

DEVELOPING AND IMPLEMENTING A COMPLIANCE CALENDAR AND OTHER TOOLS

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INTRODUCTION

The following discussions and examples of various compliance-related tools are intended to assist counsel in developing his/her own tools to achieve compliance in a broad range of areas. Some of these tools (*e.g.*, 990 Disclosure Form) will be fairly easy to implement at your institution and will likely mostly involve cutting and pasting, with a few tweaks. Other tools (*e.g.*, record retention schedules and compliance calendars) will require a substantial amount of research and tailoring to fit the laws of your state and/or the political dynamics of your institution.

I. COMPLIANCE CALENDARS

Compliance calendars represent a useful way to track federal and state notice, disclosure, and reporting requirements that arise on a regular basis. At Washington and Lee University, we developed calendars for each individual department, and also a “master” calendar that reflects such compliance activities across the entire campus. Our first step in developing these schedules was to reference the detailed compliance calendars used by Catholic University [<http://counsel.cua.edu/thebasics/compliance.cfm>] and then eliminate particular items that were not applicable. We subsequently conducted our own research into similar requirements on both the state and federal level. With this information, we developed draft calendars, and then worked with our compliance liaisons in each department to fill in any missing elements.

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/tutorial/ComplianceCalendars/ComplianceCalendars.html>

II. COMPLIANCE MATRIX

For discussion of the value of this tool and Washington and Lee’s approach to developing our own version, see materials from Session 3B: “Creating Effective Compliance Programs at Smaller Institutions or on a Limited Budget: Models and Procedures.”

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/Chart.of.Compliance.Areas.pdf>

III. CONFIDENTIALITY AND INFORMATION SECURITY

Identity theft is on the rise, and statistics show that educational institutions are a leading source of information security breaches.¹ This is due in large part to the collegial atmosphere and decentralized nature of educational institutions. Nonetheless, numerous federal and state statutes² necessitate the implementation of a university-wide information security policy and program. Beyond the legal requirements, there is the obvious risk of negative public reaction if a breach were to occur at your institution. At Washington and Lee, our Confidentiality Policy is used as both a training and orientation tool, and we require all new employees to sign an acknowledgement statement. Our Computing Resources, Network, and Email Use Policy reinforces the obligation of confidentiality. Our Information Security Program established a committee that has been active in promoting good information security practices across campus. This effort was aided by our ability to identify gaps in departmental information security practices, which we accomplished through a web-based risk assessment tool [see Exhibit 1 – Sample Risk Assessment Screen Shot]. No matter what tools you use to increase information security, keep in mind that even the best efforts to prevent data breaches can't guarantee success – so be sure to have a plan in place to respond to any data breach that may occur. In addition to familiarizing yourself with your state's data breach notification requirements, check out the wealth of knowledge and advice contained in EDUCAUSE's Data Incident Notification Kit.³

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/Confidentiality.Policy.pdf>

<http://www.wlu.edu/Documents/humanresources/Confidentiality%20Policy%2008.pdf>

<http://counsel.wlu.edu/policy/Acceptable.Use.Policy.pdf>

<http://counsel.wlu.edu/whatsnew/glbfinalforweb112003.htm>

<http://counsel.wlu.edu/policy/Identity.Theft.Program.pdf>

IV. CONFLICTS OF INTEREST

For a discussion of Washington and Lee's approach to conflicts of interest (including our policies and disclosure forms), see materials from session 4A: "Best Practices in Non-Profit Governance."

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/trusteesonly.final.050705.pdf> (Trustees)

<http://counsel.wlu.edu/policy/offsenbusMay192007FINALclean2.pdf> (Officers, etc.)

<http://counsel.wlu.edu/policy/employeehandbook07.pdf> (Employees)

¹ In 2008, twenty percent of all data breaches in the U.S. occurred at educational institutions, which was second only to the business sector (see Identity Theft Resource Center, 2008 Data Breach Stats, available at: <http://tinyurl.com/y9rctu4>). In addition, there is an entire website (<http://www.adamdodge.com/esi/>) that is specifically devoted to cataloguing breaches of information at educational institutions.

