

SUPREME COURT OF NORTH CAROLINA

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DUSTIN MICHAEL MCKINNEY,  
GEORGE JERMEY MCKINNEY and  
JAMES ROBERT TATE,

Plaintiffs-Appellees,

STATE OF NORTH CAROLINA,

Intervenor-Appellee,

vs.

GASTON COUNTY BOARD OF  
EDUCATION,

Defendant-Appellant.

From Wake County

No. COA 22-261

No. 21 CVS 7438

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**DEFENDANT-APPELLANT GASTON COUNTY BOARD OF  
EDUCATION'S REPLY BRIEF**

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GASTON COUNTY BOARD OF  
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**DEFENDANT-APPELLANT GASTON COUNTY BOARD OF  
EDUCATION'S REPLY BRIEF**

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To the Honorable Supreme Court of North Carolina:

The Gaston County Board of Education (the “Board”) replies here to the new briefs of the Plaintiffs-Appellees (“plaintiffs”), the State of North Carolina Intervenor-Appellee (the “State”), and the amicus brief filed by CHILD USA. For the reasons explained below and in the Board’s opening brief to this Court, the Board requests that this Court uphold its longstanding precedent and find Section 4.2(b) of Session Law 2019-145 (“the Revival Window”) unconstitutional and inoperative as to Plaintiffs’ claims.

The New Briefs of plaintiffs and the State are striking for three reasons. First, plaintiffs put forward an incorrect interpretation of *Harper v. Hall*, 384 N.C. 292 (2023) that, if adopted by this Court, would strip the People of basic rights that they have held for centuries—including the right to be protected from arbitrary takings of property, from double jeopardy, and from violation of due process rights.

The second remarkable aspect of the New Briefs is their almost complete disregard for the sweeping repercussions of adopting plaintiffs’ position. As discussed in the Board’s opening brief, adopting plaintiffs’ view would do little if anything to prevent future child abuse. To argue otherwise defies common sense. Plaintiffs almost completely ignore this issue, simply stating that “Defendant’s assertions are as irrational as they are mendacious and have no basis in fact or reason.” Pls. Br. 81. In their eighty-three page

brief, plaintiffs make no effort to explain how reviving decades old civil claims would do anything to protect today's children, nor do they address the myriad impacts on organizations across the state that will result from allowing fifty year old claims to suddenly be resurrected. The compelling explanations offered by the various amici are simply ignored.

Not only would plaintiffs' position do little if anything to protect today's children, but agreement with plaintiffs' position would mean that the Legislature could resurrect any claim it wants any time it wants for almost any reason that it wants—today it would be claims for child abuse; in the future it could be whatever the General Assembly is convinced to revive: products liability, construction defects, medical malpractice, law enforcement officer liability, defamation, employment discrimination—the list is endless.

The third striking aspect of plaintiffs' brief is the vitriol directed, not just at the Board and other children-oriented organizations (labelling them as “enablers” of pedophiles), but at this Court itself. *Wilkes County v. Forester*, 204 N.C. 163 (1933) and the long list of cases that have relied on that decision are a serious problem for plaintiffs' position. If plaintiffs want to label *Wilkes County* as “antiquated” or “opaque,” they have every right to do so (even though they would be incorrect). But attacking this Court's opinion as “vacuous,” or a “glaring example of judicial overreach,” or asserting that this Court “went rogue and chose to violate numerous fundamental tenants [sic] of appellate

jurisprudence,” or proclaiming that the opinion in *Wilkes County* was “pulled from thin air,” or that *Wilkes County* (or any other decision of this Court) “deserves no precedential deference” is inappropriate. Just as bad facts should not make bad law, there is no excuse for disrespect for this, or any, Court.<sup>1</sup>

Child abuse is among the worst of crimes. Child abusers should be punished harshly, and children should be protected at almost any cost. But child abuse is already a felony and those criminal laws have no statute of limitations. Justice is, always has been, and always will be available to victims of child abuse.

This Court has already answered the question before it and it should reaffirm its precedents, which are consistent with the text of the Constitution and the context in which it was adopted, as explained below. The alternative is to strip the People of their vested rights and sow havoc across the state.

## ARGUMENT

### **I. THE *HARPER* METHODOLOGY COMPELS THE CONCLUSION THAT THE PEOPLE MEANT TO PROTECT THE VESTED RIGHT TO A LIMITATIONS DEFENSE.**

The parties agree that *Harper v. Hall* sets out the constitutional analysis applicable to this case. When applied, the unassailable conclusion is that the

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<sup>1</sup> While many of the State’s arguments are incorrect, the State’s brief at least treated this Court with the respect that it is due.



People understood that the Law of the Land Clause protected them from legislative interference in their vested right to a statute of limitations defense.

**A. The *Harper* Methodology requires analysis of both the text of the Law of the Land Clause and what the People agreed that text meant at the time it was adopted.**

The directive from this Court in *Harper* reads:

The constitution is interpreted based on its plain language. The people used that plain language to express their intended meaning of the text when they adopted it. The historical context of our constitution confirms this plain meaning. **As the courts apply the constitutional text, judicial interpretations of that text should consistently reflect what the people agreed the text meant when they adopted it.**

*Harper*, 384 N.C. at 399 (emphasis added). That is, the answer to the question (do the People have a vested right in the protections of time-based defenses?) is found by determining whether such protections existed when the Law of the Land Clause was adopted, most recently in 1970. If the answer is “yes” (as it is), then the Revival Window infringes on that vested right and such statute cannot stand.

As this Court explained well, a constitution must be read in the historical context in which it was adopted, *what the people thought when they ratified it*. This means looking to the “plain language, historical context, and this Court’s precedents,” all with an eye toward discerning the intent of the drafters (hereinafter the “*Harper* Methodology”). *Id.* at 364.

Plaintiffs argue that the People have no rights unless those rights are specifically listed in the Constitution. By plaintiffs’ reasoning, the People have no vested rights at all. They have no right to compensation when their property is taken, they have no protections against double jeopardy, and they have no due process rights of any kind—because none of those rights are specifically enumerated in the State Constitution. *Finch v. City of Durham*, 325 N.C. 352, 362–63 (1989) (noting the lack of appearance of “taking” in the Constitution but reading it into the Law of the Land Clause); *State v. Robinson*, 375 N.C. 173, 183–84 (2020) (noting the lack of the term “double jeopardy” but finding the right in the Law of the Land Clause based on history and context); *State v. Ballance*, 229 N.C. 764, 768–69 (1949) (describing the organic law of due process embedded in the law of the land).

To argue that the Court cannot read words in the context of the constitutional framers is to ignore the plain language of *Harper*. In the case of the Law of the Land Clause, plaintiffs’ argument eviscerates the fundamental, ancient principles on which the State was founded.

Before turning to the applicable (1971) North Carolina Constitution, it should be noted that a similar methodology is employed in the federal courts for construing the United States Constitution. For example, in *Ramos v. Louisiana*, 140 S. Ct. 1390, 1394–95 (2020), the question was whether a

unanimous jury verdict is required by the Sixth Amendment even though the Constitution nowhere mentions unanimity.

Justice Gorsuch, writing for the majority, dealt with the issue by first analyzing whether a right to unanimity was recognized at the time that the Constitution was adopted; i.e., was it already a right held by the People when the Constitution was adopted? The Court started by noting that “[t]he requirement of juror unanimity emerged in 14th century England and was soon accepted as a vital right protected by the common law.” *Id.* at 1395. The Court went on to trace the history of this fundamental right through the adoption of the federal Constitution in determining that the Sixth Amendment requires unanimity even though such is never mentioned in the Constitution. *Id.* at 1395–97.

**B. The Law of the Land Clause in the 1971 Constitution protected vested rights.**

The dispositive question under the *Harper* Methodology is: Was the ability to rely on the expiration of a statute of limitations recognized as a vested right at the time that the current Constitution, and specifically the Law of the Land clause, was adopted? The answer is indisputably yes.

The current North Carolina Constitution became effective in 1971.<sup>2</sup> The Law of the Land Clause appears in Article 1, Section 19, and reads: “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.” N.C. Const. art. I, § 19.

This language comes directly from the Magna Carta and has appeared in each constitution of North Carolina. *See* Report of The North Carolina State Constitution Study Commission, To The North Carolina State Bar And The North Carolina Bar Association, 72–73 (1968).

The drafters of the 1971 Constitution saw the Law of the Land Clause as a vital protection, writing in their conference report on the subject: “We do not propose the removal from the Constitution of any of these ancient guarantees of liberty.” *Id.* at 73–74.

As discussed below, one well-recognized ancient liberty in 1970 was the Vested Rights Doctrine. Laws that impair vested rights have always been viewed as inconsistent with the law of the land and therefore unenforceable (as discussed in greater detail below). *See, e.g., Robinson v. Barfield*, 6 N.C. 391, 423 (1818); *Charlotte Consol. Const. Co. v. Brockenbrough*, 187 N.C. 65,

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<sup>2</sup> This current version of the Constitution was approved by the voters in 1970 and became effective in 1971.

