

VICTOR VALLEY COMMUNITY COLLEGE DISTRICT ADMINISTRATIVE

PROCEDURE

GENERAL INSTITUTION

Chapter 3

Electronic Document Discovery and Retention Procedures

AP 3722

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Electronic Document Discovery and Retention Procedures

1 Scope

1.1 Introduction

This procedure applies to all district students, faculty and staff and to others granted use of District computer and electronic communication systems. This procedure applies to all documents, records and data stored on District Computer systems whether on campus or remotely hosted. For purposes of this procedure, Computer and Electronic Communication Systems include, but are not limited to, electronic mail, Internet and intranet services, voice mail, audio and video communications and facsimile messages which are provided using District-owned, leased, or rented computer hardware, software, databases and telecommunications systems.

1.2 Background

Parties to a lawsuit have always been required to preserve and produce “evidence” that was relevant to the claims in that lawsuit. In the past, such requirements meant that paper documents were to be maintained. Now, courts recognize that evidence also includes “electronically stored information” (“ESI”). As a result, when a legal claim is filed against Victor Valley College, either in court or with an administrative enforcement agency, or when such a claim is reasonably anticipated, the College and its employees are obligated to preserve electronically stored information as well as all other traditionally preserved information that may be relevant to that claim (“Information”). Similar obligations arise when the College receives a subpoena for information, even though the College may not be a party to the lawsuit. Failure to preserve such evidence may result in sanctions and liability imposed on both the College and those employees who fail to take appropriate steps to preserve

evidence.

Although ESI and other Information must be preserved, it will not be produced to an opposing party without first being reviewed by College counsel to determine relevance and to re-move legally privileged information.

The purpose of this policy is to assist College employees in fulfilling their responsibilities to preserve and produce relevant evidence.

2 Electronic Documents Retention

2.1 Where electronic documents are used as a primary or backup source of legal records, the retention requirements are the same as those for the paper record. These retention timeframes are defined in the applicable AP for that record type:

2.1.a General guidelines for the retention and destruction of District records are provided in AP 3310 District Record Retention and Destruction

2.1.b Student Records requirements are provided in AP 5040 Student Records and Directory Information and Privacy

2.1.c Business records such as contracts and purchasing agreements must be adequate to meet the audit requirements of AP 6200 Budget Development, AP 6330 Purchasing Approval and Document Matrix and AP 6331 Purchasing Procedure

2.1.d Instruction Program Records must be adequate to demonstrate the procedures outlined in the VVC Program Review Handbook and to meet the requirements of Accrediting Commission for Community and Junior Colleges.

2.2 Documents maintained on the centralized systems maintained by VVCD Information Technology Services are regularly backed up and are:

2.2.a Required by and consistent with law, or when there is probable cause to believe that violations of policy or law have occurred;

2.2.b Necessary to prevent loss of evidence of violations of policy or law;

2.2.c Necessary to prevent property damage or loss of property, or bodily harm;

2.2.d Necessary to prevent liability to the District;

2.2.e Warranted by business operational needs, as determined by the Superintendent/President or designee.

3 Employee Responsibilities

3.1 As covered in AP 3720, Acceptable Use of Computer and Electronic Communication Systems, the content of electronic communications or computer files sent and received on the District's systems or stored on District servers may be presumed to constitute a District record subject to disclosure under the California Public Records Act or other laws, or as a result of litigation. This is true even if these are personal communications that used a District device.

3.2 Employees are responsible for maintaining District records for which they or their department control, according to the records management policies and procedures for their department.

Inspection or monitoring, other than for routine maintenance and system administration must be authorized by the Superintendent/President or designee. Such inspection or monitoring must be limited to materials related to the investigation, and the confidentiality of the inspection must be maintained to the highest degree possible. In the event a search of an employee's computer files is authorized, a reasonable effort must be made to secure technical assistance from a designated constituent group and/or union of the employee whose files are being searched.

4 Electronic Document Discovery Procedures

4.1 When a lawsuit is filed against the College, only the Office of the Superintendent/President is authorized to accept receipt of the summons and complaint.

4.2 Upon receipt of a summons and complaint or otherwise learning that a lawsuit or a charge with a state or federal administrative enforcement agency has been filed against the College, or that one is reasonably anticipated to be filed, the Office of the Superintendent/President shall notify the of Chief Information Systems Officer

4.3 The President shall send a Document Preservation Notice to ITS and all relevant College employees notifying them of their legal obligation to preserve and not delete, destroy, alter or modify ESI and other Information, pertinent to the case.

4.4 Document Preservation Notices are confidential and may only be discussed by the recipient with other employees on a need to know basis.