² See, for example: Federal Trade Commission Red Flag Rules (16 CFR Part 681); Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99); Gramm-Leach-Bliley Act of 2003 (15 U.S.C. § 6801 *et seq.*); Health Insurance Portability and Accountability Act [Pub. L. No. 104-101, 110 Stat. 1936 (1996)]; as well as state privacy and/or data-breach notification laws.

³ Available at: <http://www.educause.edu/Resources/DataIncidentNotificationToolki/154029>.

<http://counsel.wlu.edu/policy/Board.990.Disclosure.pdf> (990 Disclosure Form)

V. CONTRACTS MANAGEMENT AND ADMINISTRATION

The decentralized nature of most higher education institutions can lend itself to uncertainty over who has authority to contractually bind the institution. In addition, many employees fail to appreciate the importance of contractual terms and the ways in which they can negatively affect the institution. Therefore, it is important to develop a system – including both a policy and a written delegation of authority – that clearly establishes authority to sign contracts and emphasizes the need for advance legal review. Successful implementation of a system of contracts management and administration should: 1) limit institutional exposure for contracts that are not in the institution’s best interests; 2) provide advance review of contracts and opportunity to shift risks; and 3) prevent unauthorized execution of contracts binding the institution. To increase campus-wide awareness of the existence of the policy and its importance, consider creating a Q and A, as well as a contracts “process” checklist such as that used at Northwestern University [see <http://www.northwestern.edu/general-counsel/contracts/index.html>]. If you are worried about being inundated with contracts to review, develop standard template contracts for common issues [see, for example, Catholic University’s Independent Contractor Agreement, available at: <http://tinyurl.com/y9q4sok>].

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/Contracts.Administration.Policy.pdf>

<http://counsel.wlu.edu/policy/Contract.Delegation.of.Authority.pdf>

<http://counsel.wlu.edu/policy/Contracts.Policy.QandA.pdf>

VI. DOCUMENT RETENTION AND DISPOSITION

In large part due to the academic focus of higher education institutions, many have historically taken the approach that most, if not all, records were worth retaining. However, physical space (and to a lesser extent, electronic “space”) are not infinite, and many institutions are scrambling to clear space by eliminating records. Beyond the practical benefits, a record retention and disposition policy – with appropriate retention periods – also promotes compliance with myriad federal and state record keeping requirements.⁴ In addition, a reasonable, justifiable, and properly-implemented record retention program can vastly – yet legally – reduce the number of documents subject to e-discovery. For these reasons, it is imperative that institutions develop a comprehensive document retention and disposition strategy that: 1) identifies appropriate retention periods [whether based on best practices, specific statutory requirement, or applicable statute(s) of limitation]; 2) identifies proper methods of disposing of various types of records; and 3) clearly conveys that a litigation hold trumps any record retention

⁴ While the specific record-keeping requirements of all applicable federal and state statutes are too numerous to list for present purposes, note that portions of the Sarbanes-Oxley Act [see 18 U.S.C. §§ 1519-1520] provide substantial penalties for document destruction that amounts to obstruction of justice, and these penalties are further reflected in the Federal Sentencing Guidelines [see United States Sentencing Commission, [Guidelines Manual](#), §§ 2J1.2 and 8C2.5(e) (Nov. 2008)]. The bottom line: the most effective way to avoid illegal destruction of documents is to implement and require compliance with a comprehensive document retention schedule.

schedule. At Washington and Lee, we developed (and are in the course of finalizing) record retention schedules (including individual departmental schedules and an all-inclusive “master” schedule) by using Cornell’s record retention schedule [<http://tinyurl.com/ybc7e3x>] and the NACUA-published Federal Record-Keeping Requirements for Independent and Public Colleges and Universities⁵ as our “jumping off point” for extensive research of applicable federal and state record-keeping requirements. We supplemented this research by conferring with each department/unit about other types of records that they maintain. In accordance with best practice, we decided to keep records that lack a directly-applicable retention requirement for the length of the most closely applicable statute of limitations (if any). A Document Retention and Disposition Policy has been established that mandates adherence to the record retention schedules (once finalized), and also clarifies that the schedules are trumped by any applicable litigation hold.