74–77 (1924) (per curiam); *Watts v. Lenoir & Blowing Rock Tpk. Co.*, 181 N.C. 129, 135 (1921). No changes were made to the Vested Rights Doctrine in the 1971 Constitution, despite significant attention being paid to the concepts of substantive due process during that era. The Vested Rights Doctrine was plainly incorporated into the Law of the Land Clause.

**C. The People understood that a limitations defense was a vested right in 1970.**

When the current Constitution was adopted in 1970, the limitations defense was a vested right. This fact was acknowledged in detail in *Wilkes County*, and repeated in many cases leading up to 1970. In *Wilkes County*, the Court found a revival window unconstitutional because it “attempted to destroy defendants’ defense of the statute of limitations.” *Id.* at 170. The Court went on to explain, “[i]t takes away vested rights of defendants, and therefore is unconstitutional.” *Id.*

Soon thereafter, this Court applied the rule to all kinds of civil actions. *See, e.g., Sutton v. Davis*, 205 N.C. 464, 469 (1933); *Waldrop v. Hodges*, 230 N.C. 370, 373 (1949); *McCrater v. Stone & Webster Eng’g Corp.*, 248 N.C. 707, 709–10 (1958). The very statute of limitations that barred plaintiffs’ claims here (N.C.G.S. § 1-52) was deemed to vest a right in the defendant to be free from civil tort claims in 1965. *See Jewell v. Price*, 264 N.C. 459, 461 (1965). By

1970, the law was clear: the protections of a statute of limitations is a vested right protected by the Law of the Land Clause.

The Board asks that this Court apply *Harper* and give force and effect to what the People and courts understand the Constitution of North Carolina to mean: A statute of limitations, once run, vests a right in every citizen—a right to be free from the threats of litigation from decades past, a right not to subject their person or property to judgments from civil claims, the right to rely on the word of the Legislature. The statute of limitations in this case should be given effect, because the effort to revive claims violates the Law of the Land Clause.

## **II. THE LAW OF THE LAND CLAUSE HAS ALWAYS INCORPORATED THE VESTED RIGHTS DOCTRINE.**

Applying the *Harper* Methodology to the historical record, it is obvious that the Vested Rights Doctrine has always been part of the Law of the Land Clause. This is true even though other provisions of the State Constitution address *ex post facto* laws in the context of criminal law and taxes. This is true even though the words “vested rights” do not appear in the text.

### **A. Vested rights were an integral part of the legal fabric in 1776 and 1868.**

#### **i. The People understood that laws could not operate retroactively to impair vested rights under the Law of the Land Clause in 1776.**

The concept that the vested rights of the People serve as a check on legislative power was already fundamental to legal thought at the time of the

American Revolution. The Declaration of Independence itself illustrates the principle that the power of the Legislature must be held in check by attention to vested rights of individuals. See Thomas M. Cooley, *Treatise On The Constitutional Limitations Which Rest Upon The Legislative Power Of The States Of The American Union*, 357–413 (1868); Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J. 1672, 1699–703 (2012); Elmer E. Smead, *The Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence*, 20 Minn. L. Rev. 775, 780–82 (1936); Gordon S. Wood, *The Origins of Vested Rights in the Early Republic*, 85 Va. L. Rev. 1421, 1441–42 (1999). These concepts were developed through the English Common Law, the Magna Carta, and the English Bill of Rights but were strengthened by the revolutionary imperative to protect the People from overreach by the government. Wood, *The Origins of Vested Rights in the Early Republic* at 1427.

As explained in the Board’s opening brief (pp. 37–39), the Vested Rights Doctrine runs through the early case law of our state. Some more examples (in addition to the plethora of early cases cited in the Board’s opening brief<sup>3</sup>) are:

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<sup>3</sup> *Robinson*, 6 N.C. at 423; *Scales v. Fewell*, 10 N.C. (3 Hawks) 18, 18–20 (1824); *Hoke v. Henderson*, 15 N.C. 1, 16 (1833), *overruled on other grounds by Mial v. Ellington*, 134 N.C. 131, 162 (1903); *Pratt v. Kitterell*, 15 N.C. (4 Dev.) 168, 168–70 (1833); *Battle v. Speight*, 31 N.C. (9 Ired.) 288, 292 (1848); *Green v. Cole*, 35 N.C. (13 Ired.) 425, 428 (1852) *Stanmire v. Taylor*, 48 N.C. (3 Jones) 207, 212 (1855).

*Oats v. Darden*, 5 N.C. (1 Mur.) 500, 501 (1810) (“[W]hen an act of Assembly takes away from a citizen a vested right, its constitutionality may be inquired into[.]”); *Harrison v. Burgess*, 8 N.C. 384, 391 (1821) (“But it is said, in this case it interferes with the vested rights of the Defendant, and if so, the Court will not apply it to divest those rights. To declare that the property of A belongs to B, has been by this Court decided to be beyond the power of the Legislature[.]”); *Houston v. Bogle*, 32 N.C. (10 Ired.) 496, 504 (1849) (“It is settled, that the Legislature cannot pass any declaratory law or act declaring, what the law was before its passage, so as to give it any binding weight with the courts. A retrospective statute, affecting or changing vested rights, is founded on unconstitutional principles and consequently void.”); *Davidson Coll. v. Chambers’ Ex’rs*, 56 N.C. 253 (1857) (noting that legislative act to expand ability of Davidson College to hold property could not fix the problem because the “rights of the next of kin being vested, the act of the Legislature does not in anywise affect them”).

*State v. \_\_\_\_\_*, 2 N.C. (1 Hawy.) 28, 33–39 (N.C. Super. L. & E. 1794), is the primary case cited by plaintiffs and the State to further their argument as to eliminating the Vested Rights Doctrine. In *State*, the Court found that the judiciary had no power to hold an Act of the General Assembly unconstitutional under the Law of the Land Clause at all. *Id.* It further found there to be no due process right at all. *Id.* Both of these concepts—that a statute cannot be found



unconstitutional by the judiciary under the Law of the Land Clause, and that the people have no right to notice and an opportunity to be heard—have been rejected a thousand times over. With the body of law finding first and foremost that the Vested Rights Doctrine is a fundamental principle of the state’s jurisprudence and that the Law of the Land Clause protects the People from arbitrary interference by the government, this lone case does not undo hundreds of years of the Vested Rights Doctrine.

Plaintiffs and the State misconstrue the Board’s argument on this point, claiming that the Board’s position is that retroactive laws can never be enacted. While retroactive laws were disfavored, the Board’s position is simply that the Law of the Land Clause prohibits interference with vested rights.

With the exception of *State v. \_\_\_\_\_*, there is no case to support the proposition that the Law of the Land Clause does **not** incorporate the vested rights doctrine. That is the constitutional principle at stake in this dispute and neither plaintiffs nor the State ever address it. Indeed, plaintiffs’ and the State’s argument apparently is that there is no Vested Rights Doctrine at all, a view that is demonstrably incorrect.

**ii. The People understood that laws could not operate retrospectively to impair vested rights under the Law of the Land Clause in 1868.**

The Vested Rights Doctrine continued through the Constitution of 1868. Consider for instance the discussion in *Holliday v. McMillan*, 79 N.C. 315, 317–

19 (1878): the majority opinion and the concurrence agreed on the basic principle that a law cannot impair a vested right. In fact, the cases interpreting the 1868 Constitution all agree that the Legislature cannot impair vested rights. *See, e.g., Sutton v. Askew*, 66 N.C. 172, 176 (1872) (“And we, by no means, subscribe to the doctrine that a right vested by operation of law, is less inviolable than when it arises from contract, when once it exists, no matter how it is inviolable.”); *Lowe v. Harris*, 112 N.C. 472, 542–43 (1893).

Even the case of *Tabor v. Ward*, cited by the State for the proposition that there is no constitutional limitation on retroactive laws, explicitly acknowledged the Vested Rights Doctrine: “There is no provision in the constitution of this state nor in the constitution of the United States which prohibits the passage of retroactive laws, as distinguished from those that are *ex post facto*, **unless they are such as impair the obligation of contract or disturb vested rights.**” 83 N.C. 291, 294 (1880) (emphasis added).