4.5 Upon receipt of the Document Preservation Notice, immediate review and retention of all ESI and other Information held or maintained by a College employee is required by law and pursuant to this College policy. Any employee who receives a Document Preservation Notice is required to follow the specific instructions in the Notice. Failure to do so may result in discipline and expose the employee to court imposed sanctions.

- 4.6 ESI and other Information include hard copy documents, audio recordings, videotape, e-mail, instant messages, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, attendant data for each file that may not be visible and all other electronic information maintained created, received, and/or maintained by the employee or the College on computer systems.
- 4.7 Sources for ESI and other Information include all hard copy files, computer hard drives, re-movable media (e.g., CDs and DVDs), laptop computers, PDAs, Blackberry devices and any other locations where hard copy and electronic data is stored.
- 4.8 Sources for ESI and other Information may include personal computers an employee uses or has access to at home or at other locations.
- 4.9 Sources may also include inaccessible storage media, such as back-up tapes, which may contain relevant electronic information that does not exist in any other form.
- 4.10 Upon receipt of a Document Preservation Notice and in order to comply with his/her legal obligations, an employee must suspend deletion, overwriting or any other possible destruction of relevant ESI and other Information, including the disabling of any “janitorial” functions such as automatic deletion of e-mails. For relevant ESI and other Information, personal practices such as the deletion of e-mails, voice mail, drafts of documents and similar practices must be suspended.
- 4.11 Relevant ESI must be preserved in its original electronic form on the media which it is stored, regardless of whether it has been reduced to a hard-copy or whether a hard-copy already exists. ESI must not be transferred from the media on which it is then stored to any other type of media.
- 4.12 Hard copies of ESI must also be preserved.
- 4.13 Any new ESI and other Information created after receipt of the Document Preservation Notice must also be protected and preserved if relevant to the case.
- 4.14 Upon receipt of a Document Preservation Notice, ITS will address it according to divisional and/or departmental policy.
- 4.15 The obligation to preserve ESI and other Information also arises when the College “reasonably anticipates” litigation. For purposes of this policy, “litigation” includes the pursuit of a charge with any state or federal administrative enforcement agency. The mere possibility of litigation does not necessarily mean that litigation should be “reasonably anticipated.” The duty to preserve is created when credible facts and circumstances indicate that a specific, predictable and identifiable litigation is likely.
- 4.16 Factors that should be considered in evaluating whether litigation is “reasonably anticipated” include, among other things:

- 4.16.a Attorney statements or letters on behalf of any employee, student or outside party regarding a dispute with the College. Such attorney letters should immediately be referred to one's supervisor. Any other inquiries by such attorneys, whether by telephone or in person, should immediately be referred to the Vice President of Administration.
 - 4.16.b Statements regarding the potential or prospect for litigation.
 - 4.16.c Complaints or grievances filed internally with the College.
 - 4.16.d Initiation of dispute resolution procedures by employees, students or outside vendors.
 - 4.16.e Termination of employment.
 - 4.16.f Dismissal of a student from the College.
 - 4.16.g Significance or consequence of a dispute.
 - 4.16.h Event reported in the press.
- 4.17 Any employee who believes that litigation is "reasonably anticipated" should notify his/her supervisor, with notification continuing through all supervisory levels, until notice is provided to the College. At any time, an employee may alternatively notify Human Resources or the Compliance Officer. If, however, a supervisor is the employee from whom the litigation is "reasonably anticipated," notice should be provided to the next level supervisor.
- 4.18 The divisional Vice President, Human Resources or the Compliance Officer shall notify the Superintendent/President if any one of them concludes that litigation is "reasonably anticipated." The Superintendent/President may then issue Document Preservation Notices.
- 4.19 Upon transfer, reassignment or promotion within the College, retirement or any other separation from the College, each employee is obligated to place all preserved ESI and other Information under the control of his/her supervisor, unless that supervisor is the employee from whom the litigation is "reasonably anticipated," in which instance the preserved ESI and other Information shall be placed under the control of the next-level supervisor. The supervisor shall notify the Executive Director of IT for further instruction.
- 4.20 Upon an employee's transfer, reassignment, promotion, retirement or any other separation from the College, Human Resources shall notify IT.
- 4.21 In all such instances, IT shall manage the preservation of ESI and other Information and the reassignment, if any, of the employee's IT equipment. If any such employee is assigned new IT equipment, the original IT equipment containing any ESI or other Information shall be preserved until IT authorizes its release and reassignment.

5 Expiration of Preservation Notice

When the need for preservation of ESI and other Information has expired, Superintendent/President shall notify those employees who originally received a Document Preservation Notice and IT. Retention shall then be governed by applicable College policies.