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/Document.Retention.and.Disposition.Policy.pdf>

Sample Departmental Schedule: University Registrar [Exhibit 2]

VII. EXECUTIVE COMPENSATION

For a discussion of Washington and Lee’s approach to executive compensation in compliance with the Internal Revenue Service’s Intermediate Sanctions,⁶ see materials from session 4A: “Best Practices in Non-Profit Governance.”

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/prescompensation.final102007.pdf>

VIII. POLICY MAKING

Centralized policy-making is an important way of avoiding the problems that occur when multiple departments have different versions of a single policy, or when a department would like to implement a policy that affects the entire institution. Institutions should clearly establish which individuals – or more appropriately, departments – have the authority to issue policies that bind the entire institution. Institution-wide policies should be differentiated from other protocols, etc. that are meant to apply only within a specific department (*e.g.*, procedures for checking-out a book from the library). The institution’s goal should be to clearly establish limits on who can create policies and procedures that bind the entire institution. As a practical matter, it is also a good idea to require that all policies comport with a certain template, or, at a minimum, that all policies contain certain important elements (*e.g.*, which office approved the policy, when the policy was initially approved or revised, etc.).

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/Establishing.University.Policies.pdf>

⁵ FEDERAL RECORD-KEEPING REQUIREMENTS FOR INDEPENDENT AND PUBLIC COLLEGES AND UNIVERSITIES (Joseph W. Ambash, ed., 2d ed. 2005).

⁶ See 26 U.S.C. § 4958, and final regulations available at: <http://www.irs.gov/pub/irs-tege/td9390.pdf>.

IX. RECEIPT OF LEGAL DOCUMENTS

It is not uncommon for institutions to receive visits from individuals conducting background checks on students or otherwise requesting private information. In other instances, an individual may be attempting to serve a subpoena and not know upon whom at the institution such subpoena should be served. It is important that the institution clearly communicate to its employees a procedure for responding in such situations, so as to avoid unauthorized disclosure of personal information,⁷ unauthorized acceptance of legal documents, or (in certain instances) illegal notice to the individual who is the subject of certain investigations.⁸ In order to promote compliance with – and understanding of – the policy, consider also creating a one-page bullet-point summary of the requirements to be posted in any office that maintains records on employees or students, in particular: Registrar, Human Resources, and Dean of Students.

Washington and Lee University Sample Documents:

<http://counsel.wlu.edu/policy/Legal.Document.Receipt.pdf>

<http://counsel.wlu.edu/policy/Legal.Documents.Receipt.Summary.pdf>

⁷ See the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99.

⁸ See the U.S. PATRIOT Act, Pub. L. No. 107-56; 115 Stat. 272 (2001).

WASHINGTON AND LEE UNIVERSITY

INFORMATION SECURITY PROGRAM RISK ASSESSMENT PROCEDURE

Name:

UserDemo

Title:

test Account



[Instructions](#) | [General Questions](#) | [Location & Storage](#) | [Access](#) | [Use, Disclosure, ...](#) | [Disposal](#) | [Report](#) | [Logout](#)

