October 3, 2019

The Honorable R. Steven Landes, Chair
Committee on Education
Virginia House of Delegates
Pocahontas Building
900 E Main St
Richmond VA 23219

The Honorable Stephen D. Newman, Chair
Committee on Education and Health
Senate of Virginia
PO Box 396
Richmond, VA 23218

Dear Chair Landes and Chair Newman:

Attached please find the Report on the Implementation of the Virginia Public Records Act in Public Schools, as authorized and required by Chapter 575 (Regular Session, 2019).

The Report is the culmination of several months of work in consulting with school records officers in the Public Schools Records Consortium and in surveying school records officers, superintendents, and school board members. We have viewed it as an opportunity to establish a baseline of records practices as actually carried out in the public schools of the Commonwealth and to determine better where needs can be addressed.

We plan to share the Report with the records officers, superintendents, and school boards that were surveyed in its creation. We hope that it is as informative to them, and to your committees, as it has been to us.

If you have questions or require additional information, please contact me at (804) 692-3807 or at chad.owen@lva.virginia.gov.

Sincerely,

Chad Owen
Records Management Coordinator
Government Records Division

Report on the Implementation of the Virginia Public Records Act in Public Schools

The Library of Virginia

800 East Broad Street

Richmond, Virginia 23219-8000

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1 LEGISLATIVE REQUEST

The 2019 Virginia General Assembly passed House Bill 1788 that required the Library of Virginia (LVA), in conjunction with the Public Schools Records Consortium (PSRC) and the Records Oversight Committee (ROC), to confer with local school boards and superintendents to find ways to better and more efficiently promote and implement the Virginia Public Records Act (VPRA).

CHAPTER 575

An Act to require certain State Library Board advisory committees to make recommendations relating to the Virginia Public Records Act.

[H 1788]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The Public School Records Consortium and the Records Oversight Committee, established by the State Library Board as advisory committees pursuant to subsection B of § 42.1-82 of the Code of Virginia, shall confer with school boards and division superintendents and submit to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than November 1, 2019, recommendations on ways in which school boards and school board employees can better promote efficiency and cost-effectiveness in the implementation of the Virginia Public Records Act (§ 42.1-76 et seq. of the Code of Virginia).*

2 EXECUTIVE SUMMARY

The VPRA (§§ 42.1-76 through 42.1-91) gives the LVA the authority to "administer a records management program for the application of efficient and economical methods for managing the lifecycle of public… establish procedures and techniques for the effective management of public records, make continuing surveys of records and records keeping practices, and recommend improvements in current records management practices…" Public records are defined as "recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record." With this authority and in accordance with the aforementioned act, the LVA developed a survey in order to understand the current state of records management in public school divisions across the state. With the help of the PSRC, the Virginia Department of Education (VDOE) and the Virginia Association of School Boards, the survey was distributed to superintendents, school boards, and Records Officers and data was collected over a two-month period.

The findings of the survey highlight the challenges that both school divisions and the LVA face in efficiently implementing the VPRA. Both entities have room for improvement in regards to outreach, education, and support in order to better their records management programs and provide Records Officers the tools they need; additional resources would facilitate this improvement.

3   METHODOLOGY

This survey was designed primarily for school administration and board members, with Records Officers as a secondary respondent. Survey takers were asked to provide their name, title, and school district in addition to answering questions about records management practices in their division. Questions were worded in order to understand what school divisions are or are not doing in order to manage their records. There were also open-ended questions, so that respondents could provide their own input on retention schedules and records series that could be improved.

In order to reach the target audience required by HB1788 and other relevant parties, the survey was distributed via web link through several email channels. It was opened May 16, 2019 and after various email communications and reminders, it was closed on July 31, 2019. The survey was disseminated to school divisions by Superintendent's Memorandum 145-19, dated June 21, 2019. The Virginia School Boards Association distributed the survey to school board chairs, and the Library of Virginia sent out notices via the EDSIG listserv to school Records Officers. At a minimum, this survey was sent to 408 individuals, with the assumption that there is one superintendent, school board chair, and Records Officer per division. This does not account for multiple superintendents, board members, Records Officers and coordinators who may also have been informed about the survey.

