less often than annually.

VI. Procedures for Third Party Service Providers

- A. Any third party used to create, access, receive, use, manage, or destroy Commission records or to maintain hardware used by the Commission must maintain record retention practices at least as stringent as Commission policy and procedures. The Commission will select third

party service providers only after conducting appropriate due diligence on potential providers.

- B. During any contract negotiations with third party service providers, the Commission will consider the inclusion, as appropriate, of provisions to address:
 - 1. Reservation of rights of records ownership;
 - 2. Physical, logical, and environmental records security;
 - 3. Confidentiality in the handling and disposition of Commission records;
 - 4. Applicable records retention requirements;
 - 5. Return and release of Commission records upon request and/or at termination;
 - 6. Complete and unrecoverable disposition of any Commission records or record copies remaining in the possession of the vendor, including backups; and
 - 7. Right to audit and conduct oversight.
- C. The Commission will require non-disclosure and confidentiality agreements with third party service providers in accordance with the *Communication in the Accreditation Process Policy and Procedures*.
- D. The Commission will conduct ongoing monitoring and oversight of third-party vendors.
- E. The Commission will take appropriate action in response to a third-party vendor's failure to maintain appropriate record retention and destruction practices, up to and including termination of any service contract or ongoing business relationship.

VII. Procedures for Accountability and Enforcement

- A. The Commission will conduct an internal audit process to ensure compliance with the policy and procedures.
- B. Failure to follow this policy and procedures, such as the failure to preserve records or the intentional destruction of any record subject to a litigation hold, may result in possible civil and criminal sanctions against the Commission and its employees. Any Commission staff member who violates this policy or procedures may be subject to appropriate disciplinary action, up to and including termination of employment.
- C. Any Commission staff member who knows of or reasonably suspects a violation of this policy and procedures should report such violation to the President, Senior Staff and/or supervisors in accordance with the *Middle States Commission on Higher Education Employee Handbook Policies and Procedures*.
- D. Any questions regarding any portion of this policy or procedures or their applicability to a specific situation are to be directed to the records officer.

VIII. Definitions

The following definitions are used and/or inferred in this policy and/or procedures:

- A. **Accreditation activity.** All activities (including but not limited to reviews, reports, visits) conducted by Commission representatives related to the institution's accreditation phase, accreditation status, or scope of accreditation occurring throughout the accreditation

review cycle and during monitoring activities for a member (accredited or candidate) or applicant institution.

- B. Accreditation materials.** All documentation related to accreditation activities including but not limited to the institution's written reports to the Commission, submitted evidence, team reports, institutional responses, confidential briefs, third-party comments, action notifications, substantive change requests, transcripts of proceedings, team rosters, and any correspondence of record. Accreditation materials are treated as confidential by Commission representatives, become part of the institutional record, and are retained in accordance with the Commission's *Maintenance and Retention of Commission Records Policy and Procedures*.
- C. Authorized representative from member institution.** The institution will designate specific individuals to serve as authorized representatives of the institution when they designate them as key contacts (CEO, ALO, CAO, CFO, Portal Delegate) in the secure MSCHE portal. Authorized representatives act responsibly on behalf of the institution in matters related to accreditation and are individuals with whom the Commission will directly communicate. The Commission may consider the Chair of the Board to be an authorized representative of the institution.
- D. Commission representative.** Any individuals who represents or serves the Commission including but not limited to peer evaluators, Commission staff, and Commissioners.
- E. Confidential information.** Confidential information includes, but is not limited to, all information related to the institution and not generally known in spoken, printed, electronic or any other form or medium relating, directly or indirectly to business practices, policies and procedures, plans, strategies, agreements and contracts, pending or future transactions, trade secrets, negotiations, computer and information technology resources information, accounting information and records, and financial information. Confidential information shall not include information that was required to be disclosed by law, regulation, other lawful means or any information that is generally known to the public or in the public domain.
- F. Corporate record.** The Corporation shall keep (a) minutes of the proceedings of the Commission, and (b) appropriate, complete, and accurate books or records of account, at its registered office or the principal place of business or any actual business office of the Corporation in accordance with records retention policy and procedures. (*MSCHE Bylaws, Section 11.03*).
- G. Correspondence of record.** Any written communication or correspondence related to the process of making decisions about an institution. Correspondence of record is not miscellaneous correspondence with no significant business value including but not limited to notes of appreciation, congratulations, letters of transmittal, plans for meetings, confirmations of dates for staff visits, invitations to attend conferences, and other personal communications of commissioners, peer evaluators, or Commission staff. Correspondence of record is confidential and stored as part of the institutional record.

Correspondence of record does not include text messages and instant messages for these purposes, as the Commission staff are prohibited from using text messaging or instant messaging to conduct official commission business.

- H. Institutional record.** The compilation of all materials and data the Commission has on file related to the applicant, candidate, or accredited institution, including but not limited to all accreditation materials related to any accreditation activity, the record on file and transcripts for any proceeding, complaints, and any information or documents related to the institution collected by the Commission or received from external sources such as the government or other quality assurance agencies as part of ongoing monitoring activities.
- I. Litigation hold.** The procedure used to cease the scheduled disposal, destruction, purging, or deletion of certain Commission records, regardless of any retention period(s) set forth in the *Records Retention Schedule*.
- J. Personal information.** Information that is identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- K. Record on file.** A segment of the institutional record used in a Commission proceeding such as show cause appearance or appeals. It includes but is not limited to the accreditation materials for accreditation activities for the period of non-compliance (since the first non-compliance action), any information collected or received by the Commission as part of ongoing monitoring activities, transcripts from other proceedings, and correspondence of record.
- L. Records.** All data, documents, or records that are created, accessed, received, used, or maintained as part of Commission accreditation or business activities. Records may be stored on any electronic or non-electronic media (e.g., paper, video or audio tape, microfilm or microfiche, or hard drive, disk, or other electronic storage device) or in any format (e.g., memos, spreadsheets, or email). Records do not include documents or materials that are created or received solely for reference or convenience or that do not relate to Commission business. Examples of materials that are not considered records include, but are not limited to: library materials, card and notebook indices, brochures, articles and publications referenced for convenience purposes, miscellaneous correspondence (such as confirming dates for staff visits, invitations to attend conferences), and other personal communications of commissioners, peer evaluators, or Commission staff.
- M. Third-party vendors.** Third party vendors perform certain services on behalf of the Middle States Commission on Higher Education. The Commission may provide these companies with access to user information, including personal information, to carry out the services they are performing for the Middle States Commission on Higher Education.

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Related Documents: *Communication in the Accreditation Process Policy; Communication in the Accreditation Process Procedures; Dues and Fees Policy; Dues and Fees Procedures; MARCHE Bylaws; Middle States Commission on Higher Education Employee Handbook Policies and Procedures;*