Instructions

- ANY DEPARTMENT THAT HANDLES **"COVERED DATA AND INFORMATION"** MUST COMPLETE THIS RISK ASSESSMENT.
- **"COVERED DATA AND INFORMATION"** means social security numbers, bank or credit card account numbers, income and credit information, tax returns, asset statements or any other "personally identifiable financial information" regarding students, parents, employees, alumni, potential donors, or other third parties.
- This Risk Assessment was prepared at the request of the Office of General Counsel, for the purpose of gathering information necessary to advise the Information Security Committee as well as relevant University departments and offices as they: 1) identify internal and external risks to the security, confidentiality, and integrity of covered data and information; and 2) design, implement, and monitor safeguards to address those risks. In order to ensure appropriate confidentiality of the information provided in response to this Risk Assessment, and to prevent its misuse, do not disclose or publish your responses to anyone other than the Office of General Counsel.
- Answers are automatically saved as you click on "Next Question". You can go back to any section at anytime to review and or change your answers. Note: clicking "Previous Question" will NOT save your answer, you must click "Next Question" if you want your answer saved.
- In the interest of trying to be user-friendly and having streamlined responses to facilitate the initial analysis, many of the answer choices to the questions in this Risk Assessment are phrased in "Yes/No" or similar format. If you feel that you need to describe your answer in more detail, you'll have that opportunity in follow up meetings, at which point you can address any other relevant information or details unique to your department operations.
- THERE ARE NO "RIGHT" OR "WRONG" ANSWERS TO THIS RISK ASSESSMENT. THE PURPOSE OF THIS TOOL IS SIMPLY TO IDENTIFY "SOFT SPOTS" SO THAT WE CAN WORK TOGETHER TO ADDRESS THEM. PLEASE BE AS FRANK AS POSSIBLE ABOUT YOUR CURRENT OPERATIONS, EVEN IF YOUR RESPONSES TO THIS RISK ASSESSMENT REVEAL THAT YOUR DEPARTMENT MAY HAVE SOME WORK TO DO IN THIS AREA. WE JUST NEED TO KNOW WHERE EACH DEPARTMENT STANDS NOW WITH INFORMATION SECURITY, AND WE'LL GO FROM THERE. THANK YOU.

[Start Survey](#)

Record Retention Schedule University Registrar

*** FOOTNOTES INDICATE CURRENT DEPARTMENTAL PRACTICE ***

Category/Type of Record	MINIMUM Retention Period (in years, unless otherwise indicated)
-------------------------	--

Academic, Student

- | | |
|---|--|
| <ol style="list-style-type: none"> ¹ AP and Other Placement Tests ² Applications for Graduation ³ Change of Address Forms/Notifications Change of Course Forms, Registration Changes, Drop/Add Change of Grade Forms ⁴ Class Roster/List (original) ³ Confirmation of Admission and Personal Information Forms Correction of Social Security Number ⁵ Course Descriptions, Syllabi, and Catalog Info for Transferred Courses ⁶ Course Offerings ¹ Credit by Examination Reports/Scores (Placement, Advanced Standing, etc.) ² Curriculum Change Authorizations (C&D, substitutions from Dept, etc.) ² Declarations of Major ² Degree Audit Records ⁷ Enrollment Verifications and Letters of Status (Sent Off Campus) | <p>5 from grad or DOLA</p> <p>1 from grad or DOLA</p> <p>no required minimum</p> <p>1 after date submitted</p> <p>Perm</p> <p>Perm</p> <p>no required minimum</p> <p>Perm</p> <p>no required minimum</p> <p>Perm</p> <p>no required minimum</p> <p>5 from grad or DOLA</p> <p>5 from grad or DOLA</p> <p>no required minimum</p> <p>5 from grad or DOLA</p> <p>3 after last action</p> |
|---|--|

- ¹ Perm (online)
- ² Perm
- ³ until grad.
- ⁴ Perm (Old: Archives; New: Electronic)
- ⁵ 3 years
- ⁶ Perm (imaged back to 1984-85) electronic
- ⁷ Indefinitely