At the time the survey closed, there were 102 total responses, which includes survey views, complete, and incomplete responses. Of those responses, 93 began the survey in some form either entering their name or answering a question, but we only received 60 *complete* responses. Although they could have added more to the demographics of the survey, the incomplete responses were not counted in the findings due to the large gaps in their answers, especially in significant areas such as information on records officers, thoughts on retention schedules, record format, etc.

4   SURVEY FINDINGS

4.1   DEMOGRAPHICS

Of the sixty complete responses:

- 43% of respondents work in an administrative capacity
- 27% are superintendents
- 20% are in records management
- 8% are school board members or employees
- 2% work in the school library.

Some districts had multiple respondents, which led to some duplicated information and a few conflicting responses. The various roles of the individuals who took the survey also shaped the responses, since they may have little to no knowledge of the records management in their division, or they could be the Records Officer who runs the program.

A majority of respondents were from smaller divisions, with enrollment ranging from 1,000 to 5,000 students [Figure 1]. This is unsurprising since over half of the school divisions across the state had enrollment ranging from 1,000 to 5,000 students in the 2018-2019 school year. It is noteworthy that there were not more responses from divisions with higher student enrollment, since they have more records to manage.
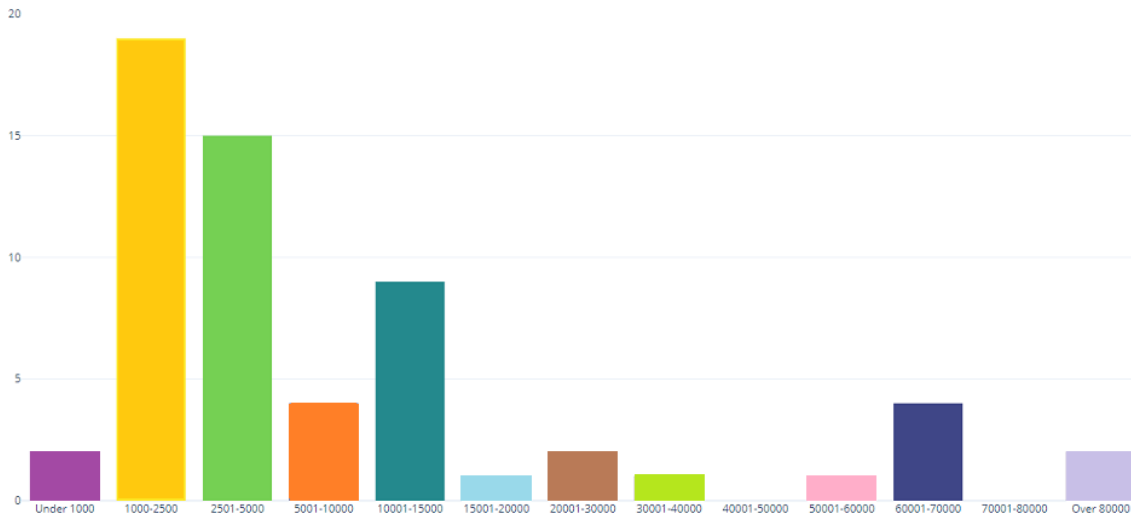
Figure 1: Division Enrollment

Out of 132 possible school divisions, only 51 are represented in this survey (39%), meaning that 81 localities did not fully complete the survey. There is a significant non-response from southwestern Virginia, and other small pockets of counties and cities across the state. Overall, there is greater representation of counties in the survey (78%) than cities, which presents a potential bias of rural representation over urban and may be reflected in the division enrollment.

4.2 RECORDS MANAGEMENT RESOURCES

4.2.1   Records Officers and Personnel

Per the Code of Virginia §42.1-85(C), each agency and political subdivision of the Commonwealth should have at least one Records Officer designated. These Records Officers may be appointed within the school district, or they may be appointed at the locality level if the records management functions for the locality are centralized, but each school division should have a Records Officer who they can turn to for questions and for authorizing destruction of public records. In response to the question "Does your school division have a Records Officer designated with the Library of Virginia" the breakdown is as follows:

- 80% Yes
- 7% No
- 13% I Don't Know

The cumulative 20% of 'No' and 'I Don't Know' responses is concerning. Of those who responded with either answer, only one locality did not have an active Records Officer designated with the Library of Virginia. The rest of the respondents had Records Officers designated, or were in fact themselves the designated Records Officer. This is particularly troubling as it shows a breakdown in communication between the administrative and governing bodies and their Records Officers, an unawareness of the agency heads and their role in implementing the VPRA, and confusion surrounding the Records Officer's role in communicating and implementing the VPRA in their division.