At the time the Constitution of 1868 was adopted, state courts across the country had found a vested right in a statute of limitations defense. *See, e.g., Couch v. McKee*, 6 Ark. 484, 495 (1846) (Supreme Court of Arkansas construed statute of limitations not to operate to revive claims, noting: “This must be the rule if a defense may form the subject of a right, and that it may, seems to me most clear. Defences, like causes of action, are of various kinds, arising by operation of law, predicated on some act or supposed act of the parties, or by

connection or agreement between them, and in either case must be equally operative.”); *Hill v. Kricke*, 11 Wis. 442, 446 (1860) (refusing to acknowledge statute reviving barred claim); *Proprietors of Kennebec Purchase v. Laboree*, 2 Me. 275, 293–95 (1823) (Supreme Judicial Court of Maine held statute of limitations invalid to extent it operated retroactively to impair vested rights); *Berry v. Ransdall*, 61 Ky. 292, 294 (1863) (invalidating alteration of statute of limitations to extent it impaired contracts); *McKinney v. Springer*, 8 Blackf. 506, 507 (Ind. 1847) (Supreme Court of Indiana discussed that “no statute subsequently passed could have renewed the defendant’s liability”); *Woart v. Winnick*, 3 N.H. 473, 483 (1826) (Superior Court of New Hampshire construes statute not to operate retroactively despite being “contrary to the letter” of the statute because such construction was “required by the Constitution”); *Martin v. Martin*, 35 Ala. 560, 568 (1860) (Supreme Court of Alabama states that “it is an established principle, that the repeal of a statute of limitations does not impair a bar perfected before the repeal”).

While North Carolina did not address the question in a head-on manner until the *Wilkes County* decision in 1933, every court that touched on the instant question in *dicta* found that the limitations defense was likely to be a vested right that could not be impaired. *Phillips v. Cameron*, 48 N.C. 390, 393 (1856) (noting that it would not construe statute to revive previously barred

claims)<sup>4</sup>; *Johnson v. Winslow*, 63 N.C. 552, 553–54 (1869) (that Legislature could suspend statute of limitations prospectively while noting that Legislature could not enact limitations provision that impaired contract or vested rights); *Whitehurst v. Dey*, 90 N.C. 542, 545 (1884) (construing statute so as not to revive claims because “disturbing rights that time has settled and fixed” could infringe upon Constitution).

The robustness of the principle is even evident in the case of *Hinton v. Hinton*, which dealt with another vested right—the right to dower. 61 N.C. (Phil.) 410, 415–16 (1868). Plaintiffs and the State hold this singular case up against the reams of constitutional analysis (including subsequent decisions of this Court) to suggest that it destroyed the Vested Rights Doctrine, before and after. The truth is that the *Hinton* court explicitly discussed the fact that the Legislature cannot impair a vested right. *See id.* The *Hinton* court is quite clear that its holding was that the limitations defense in that case never vested, not that no such vested right could exist.

If a legacy be given to A, provided he applies for it in six months after the death of the testator, otherwise it shall go to B, and A does not apply within the time, the title becomes vested in B, and the Legislature has no power to extend the time; for the reason that the testator, by the words of condition and the limitation over to B, makes a compliance with the condition a part of the essence

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<sup>4</sup> Plaintiffs misconstrue this case as standing for the proposition that revival of barred claims would be permissible. Pls. Br. 27. The Court’s tongue-in-cheek analysis instead demonstrates that it was avoiding the question by construing the statute prospectively.

of the gift, and being a condition precedent, it is not saved, even although the condition becomes impossible by the act of God, or by the act of law; and the title of B is absolute.

*Id.* at 411–12.

The Court acknowledged that a vested right accrues after the passage of time. Then, the Court went on to place that rule into the context of dower:

But we do not think this principle applies to the right of dower, or that that right is *created* by the act of 1784, with a *condition precedent* that when a husband by his will makes a provision for his wife, she shall within six months, after probate of the will, enter her dissent to the provision made for her, and that a compliance with this condition is made a part of the essence of the right of dower. On the contrary, we are entirely satisfied that the right existed at common law, and was not created by the act of 1784, and that the effect of the act is to prescribe a limitation in respect to the time in which the right shall be claimed, when the husband has by will made a provision for the wife; in other words, it is a “statute of limitations,” which in such cases bars the right to a writ of dower, but does not extinguish the preexisting common law right of dower.

*Id.* at 412 (emphasis in original).

That is, the Court said that the right to dower vested *before* the time period for claiming it started to run. Consequently, the widow had a vested right and the time limitation could not operate to impair it. The Court clarified explicitly that it was not rejecting the vested right in a limitations defense but was merely holding that the limitations period did not run in this case: “**It is said the Legislature has not the power to interfere with ‘vested rights,’ and take property from one and give it to another! That is true;** but these

devises took the land *subject* to the widow's common law right of dower." *Id.* at 415 (bold added; italics in original).

The *Hinton* Court acknowledged that a limitations defense is a vested right, but held that, since the right to dower vested *before* the limitations defense in this case, the right to a limitations defense never vested. The Court of Appeals' plurality, plaintiffs, and the State all read *Hinton* to announce some kind of broad rule that there is no vested right in a limitations defense—the Court said just the opposite—and that was before *Wilkes County*, where the Court issued a clear blanket ruling that expired claims cannot be resurrected.

In sum, the Vested Rights Doctrine is fundamental to the founding of our state and to the Reconstruction Era adoption of a new constitution. It long predates both the so-called "*Lochner* era" and modern substantive due process. See, e.g., James L. Kainen, *The Historical Framework for Reviving Constitutional Protection for Property and Contract Rights*, 79 Cornell L. Rev. 87, 102 & n.51, 132 (1993); Philip A. Hamburger, *Natural Rights, Natural Law, and American Constitutions*, 102 Yale L.J. 907, 944–55 (1993).

Plaintiffs and the State encourage this Court to rashly discard this important right of the People. Such a step would be antithetical to the principles of *Harper v. Hall* and the stable jurisprudence of this state.

**B. The *ex post facto* clause does not invalidate the Vested Rights Doctrine.**

Plaintiffs rely heavily on the *ex post facto* clause, arguing that, because the clause explicitly applies to criminal and tax laws, there is no other constitutional limitation on any other retroactive legislation. This reading of the Constitution ignores an enormous body of law articulating the Vested Rights Doctrine, but it also misunderstands what an *ex post facto* law is.

Plaintiffs' argument is grounded on the presumption that an *ex post facto* law—and particularly the target of the *ex post facto* clause—is anything that has a retroactive or backward-looking aspect. Plaintiffs' underlying presumption is incorrect. An *ex post facto* law **creates or expands** liability by changing the law after the act is done. This is apparent from the language of the Clause itself: “Retrospective laws, **punishing acts committed before the existence of such law**, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty.” N.C. Const. art. 1, § 16 (emphasis added).

This is consistent with the definition of *ex post facto* laws from Black's Dictionary as quoted by plaintiffs: “A law **passed after the occurrence** of a fact or commission of an act, **which retrospectively changes the legal consequences** or relations of such fact or deed.” Pls. Br. 20 (emphasis added). An *ex post facto* law would subject a person to more serious or additional

liability for past conduct, changing the legal situation in which the defendant found himself at the time the act was committed. *See, e.g., State v. Broadway*, 157 N.C. 598, 599 (1911); *State v. Ramseur*, 374 N.C. 658, 684 (2020) (Newby, J. dissenting).

The Revival Window is not an *ex post facto* law because child abuse has always been illegal, and the Revival Window did not alter the standards for civil liability on which that conduct would be judged. The Revival Window attempts to create potential liability where none now exists. If one were to think of an *ex post facto* law in the present circumstances, it would be something like this:

1. The age of consent to sex is sixteen years old. 2. A defendant has consensual sex with a sixteen-year old. 3. The Legislature then retroactively raises the age of consent to eighteen. 4. The Legislature seeks to prosecute the defendant for the earlier conduct, which was legal when it happened.

Here, by contrast, Mr. Goins's conduct was unlawful when it happened.<sup>5</sup> Such conduct created potential liability for the Board, and then that potential liability was extinguished by operation of law (by the running of both statutes of limitations and repose). To use the words of the *ex post facto* clause itself,

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<sup>5</sup> While Mr. Goins has been convicted and imprisoned for acts related to the three plaintiffs, the Board adamantly denies any liability for the heinous acts. Plaintiffs met and began working with Mr. Goins over twenty years ago through a community wrestling program before plaintiffs were enrolled at the school where Mr. Goins was a coach. *See State v. Goins*, 244 N.C. App. 499, 501, 504, 508 (2015).



the Revival Window is not a “[r]etrospective law[ ], **punishing acts committed before the existence of such law**” and therefore the *ex post facto* clause is simply not relevant.

This Court has always treated the concepts of *ex post facto* and Law of the Land as two different constitutional constraints, neither of which overrides the other. For example, in *State v. Keith*, 63 N.C. 140, 144–45 (1869), the Court analyzed an ordinance under both the *ex post facto* clause and the Law of the Land Clause. The Court held that the ordinance was an impermissible “*ex post facto* law [because] it made criminal what, before ratification of the ordinance was not so.” *Id.* at 145. The court held that the ordinance **also** violated the Law of the Land Clause because “it took away from the prisoner his vested right to immunity.” *Id.* (emphasis added). In other words, the Vested Rights Doctrine still operated to prevent a law that impaired vested rights from operating retrospectively.