Record Retention Schedule University Registrar

*** FOOTNOTES INDICATE CURRENT DEPARTMENTAL PRACTICE ***

Category/Type of Record	MINIMUM Retention Period (in years, unless otherwise indicated)
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² Enrollment Verifications, including Logs (In-House and NSC)	1 from enroll date
² Grade Appeal Records (receipt and response; C&D minutes; letters of notification)	1 after end of semester of last action on appeal
Grade Rosters/Sheets (Registrar)	Perm
² Graduation Authorizations (final degree audit)	5 from grad or DOLA
Graduation Lists / Commencement Bulletin	Perm
⁸ Hold or Encumbrance Authorizations	until released
Name Changes	Perm
³ Notes of Extension of "Incomplete" Grades	no required minimum
³ Overload/Underload Approvals	no required minimum
² Pass/Fail, Credit/No Credit Approvals (including audit, etc.)	1 from date submitted
² Pass/Fail Requests	1 from date submitted
² Personal Data Information Forms (Matriculation)	1 from grad or DOLA
⁵ Personal Notes With No Permanent Value	no required minimum
⁹ Religious Preference Form	no required minimum
¹⁰ Student Class Schedules	1 from grad or DOLA
¹¹ Student Registration Forms	1 from date submitted

² Perm

³ until grad.

⁵ 3 years

⁸ Electronic during hold

⁹ 1 year

¹⁰ Perm (Current: online; Old: archived)

¹¹ WebReg Tracking only

Record Retention Schedule
University Registrar

*** FOOTNOTES INDICATE CURRENT DEPARTMENTAL PRACTICE ***

Category/Type of Record	MINIMUM Retention Period (in years, unless otherwise indicated)
-------------------------	--

- | | |
|--|------------------------|
| Transcript Requests | 1 from submission date |
| Transcripts (W&L) | Perm |
| ² Transfer Credit Evaluations | 5 from grad or DOLA |
| ² Withdrawal / Leaves of Absence (authorizations and forms) | 2 from grad or DOLA |

Admissions for Applicants Who Enroll

- | | |
|---|---------------------|
| ² Military Documents (Veteran's Affairs Documents) | 5 from grad or DOLA |
| ¹² Transcripts (high school or other college) | 5 from grad or DOLA |

Archival Historical Publications and Internal Institutional Research Catalogs

Perm

Family Educational Rights and Privacy Act Data/Documents

- | | |
|--|---|
| Requests (with disposition) for Correction/Amendment of Records and Student Statements on Content of Records Regarding Hearing Panel Decisions | as long as the records they pertain to are maintained |
| ¹³ Student Consent to Disclosures of Personally Identifiable Information | as long as education records of student are maintained |
| Student Requests for Non-Disclosure of Directory Information | until terminated by student; or as long as student records maintained |
| Waivers for Rights of Access to Letters of Recommendation | until terminated by student; or permanent |

¹² Perm. Note: Some documents from foreign institutions may be originals and therefore difficult or impossible for the applicant to replace.
Holders of such records should consider returning these documents to the applicant, as appropriate.

¹³ Electronic only

Record Retention Schedule
University Registrar

*** FOOTNOTES INDICATE CURRENT DEPARTMENTAL PRACTICE ***

Category/Type of Record	MINIMUM Retention Period (in years, unless otherwise indicated)
Human Resources	
Conflict of Interest Disclosure Statements (staff & faculty, where applicable)	2
Job Applications and Other Employment Inquiries for Faculty and Staff NON-HIRES (including records related to failure or refusal to hire any individual)	3 from date of hiring decision
Personnel Records (supervisor records re: performance/attendance/discipline/etc.)	5 from separation
References	2 after separation
Student-Employee Personnel Files	5 after graduation or DOLA
Purchasing and Contracts	
Departmental Budget Files	no required minimum
Purchase Orders, Contracts, Agreements	5 (written contracts and any documents relating to verbal contracts)

Information Only

Not Legal Advice

STUDENT FINANCIAL AID (SFA)
SFA Recipient Records
Documentation of Student's Program of Study and Courses Enrolled In

3 from award year