When asked if there was a full time equivalent employee (FTE) for records management in their district, a majority said there was none, while the next highest percentage (38%) only had one. However, this data is likely inaccurate when placed in context of other responses, since several of the budgets provided do not indicate the ability to fund a FTE. The likely explanation is that the respondent intended to communicate that there is a FTE who has records management as part of their duties, but that it is not their primary job function. The locations that indicated multiple FTEs for records management tended to have larger division enrollments, which necessitates more resources in dealing with records.

4.2.2   Training and Budget

The dearth of human resources committed records management is felt in the answers on training and staff knowledge. A majority of responses state that their Records Officer spends 0-5% of their time training staff, and only an average of 20% of teachers and administrative staff have been trained on records management. Given the high volume of records created by teachers and administration, it is concerning that so few have any knowledge on how to deal with them.

When asked about the school board, over half indicated that their school board members had not been trained on the VPRA.

In regards to training in records management, half of the respondents indicated that they had received professional training in records management. Additionally, 64% of respondents state that their records management staff do not or are unable to attend professional development meetings.

When asked if they wanted more training from the LVA, it was clear that there is an overwhelming demand for training [Figure 2]. The respondents who said "No" tended to be either high level administration such as the superintendent or the school board, or a full time Records Officer who has had formal training or certification in records management. Except for those who said no, almost all of the respondents indicated that they would like more training for their Records Officer, who could then disseminate information to other staff.
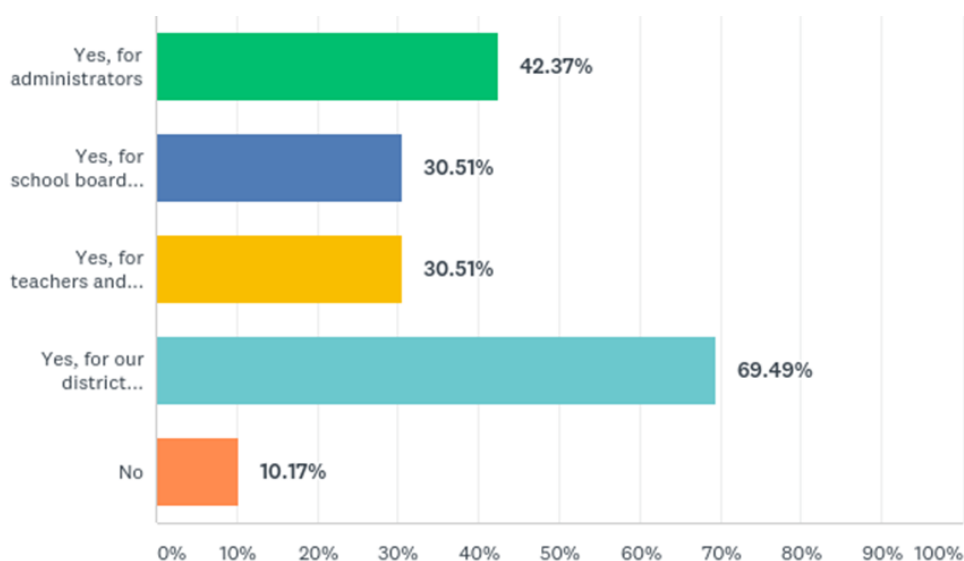

Figure 2: Requests for Training from the LVA

The lack of full time positions and inability to train teachers and staff are corroborated by the small amount of funds allocated by divisions to records management. 32 out of 61 respondents have $5,000