The Law of the Land Clause protects the People from retrospective civil laws that impair vested rights, by prohibiting the *revival* of claims, whereas the *ex post facto* clause protects the People from the retroactive *change* of the law (i.e., changing the legal situation of the organization at the time the conduct occurred). To borrow plaintiffs’ metaphor, each clause occupies its own lane.

i. ***State v. Bell* acknowledges the Vested Rights Doctrine.**

Plaintiffs and the State erroneously rely on *State v. Bell* to support their argument that the North Carolina Constitution does not limit retrospective legislation. In *Bell*, the Court examined a law that retrospectively imposed a tax on business conducted in the months preceding the law's enactment. The Court concluded that the law was constitutional even though it operated retrospectively. *Bell*, 61 N.C. at 86. The question of whether laws could operate retrospectively to impair vested rights was **not** before the Court. No argument was made that the taxes in question impaired vested rights of the defendants. The Court reasoned that, under well-established precedent, the tax did not implicate the *ex post facto* clause as, at the time, the *ex post facto* clause only addressed retrospective criminal laws. *Id.* at 81; *see also* N.C. Const. of 1776, Declaration of Rights, § 24.

In *Bell*, no vested rights were at issue. North Carolina had historically permitted retrospective tax laws, and there was no pronouncement, via the State Constitution or otherwise, that created a vested right to be free from such taxation. *Bell*, 61 N.C. at 78; *see also State v. Kelly*, 186 N.C. 365, 372–73 (1923) (“An exemption from taxation does not confer a vested right, and it may, therefore, be modified or repealed by the Legislature.” (cleaned up)). As such,

the Law of the Land Clause could not prevent the Legislature from imposing a retrospective tax law.

It is true that the Legislature can pass retrospective civil laws in some situations, and that at the time *Bell* was decided, retrospective tax laws could be passed.<sup>6</sup> However, as discussed above and at length in the Board’s opening brief, retrospective laws could be passed only to the extent that they did not interfere with vested rights. That vested rights principle was the law before *Bell* and has been reiterated many times since. See *Morrison v. McDonald*, 113 N.C. 327, 331 (1893) (stating that vested rights “could not be disturbed by the Legislature”); *Booth v. Hairston*, 193 N.C. 278, 286 (1927) (“[T]his statute has no retroactive operation and . . . the Legislature has no power to pass an act affecting vested rights.”); *Wilkes Cnty.*, 204 N.C. at 170 (stating that a statute that “attempted to destroy defendants’ defense of the statute of limitations . . . takes away vested rights of defendants, and therefore is unconstitutional”); *Gardner v. Gardner*, 300 N.C. 715, 719 (1980) (“Vested rights may not be retroactively impaired by statute.” (cleaned up)); *Bolick v. Am. Barmag Corp.*, 306 N.C. 364, 371 (1982) (“When a statute would have the

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<sup>6</sup> The fact that there was no constitutional prohibition against retrospective tax laws explains why the 1868 Constitution was amended to specifically address such laws. See N.C. Const. of 1868, art. 1, § 32 (amending the *ex post facto* clause to include a prohibition such that “[n]o law taxing retrospectively sales, purchases, or other acts previously done, ought to be passed”).

effect of destroying a vested right if it were applied retroactively, it will be viewed as operating prospectively only.”).

*Bell* did not invoke a vested rights analysis, and thus it simply has no relevance to the issue before this Court.

**ii. Constitutions from other jurisdictions do not undo the Vested Rights Doctrine.**

Since the law is clear in this state, plaintiffs and the State cherry-pick law in other states to see how they addressed retrospective laws. Plaintiffs and the State provide examples of states that chose to include express constitutional prohibitions on retrospective civil laws. However, as the Law of the Land Clause in the North Carolina Constitution has been interpreted to prohibit retrospective civil legislation to the extent such legislation impairs vested rights, no other constitutional provision needed to be added. Therefore, what other states chose to do with their respective state constitutions has nothing to do with over two hundred years of case law from this Court interpreting this State’s Law of the Land Clause (just as the law under the federal Constitution, on which plaintiffs spend considerable effort, is not relevant here).

Looking to the words of the Law of the Land Clause in 1776 and 1868, the context in which those words were written (as evidenced by the historical record described here and in the Board’s opening brief), and the voluminous

case law interpreting those two Constitutions, the Law of the Land Clause has always operated to protect vested rights. Therefore, a statute which operates retroactively to revive a time-barred claim is unconstitutional.

### **III. THE PEOPLE UNDERSTOOD THAT A TIME BAR VESTS A RIGHT IN THE DEFENDANT IN 1970.**

As described above, by 1970, the case law was clear that the Legislature could not pass a retrospective law that impaired vested rights. It was also clear by 1970 that a statute of limitations defense was such a vested right. While plaintiffs spend most of their brief arguing about what *Wilkes County* says, they ultimately agree with the obvious: “There is no doubt that the *Wilkes County* decision states that there is a vested right in a limitations defense.” Pls. Br. 77. The Law of the Land Clause—in 1933, in 1970, and today—provides the People with a vested right to rely on the running of statutes of limitations.

#### **A. The Court articulated a vested right in a limitations defense in 1933.**

The Court can read *Wilkes County* for itself and ascertain its meaning. The Supreme Court of North Carolina, sitting in 1933, was clear with its analysis and direction. Until the Court of Appeals’ plurality decision in the instant case, every court has understood the meaning quite well.

**i. The Wilkes County decision was not dicta.**

Plaintiffs' view is that, for ninety years, every court and every judge who relied on *Wilkes County* somehow missed the fact that its key holding was actually just *dicta*.

North Carolina's courts look to whether the issue was decided by the Court in determining whether a discussion was dicta, not whether the "case or controversy" jurisprudential standard is met as required in federal courts. As Judge Carpenter explained the difference in his Dissent:

But unlike federal courts, our state Supreme Court is not bound to live cases or controversies; it can issue advisory opinions. . . So naturally, **our Supreme Court opinions can address a wider range of issues, and so long as Court language helps resolve an "issue before [it]," the language is not dicta.**

*McKinney v. Goins*, 892 S.E.2d 460, 483–84 (N.C. Ct. App. 2023)

(Carpenter, J., dissenting) (citations omitted) (emphasis added); *see also*

*Hayes v. City of Wilmington*, 243 N.C. 525, 536–37 (1956).

The question of whether the relevant portions of *Wilkes County* are *dicta* depends only on whether the issue was actually before the Court. The issue of the constitutionality of reviving expired claims was very much before the Court in *Wilkes County*. The defendants (the Foresters) pled the statute of limitations in their answer. *Wilkes Cnty.*, 204 N.C. at 165. The Legislature had enacted a revival provision which (if applied) would have removed the statute of

limitations defense. Public Laws 1931, c. 260, § 3 (hereinafter referred to as the “1931 Revival Window”) read:

Section 4. Any person, corporation or firm, or the board of commissioners of any county or the governing body of any municipality holding a certificate of sale on which an action to foreclose has not been brought but according to the terms of chapter two hundred twenty-one of the Public Laws of one thousand nine hundred and twenty-seven as amended should have been brought, shall have until the first day of December, one thousand nine hundred thirty-one, to institute such action. This section and extension shall include all certificates executed for the sales prior to and including sales for the tax levy of the year one thousand nine hundred twenty-eight.

*Id.* at 1665 (emphasis omitted).

In approaching the defendant’s statute of limitations defense, the Court first concluded that the plaintiff’s civil claim would be barred if the statute of limitations was given effect. *Id.* at 166–67. But then the Court turned to what it called the “second question” in order to address it, pointing out that if the 1931 Revival Window were given effect, the plaintiff’s civil claim would not be barred. *Id.* at 168. If the Court had failed to reach the second question, then the statute of limitations defense before it would not have been resolved. The plaintiff would have said that, although the statute of limitations had run, the 1931 Revival Window operated to revive the claims; the defendant would have said that the 1931 Revival Window was unconstitutional and therefore inoperative.

Plaintiffs make much of the fact that the record did not include a facial challenge to the validity of the 1931 Revival Window. Pls. Br. 39. In the time before three-judge panels, there would not be a need to announce facial invalidity as the Court needed only to hold that that the law was unconstitutional and unenforceable, rather than making a pronouncement about the law in all applications.<sup>7</sup> The Court therefore decided the constitutional question and did not enforce the 1931 Revival Window.

The analysis in *Wilkes County* was much like the analysis this Court must perform: the parties have agreed that the statute of limitations bars plaintiffs' claims, but the question is whether the Revival Window can be given effect. As recognized by a long list of appellate judges, the portions of *Wilkes County* under discussion are not *dicta*.