or less to devote to their records management programs [Figure 3]. Consequently, a number of individuals are doing records management work in addition to other tasks, which leaves less time for communication and training on records management. The outliers tend to have larger enrollments with more funding and are thus able to allocate more resources to managing records. Having personnel dedicated to records management allows for more teacher, staff, and school board training, as well as provides greater opportunities to attend professional development events.
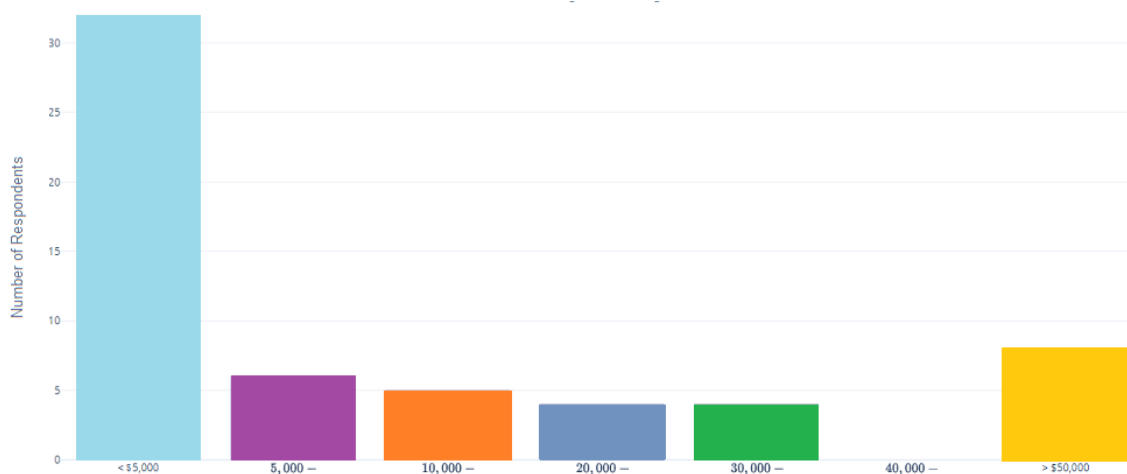

Figure 3: Budgets for Records Management (Including Salaries)

4.3 RECORD FORMATS AND STORAGE

4.3.1 Storage

Agencies are responsible for ensuring "that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary…" which involves providing adequate storage regardless of format, and having the resources to convert and migrate electronic records as needed throughout their retention period to ensure their reliable accessibility.

Most respondents (77%) store hard copy records on-site. Of those that store records off-site, there is a wide range of budgets with some storage provided by the city, and others reportedly paying up to $30,000 a year. One solution to lowering storage costs, in addition to consistent document destruction, is digitizing the documents and storing them electronically. If the record is converted to a specific file format that becomes obsolete, there can be issues if it is ever requested and it is inaccessible. For example, file formats like Word Perfect are no longer in use and floppy discs, which were once one of the main storage devices for computers, are now obsolete. In order to insure that files are always available as mandated by the VPRA, the holders of the records have to continually migrate and update electronic records to make sure they are accessible.

For permanent and long term records, institutions often employ multiple strategies when storing their records. Most responses had a combination of digitization efforts, on-site storage, off-site storage, and third party vendors as part of their efforts to house the records.

4.3.2   Formats

While records are defined by their content rather than their format, format is crucial for deciding how to store and eventual dispose of records. A majority of respondents keep records primarily in hard copy form (paper, microfilm, microfiche, etc.), and the rest are kept electronically.

An average of 41% of records exist in multiple copies and/or locations or formats. According to the VPRA, "multiple copies of the same document are each considered to be a record only in the instance that each serves a separate administrative purpose and if they are kept in separate filing or recordkeeping systems. Extra copies, such as distribution copies, stock copies, and copies maintained for convenience or reference, are not public records." Where multiple copies of the same record exist, all copies other than the agency-designated official copy of record may be disposed of when no longer administratively useful without a Certificate of Records Destruction (RM-3). This includes records that were scanned or otherwise reformatted from hard copy to electronic storage; only one of such copies need be retained. The retention of superfluous copies not only represents a fiscal burden upon the agency in terms of storage costs, but in addition, if one copy of a record is destroyed but another copy remains, the institution is still obligated to produce the copy if it is requested under the Freedom of Information Act (FOIA) or a subpoena, which can create the additional burden of legal discovery.

Digitizing records is a good step towards clearing up physical space; however, this does not mean that divisions are getting rid of the copies. One respondent stated "the student records have been scanned if they were permanent and the hard copies are here at central office," which indicates that they are unnecessarily maintaining both electronic and paper copies of records, in this case, for seventy-five years. It is likely that many districts are keeping both copies in an effort to "cover their bases" which is contributing to the higher costs and decreasing storage space.

4.3.3   Social Media Records

A worryingly large 80% of respondents do not utilize software or other means to archive their social media records. Social media posts, comments, and interactions are public records as defined by the Virginia Public Records Act, despite their nontraditional platform. Oftentimes, these records would fall under general correspondence, public relations, program and event registration, photographs, etc. Since each school and each agency uses their social media differently and to different ends, and because various records series may be presented or received via social media, it is impossible to implement an overarching social media retention schedule. This can make managing records in social media a challenge. Nevertheless, as public records, they are subject to FOIA and other legal requests for which an educational entity needs to be prepared.

4.4   RETENTION SCHEDULE NEEDS

Per the VPRA, a records retention and disposition schedule refers to a "Library of Virginia-approved timetable stating the required retention period and disposition action of a records series. The administrative, fiscal, historical, and legal value of a public record shall be considered in appraising its appropriate retention schedule." The retention schedule that deals specifically with records that are unique to public schools is GS-21, which was last updated May 2016.

4.4.1   Retention Period Too Long

78% of respondents did not feel like there were any retention periods that were too long. Of those that did, eight individuals mentioned GS-21-008223: Student Cumulative File: Long-Term Documentation

– Post 1935, which is retained for 75 years after a student graduates, completes Board of Education program, transfers, or withdraws.

These individuals felt that once a student transfers or withdraws and their records are sent over to the new school, they should be able to destroy the entire student record, short term and long term. The short term cumulative file (GS-21-008224), containing a majority of the materials in a student's scholastic record, is retained for five years and then destroyed. Only a comparative few records are retained in the long term cumulative file, and many are likely the same record with different names. For example, the following records are often compiled into one document: transcript, grade point average, grades, and work completed.

Within the larger national context, Virginia is one of a small group of states that does not keep its student records permanently. Of the 48 states whose records retention schedules, policies, or legislation are available, the student record retention is as follows:

- 38 states keep them permanently
- 4 states keep them for 100 years
- 4 states keep them for 75 years
- 2 states keep them for 60 years
- 1 state keeps them for 50 years

While there is a precedent for keeping records for less than 75 years, it is not common practice across the U.S.

In regards to federal regulations, a majority of the overarching guidelines focus on the Family Education Rights and Privacy Act (FERPA). These mandate that any requests for access be retained with student record as long as the record exists. It is worth noting that the Code of Virginia (COV) and the Virginia Administrative Code (VAC) both make reference to "permanent" student records, either permanent records of attendance, student's permanent record, pupil's permanent school record, mandatory permanent student record, student's permanent academic or scholastic records, or simply a permanent record. The student records were retained permanently until the schedule was revised in 2003 by the LVA in cooperation with a focus group of 25 public school Records Officers and with the approval of the Superintendent of Public Instruction, reducing the retention to 75 years. The VDOE does not have any specific guidelines on records retention; all refer back to LVA records schedules.

Other series that were mentioned include teacher grade books, which are one to three years depending on the series; and programs of studies, which are retained for 75 years. There are also some concerns surrounding employment applications and email, which fall under different general series that are statewide rather than specific to education. Email, for example, is a type of correspondence, and may be retained for as little as 0 years after administratively useful. What is likely the scenario for the respondent is that, as frequently occurs, personnel in their division are worried about deleting emails and instead keep them forever rather than clear out their inbox.

4.4.2 Retention Period Too Short
Almost all of the respondents felt that there were no retention periods that were too short, with two exceptions. One individual noted that legal records were kept for too brief a period, however there are a number of legal records series across schedules with various retentions, so it is unclear what specific records they may be referring to and why. Another respondent felt that special education records kept in GS-21-008224: Student Cumulative File: Short-Term Documentation, which are retained for only

five years, were kept too briefly. Their argument was that they often get requests after the five-year period since former students and their families use the documentation to apply for or continue disability benefits. Other series relating to the retention of special education records also fall within a five-year retention period, and there is no legal basis for the retention period, leaving it open for extension.

4.4.3   Confusing and Non-Conforming Records

A number of individuals indicated confusion around various records series, disposition, and the differences between paper and electronic records and copies. Of the records mentioned, people specified they wanted clarity on: school board policies, testing materials, CSA records, disciplinary records, attendance records, gifted education, and threat assessment.