**ii. *Wilkes County* rejected the limiting principle of a “property-based” rule.**

The State insists that the *Wilkes County* case adopted a property-based rule. This conclusion is wholly unsupported by the text of the decision (as well as the long list of the decision's progeny). In fact, the Court actually considered adopting a more limited rule against reviving claims but rejected that, juxtaposing *Campbell v. Holt* against the rule the Court ultimately chose:

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<sup>7</sup> That is in fact what the Board is asking this Court to do as well, although it was required to make a facial challenge under the current framework for resolving constitutional disputes. See N.C.G.S. § 1-267.1.



The ruling, that though a debt is barred by the statute of limitation the legislature may remove the bar by repealing the limitation after it has accrued, is within the reasoning of Pearson, C. J., in *Hinton v. Hinton*, 61 N. C. 410, and is sustained by Justice Miller, in *Campbell v. Holt*, 115 U. S. 620, 6 S. Ct. 209, 29 L. Ed. 483, decided in 1885; the court in the latter case holding that this is true as to a debt, though not as to the title to property which has ripened, because time does not pay the debt, but time may vest the right of property. On the other hand, it has been held by the Supreme Court of this state (1884) in *Whitehurst v. Dey*, 90 N. C. 542, that the legislature cannot revive a right of action as to a debt when it has become barred by the lapse of time; though it is true the decision was not necessary to the disposition of that case.

*Wilkes Cnty.*, 204 N.C. at 168–69 (emphasis omitted).

That is, the Court discussed that some courts had defined the vested right in terms of property and some had not. The Court was doing what every court should do and canvassing the current cases and theories. But the Court then went on, turning to the authorities that weighed in favor of a broad rule—several treatises which cited to a plethora case law in their own right, cases from other jurisdictions, and a few North Carolina cases finding no revival is permissible in the context of wills. *Id.* at 168–70.

After this entire review of the case law in North Carolina, in federal courts, and in other states, and considering that some of that precedent (albeit outside of North Carolina) had limited the rule, the Court pronounced its holding:

**Whatever may be the holdings in other jurisdictions, we think this jurisdiction is committed to the rule that an enabling statute to revive a cause of action barred by the statute of**

**limitations is inoperative and of no avail.** *Booth v. Hairston, supra.* **It cannot be resuscitated.** The sovereign permitted an old principle to be invaded in this matter, that no time runs against the commonwealth or state, and the General Assembly having passed the statute of limitations which defendants properly pleaded, **the statute of 1931, which attempted to destroy defendants' defense of the statute of limitations, is inoperative** and void as to them. **It takes away vested rights** of defendants, and therefore is unconstitutional.

*Id.* at 170 (emphasis added).

The State's brief acknowledged the broad ruling provided in that case: "In reaching this conclusion, *Wilkes* appeared to announce a broad rule." State Br. 43. The Court did in fact announce a broad rule; nowhere in this analysis does the Court announce that this rule is limited to property. In fact, the Court expressly considered announcing such a limiting principle and rejected it. Nowhere does the Court say its decision is based on the federal constitution; on the contrary, the reference to the holdings in "other jurisdictions" indicate plainly that the Court is discussing the law in North Carolina ("this jurisdiction").<sup>8</sup>

**iii. *Wilkes County* has been properly read to encompass all civil claims, including those sounding in tort.**

The *Wilkes County* decision concerned a statutory limitations period that applied to a civil claim. *Wilkes Cnty.*, 204 N.C. at 165. In *Wilkes County*, the

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<sup>8</sup> And of course appellate courts since *Wilkes County* have applied the bar on revival to all manner of causes of action, without even a hint that the rule may be in some way limited.

Court stated the problem with the statute was that it “attempted to destroy defendants’ defense of the statute of limitations.” *Id.* at 170. Soon thereafter, this Court acknowledged the vested right in those same terms in a case involving surety on a bond, not in terms of property but in terms of a vested right in the “defense” itself. “The defense of the statute of limitation being considered a vested right, which cannot be taken away by legislation . . . .” *Sutton v. Davis*, 205 N.C. 464, 469 (1933). The same was true in *Waldrop*, 230 N.C. at 373; the Court applied the rule wholly outside of tort or property or contract, to analyze whether the time had expired for a taxpayer to challenge the use of a school bond: “A right or remedy, once barred by a statute of limitations, may not be revived by an Act of the General Assembly.” *Id.*

This Court reiterated the concept in a worker’s compensation claim based on a personal injury, in *McCrater*:

The requirement of filing claim within the time limited by G.S. § 97-24 was a condition precedent to his right to compensation. Necessarily, then the element of filing claim within the time limited by the statute was of the very essence of the plaintiff’s right to recover compensation. This time limit as fixed by the statute as it existed on the date of the accident, being a part of the plaintiff’s substantive right of recovery, could not be enlarged by subsequent statute. Any attempt to do so would be to deprive the defendants of vested rights.

248 N.C. at 709–10. The statute of limitations that the Board is asking this Court to enforce, N.C.G.S. § 1-52, was not at issue in the *Wilkes County* decision. However, it was at issue in *Jewell v. Price*, in which this Court held

that a claim in tort could not be revived by a subsequent act of the Legislature. 264 N.C. at 461 (“If this action was already barred when it was brought on January 12, 1962, it may not be revived by an act of the legislature, although that body may extend at will the time for bringing actions not already barred by an existing statute.”).

The Court in *Jewell* discussed the law and did not apply any limiting principles. It is true that in *Jewell* (and in other cases), the plaintiffs’ attorneys conceded that point and the Court did not need to discuss further why the law prohibited resurrection of time-barred claims. The fact that generation after generation of lawyers and judges acknowledge the rule is simply further evidence of its validity.

**B. The 1971 Constitution incorporated the Vested Rights Doctrine again.**

Proper analysis of original intent requires an understanding of what the Law of the Land Clause meant when the current Constitution was adopted, specifically as it relates to revival of dead claims. The discussion above shows exactly what was meant: Revival of extinguished claims was flatly prohibited since doing so would violate the vested rights of the People. Such was the state of the law in 1970 when the People ratified the current Constitution of North Carolina. The *Harper* Methodology requires that this body of law control our

understanding of the Law of the Land Clause at the time it was ratified by the People in 1970.

The Commission tasked with proposing revisions to the Constitution considered altering the Law of the Land Clause but opted not to do so. Report Of The North Carolina State Constitution Study Commission at 72–73. The Commission did, however, recommend and the People then ratified two changes tangential to the Law of the Land Clause, further evidence that the issue of changing the Law of the Land Clause was carefully considered.

The first change was to clarify that the Declaration of Rights is mandatory and not permissive: “[T]he Declaration of Rights are commands and not merely admonitions to proper conduct on the part of the government, the words ‘should’ and ‘ought’ have been changed to read ‘shall’ throughout the Declaration.” *Id.* at 74–75. This change suggests that the People were intent on reinforcing the importance of the Law of the Land Clause as it stood at that time, which incorporated the prohibition on legislation impairing the vested right to a limitations defense.

Second, the Study Commission recommended, and the People adopted, an addition to the Law of the Land Clause in the form of an equal protection clause: “Proposed Sec. 19 adds to the present law of the land provision a guarantee of equal protection of the laws and a prohibition of improper discrimination by the State.” *Id.* at 74. This addition, without modifying or

disturbing the “ancient” language, is further evidence that the People very much intended for the decisions of this Court to remain a check on legislative power.

John Orth has reiterated the point that the Constitution of 1971 was intended to incorporate then-existing jurisprudence and was done in a deliberate, sophisticated manner. “The 1971 constitution . . . instead a good-government measure, long-matured and carefully crafted by the state’s leading lawyers and politicians, designed to consolidate and conserve the best features of the past, not to break with it.” John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1790 (1992). Orth notes how fundamental the stability of the Law of the Land Clause is to North Carolina: “Over the centuries, by far the most stable provisions of North Carolina’s organic law have been those safeguards of due process expressed in the declaration of rights, now Article I. Gleaned from English tradition . . . . Unlike the sweeping fundamental principles of popular sovereignty and separation of powers, these provisions have over the years been given specific content by the courts[.]” *Id.* at 1795. The courts have understood the vested rights doctrine to prohibit the Revival Window and that is the law of the land.

The argument propounded by plaintiffs and the State, that this Court should break with its long precedent and destroy the Vested Rights Doctrine, is similar to the rejected argument in *Brannon v. North Carolina State Board*

*of Elections*, 331 N.C. 335 (1992). In that case, the challenge was to the appointment of a judge to fill only an unexpired vacancy. The urge was to take on a new interpretation of the vacancy provision, but the Court stated: “ratifying changes in the State Constitution in 1962 and a new Constitution in 1970 without substantial changes in the vacancy provision, the people should be presumed to have accepted the interpretations given that provision since it was adopted in 1875.” *Id.* at 345. Here too, plaintiffs and the State urge a new interpretation of the Law of the Land Clause, but the People’s ratification in 1970 was assent to the interpretations of this Court of that clause in *Wilkes County*, *Waldrop*, *Jewell*, *McCrater*, and others. *See also Virmani v. Presbyterian Health Servs. Corp.*, 127 N.C. App. 629, 643–44 (1997), *aff’d in part, rev’d in part on other grounds*, 350 N.C. 449 (1999).