Special education records are a particular point of confusion, likely stemming from the fact that they are kept separately in certain instances and later combined in other records series. Some mentioned they were confused as to where Individual Education Plans (IEP) should be placed, and others wanted more clarity for themselves and for the parents of the students.

When asked about records that did not seem to fit into a record series or schedules, one of the concerns was how to deal with paper records once they have been digitized, and how to get people to follow retention periods for email. This goes back to several other questions in the survey when dealing with copies and electronic records. A number of these issues come from misconceptions about what is a record and what is a copy of a record, misapprehension, and inadequate records management practices. Several of the confusing and non-conforming records could be found on different schedules, such as Administrative Records or Personnel Records. There is a clear need for more effective training and communication for Records Officers and the personnel in their district so that all employees have the same understanding of as well as some level of confidence with their policies when it comes to handling, retaining, and destroying records consistently and efficiently.

4.5 FREEDOM OF INFORMATION REQUESTS AND LEGAL FINDINGS

Given the small enrollment size of most of the respondents, the majority (79%) received less than 50 FOIA requests a year. The growing number of FOIA requests and the shrinking number of respondents per category aligns with the decreasing amount of school enrollment sizes. The only respondent who selected 'Over 250' is from one of the largest school divisions in the state, so it would reasonable to assume that the larger school divisions receive more requests.

When asked about litigation where the retention and management was a focus of said litigation, only two respondents said yes. In such instances, proper records management helps school districts deal with and be prepared for subpoenas and FOIA requests. If districts follow retention schedules consistently and correctly document the destruction of records, the district is covered if they are asked to produce a record that is no longer available. If a division fails to follow retention schedules and is asked to produce a record that was scheduled for destruction but was never destroyed, they have to produce the record. And in the case that a record was destroyed right before it was requested,

consistently following a records destruction schedule is more likely to be seen favorably versus a sudden decision to start destroying records.

5 SUMMARY AND RECOMMENDATIONS

The findings highlight the lack of resources for records management in most school divisions, which leads to miscommunication, uneven application of the VPRA, and the maintenance of records long past their mandated retention period. This in turn leads to higher costs for storage and records maintenance, and leaves divisions vulnerable in the face of FOIA requests and litigation.

In order for school divisions to more efficiently and cost effectively manage their records, there needs to be an investment in local records management programs. Better education will help divisions follow schedules, eliminate copies, and manage their records with greater efficiency.

In reviewing the results of the survey, the Library of Virginia makes the following recommendations:

- All school districts should appoint a Records Officer, with a minimum of 20% of this person's time being devoted to records management duties. This appointment should be known to division staff and staff should know to approach the Records Officer with questions or concerns about records management questions. The Records Officer should also be encouraged to pursue continuing education via conferences and professional organization memberships.
- District Records Officers should perform regular training for district leadership and school administrative staff on records management. Training should include encouraging staff to adhere to designated retention of records as proscribed in LVA retention schedules as well as elimination of multiple copies of records wherever possible to save on storage and retrieval costs as well as to minimize district liability in terms of audits, discovery, FOIA requests, and the like.
- The Virginia Department of Education should regularly update and ensure the availability of the *Guidelines for the Management of the Student's Scholastic Record in the Public Schools of Virginia*, which outlines what the VDOE requires to be retained in each student's record, as well as what can and cannot be released to which parties at which times. At present, the available document is dated 2004 and, while available via a search of the VDOE web site, is not directly linked from the "Student Records" section of said web site.
- The Library of Virginia will create a small publication to address common questions for school records management and to guide district staff to more resources for more in-depth questions or concerns.

As with all endeavors connected with government, these recommendations depend on the allocation of increasingly slim resources which are similarly increasingly demanded for various other needs. In the case of records management, however, timely application of resources up front has the potential for large gains down the line. In our eyes, this survey has demonstrated more than anything that there is a great number of school district employees who want to be more efficient with records management; they merely lack the understanding, communication, or resources with which to effectively do so. It is our hope that decision makers at both the state and district levels see clear to devote needed resources to this effort, for the good of the schools, students, and the Commonwealth.

6 ACKNOWLEDGEMENTS

7 APPENDIX: SURVEY QUESTIONNAIRE

House Bill 1788 of the 2019 General Assembly session stipulated that the Records Oversight Committee and the Public Schools Records Consortium reach out to public school boards and division superintendents about cost-effectiveness and efficiency in records management. This survey is an attempt to solicit data and feedback as to records management in public schools in Virginia in order to report back to the chairs of the education committees in both houses. Your participation will help us establish the lay of the land in recordkeeping in the Commonwealth's public schools, and help us pinpoint some areas where better efficiency can be achieved.

This survey should take roughly 10 minutes to complete.

If you have any questions about the survey, please contact Chad Owen, Library of Virginia Records Management. Thank you for your help, and we look forward to sharing what we learn from the survey with you!

1. What is your name?

2. What is your title?

3. What school district do you represent?

4. What is the enrollment for your school division?
- Under 1000
- 1000-2500
- 2501-5000
- 5001-10000
- 10001-15000
- 15001-20000
- 20001-30000
- 30001-40000
- 40001-50000
- 50001-60000
- 60001-70000
- 70001-80000
- Over 80000

This section is intended to assess the division's commitment to records management in terms of budgeting, personnel, and dedicated time to training and development.

5. Does your school division have a Records Officer designated with the Library of Virginia?
- Yes
- No
- I don't know

6. How many full-time equivalent positions (FTE's) do you have designated for records management in your district?
0 - 6+

7. What is your budget for records management, including salaries? (You may choose to calculate percentages of a staff person's salary.)
- Less than $5000
- $5001-10000
- $10001-20000
- $20001-30000
- $30001-40000
- $40001-50000
- Over $50000

8. Has your staff had formal training or certification in records management?
- Yes
- No

9. Does your records management staff attend professional development meetings (SAA, ARMA, AIIM, NAGARA, VAGARA, PSRC, etc.) on a regular basis?
- Yes
- No

10. What percentage of your Records Officer's time is spent in training staff?
0 - 100

11. What percentage of your teachers and administrative staff have been trained on records management?
0 – 100

12. Have your school board members received information and/or training on the Virginia Public Records Act?
- Yes
- No

13. Would your school district like to receive more training from the Library of Virginia on records management? (Please check all that apply.)
- Yes, for administrators
- Yes, for school board members
- Yes, for teachers and administrative staff

- Yes, for our district records officer, who could then train other staff
- No

This section is aimed at surveying common records formats and potential efficiencies in storage, reformatting, and redundancy.

14. What percentage of your records, roughly, are in hard copy formats ONLY (paper, microfilm, microfiche, etc)?
0 – 100

15. What percentage of your records, roughly, are in electronic formats ONLY?
0 - 100

16. What percentage of your records, roughly, exist in multiple copies and/or locations, including in different formats?
0 - 100

17. Do you use third party off-site storage for a portion of your hard copy records?
- Yes
- No

If yes, what is your budget for offsite storage?

This page is intended to seek out issues with the Library of Virginia's retention schedules and determine areas of improvement for changing retention periods, clarifying records series and series descriptions, or adding new series to the schedules.

If yes, please indicate which records, and your reasoning for the retention period being inappropriate, citing statute or policy where possible.

18. Are you aware of records in your district for which you feel the retention period as listed in Library of Virginia retention schedules is too long?
- Yes
- No

If yes, please indicate which records, and your reasoning for the retention period being inappropriate, citing statute or policy where possible.

19. Are you aware of records in your district for which you feel the retention period as listed in Library of Virginia retention schedules is too short?
- Yes
- No

20. Do you have particular records or sets of records that are a frequent source of misinterpretation, confusion, or questions that could benefit from clarification in the schedule?

If yes, please describe the records.

21. Do you know of records within your district that you do not believe fit into the records schedules?
- Yes
- No

22. What provisions do you make for housing, storing, preserving, and/or providing access to permanent/historical records?

23. Does your school division utilize software or other means to archive social media records?
- Yes
- No

This section is intended to assess the frequency of legal issues surrounding records management facing the Commonwealth's districts.

24. How many records subpoenas/FOIA requests does your school division respond to in a given year, on average?
- Less than 10
- 11-50
- 51-100
- 101-250
- Over 250

25. Has your school division been involved in litigation in which the retention and management of records was a focus of the litigation?
- Yes
- No