**C. The constitutional prohibition on reviving time-barred claims is the majority rule across the United States.**

Plaintiffs and the State suggest that North Carolina is some kind of outlier in finding a vested right in a limitations defense. The precise opposite is true: the majority rule among states that have answered the question is that revival of claims is unconstitutional or otherwise unlawful under state law. *See* Brief by Amicus Curiae Am. Tort Reform Ass’n & Am. Prop. Cas. Ins. Ass’n at 11–15.

A review of cases from other states shows that the majority rule among those that have addressed the issue is that legal claims *cannot* be revived by an act of the legislature once the claims have become barred by a statute of limitations. This is particularly true for the states closest in geography and history to North Carolina. The Supreme Court of South Carolina held a statute of limitations related to sex abuse “cannot operate to revive an action for which the limitations period has already expired. Such a result would violate the defendant’s rights under the Due Process Clause of the South Carolina Constitution.” *Doe v. Crooks*, 364 S.C. 349, 351–52 (2005). The Supreme Court of Tennessee was faced with a similar argument to the one being made by plaintiffs – that is, that the federal rule should apply and that cases discussing the Vested Rights Doctrine do not interpret the state constitution – in *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 695–97 (Tenn. 1974). The Supreme Court of Tennessee rejected those arguments and held that a claim once barred could not be revived under the state constitution as a matter of due process. *Id.* In Virginia, a constitutional amendment was adopted to allow revival of claims with respect to “natural persons,” but the Supreme Court held that claims for *respondeat superior* were not included in the amendment and therefore the state constitutional doctrine prohibiting revival of time-barred claims remained to prevent revival of sex abuse claims against an employer. *Kopalchick v. Cath. Diocese*, 274 Va. 332, 336–40 (2007).



Other states adopting the same principle include Alabama, Arkansas, Colorado, Florida, Illinois, Indiana, Iowa, Kentucky, Maine, Mississippi, Missouri, Nebraska, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, and Wisconsin. *See Johnson v. Garlock, Inc.*, 682 So. 2d 25, 28 (Ala. 1996); *Johnson v. Lilly*, 308 Ark. 201, 203 (1992); *Jefferson Cnty. Dep't of Soc. Servs. v. D. A. G.*, 199 Colo. 315, 317 (1980) (en banc); *Wiley v. Roof*, 641 So. 2d 66, 69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 411–12 (2009); *Green v. Karol*, 168 Ind. App. 467, 477 (1976); *Frideres v. Schiltz*, 540 N.W.2d 261, 267 (Iowa 1995); *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W. 3d 850, 854–55 (Ky. 2003); *Rutter v. Allstate Auto. Ins. Co.*, 655 A.2d 1258, 1259 (Me. 1995); *Univ. of Miss. Med. Ctr. v. Robinson*, 876 So. 2d 337, 340 (Miss. 2004) (en banc); *Doe v. Roman Cath. Diocese*, 862 S.W.2d 338, 341 (Mo. 1993) (en banc); *Givens v. Anchor Packing, Inc.*, 237 Neb. 565, 568 (1991); *Gould v. Concord Hosp.*, 126 N.H. 405, 408 (1985); *Robinson v. Clark*, 2009 Okla. Civ. App. 56, ¶ 9; *Maycock v. Gravely Corp.*, 352 Pa. Super. Ct. 421, 427 (1986), *appeal denied*, 514 Pa. 618 (1987); *Theta Props. v. Ronci Realty Co.*, 814 A.2d 907, 916–17 (R.I. 2003); *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999); *Mitchell v. Roberts*, 2020 Utah 34, ¶ 5, *reh'g denied* (Jul. 13, 2020); *Haase v. Sawicki*, 20 Wis. 2d 308, 317, 121 N.W.2d 876, 881 (1963).

The amicus brief filed by CHILD USA<sup>9</sup> (the sole amicus for plaintiffs) claims that there is a “trend” of courts upholding the constitutionality of child sex abuse revival statutes, but there is no such trend. The only discernable pattern is that courts in states that allow retroactive revival of claims have upheld such laws and the courts of states that do not allow revival of time-barred claims—like North Carolina—have rejected such laws.

**D. A ninety-year chorus of cases has acknowledged a vested right in a limitations defense.**

The State and plaintiffs seek to minimize this Court’s pronouncements over the last ninety years. The constitutional principle has been articulated and rearticulated without alteration.

In addition to the cases previously cited above, the following cases since 1970 all reiterate the same law: *Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs., Inc.*, 313 N.C. 230, 234 (1985); *Rutherford v. Bass Air Conditioning Co.*, 38 N.C. App. 630, 644 (1978); *Gillespie v. Am. Motors Corp.*, 51 N.C. App. 535, 538 (1981); *Whitt v. Roxboro Dyeing Co.*, 91 N.C. App. 636, 638 (1988); *Congleton v. City of Asheboro*, 8 N.C. App. 571, 573 (1970); *Thompson v. Charlotte-Mecklenburg Bd. of Educ.*, 222 N.C. App. 855, 2012 WL

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<sup>9</sup> Although not disclosed in its filings, CHILD USA appears to be primarily funded by the plaintiffs’ Bar, including the attorneys representing plaintiffs in this case. <https://childusa.org/donors-grantors/> (last visited 25 Jan. 2024).

4078518, at \*3–4 (2012) (unpublished); *Colony Hill Condo. I Ass’n v. Colony Co.*, 70 N.C. App. 390, 394 (1984); *Olympic Prods. Co. v. Roof Sys., Inc.*, 79 N.C. App. 436, 438–39 (1986). Federal courts likewise have chimed in on the same note, reading the North Carolina law to prohibit revival of time-barred claims. *Braswell v. Colonial Pipeline Co.*, 395 F. Supp. 3d 641, 648 (M.D.N.C. 2019); *Bryant v. United States*, 768 F.3d 1378, 1385 (11th Cir. 2014).

The law is not new, nor is it “opaque” or “antiquated” or “misguided” or “improper”. Pls. Br. 16, 43. Statutes can only be given effect to the extent they are consistent with the Law of the Land. The People’s understanding of the Vested Rights Doctrine has been consistent since 1776 and was explicitly applied to the modern time bar at issue in this case in 1933 with *Wilkes County*, in 1965 in *Jewell v. Price*, and in a list of similar decisions. That law was then incorporated by the People in 1970 into the Constitution.

**IV. IF THIS COURT ADOPTS THE FEDERAL SUBSTANTIVE DUE PROCESS FRAMEWORK, THE REVIVAL WINDOW UNCONSTITUTIONALLY DEPRIVES DEFENDANTS OF THEIR RIGHT TO A LIMITATIONS DEFENSE.**

The Court should not abandon its approach now in favor of the federal strict scrutiny/rational basis balancing tests used in federal substantive due process analyses, not just because such a step is inconsistent with precedent but also because doing so would put the Court in the position of making

substantive policy decisions—the exact concern this Court warned against in *Harper*.

The Vested Rights Doctrine is simple and avoids the Court engaging in the type of case-by-case balance of policy decisions that come with the federal balancing test. If a statute attempts to impair a vested right, it is unconstitutional, period. The current rule provides clarity and predictability for both the courts and the People.

The federal due process approach that plaintiffs demand will present the courts with an endless series of policy decisions: How important is a right? When is the reason for destroying a right compelling enough? How narrowly tailored should new laws be? What is the real reason that a piece of legislation has been adopted? These questions are avoided with the Vested Rights Doctrine, but they are the very essence of federal jurisprudence.

If this Court decides to break from its precedent in favor of a complex, policy-making substantive due process balancing test, it should nonetheless conclude that the Revival Window is facially unconstitutional, under both a strict scrutiny and a rational basis analysis.

**A. The Board has a fundamental right to a statute of limitations defense.**

Under the federal balancing test, a court must first determine if a right is “fundamental.” If the right is fundamental, then strict scrutiny analysis

applies and it may be infringed upon only if the statute is narrowly tailored to achieve a “compelling” State interest. *See, e.g., Bostic v. Schaefer*, 760 F.3d 352, 377 (4th Cir. 2014) (“Strict scrutiny applies only when laws significantly interfere with a fundamental right. . . . Under strict scrutiny, a law may be justified only by compelling state interests, and must be narrowly drawn to express only those interests.”). If the right is **not** fundamental, then the government action need only have a rational basis.

Here, the Board plainly has a fundamental right in a limitations defense because, as the cases cited above show repeatedly, this has been a basic inviolable right for centuries. Given such history, it cannot be legitimately argued that merely a rational basis review is appropriate in this case.

In the case of boards of education, the Revival Provision works to force schools to defend the actions of prior employees frequently in situations where any alleged misconduct was so long ago that the school has no way to know whether the allegations are true, and no way to defend itself properly. The Court of Appeals articulated the problem for schools in *Colony Hill* (also a negligence action where the plaintiff relied on revival of previously barred claims):

In enacting the statute of repose G.S. 1-50(5), the legislature defined a liability of limited duration. Once the time limit on the plaintiffs’ cause of action expired, the defendants were effectively “cleared” of any wrongdoing or obligation. If we were to find that a later version of G.S. 1-50(5) operates retrospectively, then it must

revive a liability already extinguished, and not merely restore a lapsed remedy. **Such a revival of the defendants' liability to suit, long after they have been statutorily entitled to believe it does not exist, and have discarded evidence and lost touch with witnesses, would be so prejudicial as to deprive them of due process.** While we are sympathetic with the plaintiff condominium owners, who find that the statute of repose barred their claims even before injury occurred, we cannot let our sympathies lead us to construe the statute so as to place an unconstitutional burden on the defendant-builders.

70 N.C. App. at 394 (cleaned up) (emphasis added); see also *Staley v. Lingerfelt*, 134 N.C. App. 294, 299 (1999) (“The statute of limitations [defense] is inflexible and unyielding, and the defendants are vested with the right to rely on it as a defense.” (cleaned up)).

The rights that have accrued to the Board of Education (and other defendants) are inherently substantive and fundamental. The Board would now be crippled in its ability to defend itself, having thought that the claims were barred many years ago.

**B. The State lacks a compelling interest.**

Since the right at issue is fundamental, and assuming that the Court abandons centuries of vested rights law, plaintiffs must show that the State's interest in the Revival Provision is “compelling.” But it is hard to even identify the State's interests here at all. As discussed below, the Revival Provision is not about protecting children going forward; it is about providing a private remedy to a private party about a wrong that occurred in the often distant past.

Neither plaintiffs nor their sole amicus could even explain how the Revival Provision would do anything other than create a damages remedy. Plaintiffs' response to this critical question is to simply say that the Board is being "irrational" and "mendacious." Pls. Br. 81. That is insult, not argument.

The State suggests that revival of time-barred claims will prevent *future* abuse by facilitating identification of unknown child predators who would otherwise go unknown. But child sexual abuse is a felony in North Carolina for which there is no statute of limitations. Statutory rape,<sup>10</sup> indecent liberties with children,<sup>11</sup> and indecent liberties with a student<sup>12</sup> are felony offenses with no statute of limitations. *See State v. Johnson*, 275 N.C. 264, 271 (1969) ("In this State no statute of limitations bars the prosecution of a felony."); *see also* N.C.G.S. §§ 15A-1340.34 *et seq.* (providing for restitution in criminal cases).

In fact, a review of the 250+ cases filed under the Revival Provision shows that many of the Complaints do not even identify an alleged perpetrator at all. These cases were filed, not to identify child abusers (which was always available through criminal charges), but for purpose of obtaining monetary awards from organizations with which the perpetrators supposedly had some connection.

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<sup>10</sup> N.C.G.S. §§ 14-27.23–27.25

<sup>11</sup> N.C.G.S. § 14-202.1.

<sup>12</sup> N.C.G.S. § 14-202.4.

If a person, at age 9 or 29 or 69, decides to come forward with a claim that they have been abused, they can do so by going to the police and pressing charges. It defies common sense to argue that a person is willing to identify an abuser only in a civil action but not through criminal prosecution—or that, as is the case in many instances, identifying where a plaintiff went to school but not who abused them is at all helpful in preventing further abuse.

To the extent that child predators can be dissuaded from their conduct, the immediate threat of arrest and a long prison sentence will have more of a deterrent effect than reviving decades old civil claims.<sup>13</sup> It is difficult to imagine how opening, and then closing again, a window for litigation about the distant past would discourage anyone in the future from engaging in abuse.

Amicus CHILD USA also suggests—again without citation—that the compelling state interest could be the education of the public about child sex abuse. The first problem with this argument is that the SAFE Child Act has provisions about education which are not being challenged here. In addition, the amicus brief cites prominent examples of individuals and organizations “like Larry Nassar, the Boy Scouts of America, and the Catholic Church,” Amicus Br. 10, to whom attention was brought, not by civil claim revival laws, but **by criminal prosecutions and the news media**. There is simply no

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<sup>13</sup> In fact, plaintiffs in the present case disclosed their abuse and testified against the individual defendant in his criminal prosecution.



reason to think that retroactive application of a statute of limitations for a civil claim will achieve anything for society as a whole beyond what will be achieved by criminal prosecution.

In addition, organizations that serve youth are already keenly focused on preventing child abuse. Indeed, as more and more information has come to light about the nature of abuse, its impacts, and its occurrences, organizations like the Gaston County Board of Education have put a great deal of attention into training staff to recognize signs of abuse, taking additional precautions to ensure adults who interact with children have accountability and oversight, and implementing safer practices. The idea that a retroactive revival of claims will somehow send a message that has not already been received is not credible, particularly when the entire purpose of the Gaston County Schools, and the reason anyone teaches or serves on a board of education, is to serve and protect children.

**C. The Revival Window is not narrowly tailored to any interest and therefore fails strict scrutiny analysis.**

Assuming, *arguendo*, that the Court abandons the Vested Rights Doctrine and that the Revival Window reflects a compelling state interest in identifying child abusers and/or educating the public, the Revival Window is not designed to address that interest. For purposes of strict scrutiny, a law is narrowly tailored if it is the “least restrictive means” of advancing the

government's compelling interest. *State v. Bishop*, 368 N.C. 869, 877–79 (2016) (striking down cyberbullying statute as unconstitutional restriction on free speech because “the protection of minors’ mental well-being may be a compelling governmental interest, but it is hardly clear that teenagers require protection via the criminal law from online annoyance.”).

The Revival Provision fails any degree of scrutiny. To start, it does not distinguish between claims barred by a statute of limitations as opposed to claims barred by a statute of repose, taking no consideration for the fact that a chose in action does not even exist for claims barred by a statute of repose. It draws no distinction between claims that occurred four years earlier or fifty years ago, ignoring the problems created the longer litigation is delayed.

There is also no apparent distinction in the Revival Window between organizational defendants, like the Board, and individual perpetrators of child sex abuse. If the purpose of the law is to identify perpetrators, why would plaintiffs be authorized to sue institutions? As noted, many of the cases filed against institutions do not identify an actual perpetrator at all.

Additionally, there is no acknowledgment in the Revival Window that an organizational defendant may be in a position utterly unable to defend itself from stale claims. The law is allowing people to bring claims from things that they say happened in the 1950's and 1960's. The difficulty with defending a

fifty-plus year-old claim, when a live plaintiff claims a horrific assault, is self-evident.

Plaintiffs' only response to the enormous disadvantage foisted on defendants by the disappearance of evidence is that a plaintiff will face the same challenge. This is obviously inaccurate: Presumably, every current plaintiff will testify that they were abused; otherwise, the lawsuit should not have been filed. So the reality is that any case will presumably consist of a plaintiff describing alleged abuse while the defendant is unlikely to have any evidence at all to rebut the claim (or an insurance company to help bear the burden of defense). This is exactly why statutes of limitations exist—so that a fair and timely resolution of the claim can be had.

The disadvantage that reviving old claims will have on organizations is evident in the present case.<sup>14</sup> The Board is a publicly funded body of nine elected officials who oversee and develop policy for the operation of more than fifty schools serving approximately 30,000 students.<sup>15</sup> As a result of the delay<sup>16</sup>

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<sup>14</sup> The impact on other organizations will be even more dramatic when the claims are thirty or more years old and all institutional memory has been lost.

<sup>15</sup> *E.g.*, Gaston County Schools, “Facts and Figures,” <https://www.gaston.k12.nc.us/Page/179> (last visited 25 January 2024).

<sup>16</sup> Seven years passed between plaintiffs' participation in the criminal prosecution of their abuser and the filing of the present action. Such delay is relatively short, however, compared to many of the suits filed under the Revival Window, at least 40 of which involve claims dating back to the 1950s and 1960s.

between the events alleged in the Complaint and filing of this suit, the composition of the Board has changed<sup>17</sup> and the Board no longer employs many of those who would have been involved in hiring and/or supervising the actual perpetrator, Gary Scott Goins. There is no allegation that the acts alleged in the Complaint resulted from some longstanding or entrenched policy of the Board or the Gaston County Schools.

Finally, to the extent that the governmental interest is in providing remedies to private parties, the Revival Provision is not tailored to provide relief from the person who actually perpetrated abuse. As a practical matter, the actual wrongdoers (i.e., the abusers) are unlikely to have any appreciable assets decades after the abuse (assuming that the abusers are both identified and still alive). The actual effect of the Revival Provision is to impose massive potential liability on school systems and non-profits who have structured their limited finances with an eye toward a known universe of expenses and liabilities. With a single stroke, the General Assembly is attempting to create potential financial loss where, on the day before the Revival Window was adopted, none existed.

Applying cases in similar contexts, it is clear that the Revival Window simply fails the narrow tailoring requirement. *See, e.g., Packingham v. North*

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<sup>17</sup> Only one current member was on the Board at any time during the period from 1996 to 2006 covered by the events alleged in the Complaint.

*Carolina*, 582 U.S. 98, 108 (2017) (holding that, under intermediate scrutiny, a law criminalizing the use of social media by sex offenders was not narrowly tailored to “serve its preventative purpose of keeping convicted sex offenders away from vulnerable victims”); *Nunez by Nunez v. City of San Diego*, 114 F.3d 935, 952 (9th Cir. 1997) (holding that juvenile curfew between 10:00 p.m. and daylight was not narrowly tailored to limit infringement on parents’ fundamental right to rear children without undue influence); *Jacinto-Castanon de Nolasco v. U.S. Immigr. & Customs Enft*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018) (holding plaintiffs were likely to succeed on their claim that their fundamental right to family integrity was unconstitutionally violated by zero tolerance immigration policy that was not narrowly tailored to avoid separating families).

Thus, the Revival Window impermissibly infringes on a fundamental right of defendants without being narrowly tailored to further a compelling state interest, and must be held unconstitutional if the substantive due process balancing test is applied.

**D. The Revival Window does not pass rational basis review.**

Under the rational basis test, a statute must be “rationally related to a legitimate government interest.” *Star Sci. Inc. v. Beales*, 278 F.3d 339, 348 (4th Cir. 2002). As discussed above, it is difficult to see how providing a remedy to

a private party for an injury in the distant past advances any interest of the State.

The two-year window itself is arbitrary. In fact, plaintiffs prove that very point, stating that § 1-52 is “an arbitrary time limit to sue.” Pls. Br. 3. If Section 1-52, which reflects a careful balancing of the rights of plaintiffs and defendants, is an “arbitrary time limit to sue,” what then is the Revival Act itself? How can a carefully considered and long-employed statute of limitations be arbitrary but a decision to throw open the courthouse doors to all claims for two years (and then slam them shut again) is not?

Even the scope of the claims that are revived is arbitrary. Under the Revival Provision, a person abused at the age of 17 and 364 days could have brought a claim fifty years later, but a person who is abused on their 18th birthday still had the original three years to file suit.

Critically, school boards face a particular hardship in defending themselves due to the records retention schedules *imposed on the school boards by the State*. As explained in the Board’s opening brief and the amicus brief filed by the North Carolina School Boards Association, the State’s records retention schedule directed local education agencies such as the Gaston County Board of Education to remove certain types of evidence that would be critical to defend the claims revived by the Revival Window. The Board was also

instructed to dispose of its insurance policies and related documents. The applicable records retention schedule provides in pertinent part as follows:

INSURANCE POLICIES FILE. Insurance policies entered into by the local education agency for coverage for buildings, liabilities, fire, vehicles, workers' compensation, and other related topics. DISPOSITION INSTRUCTIONS: Destroy in office 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

...

ACCIDENT REPORTS (STUDENTS) FILE. Records concerning accidents involving students that result in **personal injury**. File includes accident reports and other related records. DISPOSITION INSTRUCTIONS: **Destroy in office remaining records after 3 years if no litigation, claims, audit, or other official action involving the records has been initiated.** If official action has been initiated, destroy in office after completion of action and resolution of issues involved. . . .

...

CORRESPONDENCE/MEMORANDUMS FILE. Correspondence and memorandums concerning personnel related matters. DISPOSITION INSTRUCTIONS: **Destroy in office after 3 years.** . . .

...

GRIEVANCE FILE. Records concerning disputed employee grievances. File includes letters of grievance, hearing records, and other related records. (File is considered part of employee's official personnel file and is considered confidential in accordance with G.S. §153A-98, §115C-319, 320, and 321, and §132-1.1.). DISPOSITION INSTRUCTIONS: **Destroy in office 3 years** after resolution of grievance.

*Records Retention And Disposition Schedule Local Education Agencies, Issued  
By North Carolina Department Of Cultural Resources Division Of Archives*

*And History* (February 19, 1999) (emphasis added) (attached hereto for the Court's convenience as Exhibit A).

The fact that the State instructed school systems to destroy most documents that could possibly be relevant to this case, and insurance policies, and then returned decades later to inform school systems that they must defend themselves against claims that had expired cannot possibly be considered due process. *See, e.g., Geo-Tech Reclamation Industries, Inc. v. Hamrick*, 886 F.2d 662, 666 (4th Cir. 1989) (noting that West Virginia's law allowing denial of permits based on believed "public sentiment" was not rationally related to the purpose at hand, and would subject applicants to arbitrary whims).

Federal courts have acknowledged that resuscitation of time-barred claims imposing special hardships on a defendant will not survive rational basis review. " 'Special hardships' or 'oppressive effects' may be present where an individual took a course of action on the assumption that the limitations period would continue or, conversely, an individual would have taken a different course of action if a change in the limitations period could have been foreseen." *Grice v. Colvin*, 97 F. Supp. 3d 684, 709 (D. Md. 2015) (citing *Chase Secs. Corp. v. Donaldson*, 325 U.S. 304, 316 (1945)). Similarly, a North Carolina federal court found an issue of fact arose as to whether or not a revival statute created an undue hardship under the due process clause. There, the



Court found that a “showing of objective good faith or reasonableness in support of a bare allegation of payment” combined with a loss of evidence needed to defend a claim would be sufficient to establish undue hardship. *United States v. Charles*, 240 F. Supp. 2d 488, 490–91 (M.D.N.C. 2002).

**V. THE SEA CHANGE SOUGHT BY PLAINTIFFS AND THE STATE WILL DESTROY THE SETTLED EXPECTATIONS ON WHICH NORTH CAROLINIANS HAVE RELIED.**

The precedents of this Court are unequivocal that the Legislature cannot revive expired claims. The real question before this Court is whether the Court should change that fundamental law. Because plaintiffs (whether they admit it or not) are asking the Court to re-write the law and abandon vested rights, the Court necessarily must consider the effects of such a change. The schools’ reliance on both *Wilkes County* and the directions from State Archives also show why abandoning *Wilkes County* would be a massive mistake.

Reliance plays an important role in honoring *stare decisis*. Justice Kavanaugh’s Concurrence in *Ramos v. Louisiana* is instructive, as the Justice discussed the three factors to be considered in deciding whether to abandon precedent. One such ground is reliance:

[W]ould overruling the prior decision unduly upset reliance interests? This consideration focuses on the legitimate expectations of those who have reasonably relied on the precedent. In conducting that inquiry, the Court may examine a variety of reliance interests and the age of the precedent, among other factors.

*Ramos*, 140 S. Ct. at 1415 (Kavanaugh, J., concurring in part).

Here, schools and other organizations have relied on ninety years of stable jurisprudence. To overturn such settled law and penalize businesses, churches, schools, and other organizations for relying on *Wilkes County* and the Vested Rights Doctrine for any set of plaintiffs, no matter how compelling, is inappropriate. *See, e.g., Janus v. Am. Fed’n of State, Cnty., & Mun. Emps*, 138 S. Ct. 2448, 2478–79 (2018) (noting relevant factors to weigh when considering overruling precedent, including “the quality of [prior cases]’ reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision”).

The reality is that, if anything, the revival of old claims will harm today’s generation of children. Most of the defendants in the more than 250 pending SAFE Child Act revival cases are either non-profits (churches, youth organizations, etc.) or local boards of education. Such entities struggle every day to find the resources to help children. The Revival Act, if allowed to stand, will require those entities to divert their resources to fighting claims for which witnesses, documents, and insurance policies are now gone, lawsuits in which each organization is handicapped by its reliance on the ninety-year rule that, once the book of liability is closed, it stays closed.

Statutes of limitations are imperfect creations. They reflect a balancing of the rights of claimants and the rights of defendants. Here, the General Assembly did not tweak the statute of limitations for child abuse claims, but wiped them out for a two-year period. The delicate balance of competing rights and interests was simply tossed aside by the Legislature.

The impact of the sea change proposed by plaintiffs and the State is indeed important to the Court's analysis. Overruling precedent is an act that should not be taken lightly. The people have come to rely on the vested right, not as a mere procedural matter but in a substantial way that impacts how they manage risk, plan for the future, and conduct their business.

## **VI. THE REVIVAL WINDOW SHOULD NOT BE HELD TO REVIVE CLAIMS BARRED BY A STATUTE OF REPOSE.**

The Board and every other defendant has the right to rely on both the running of a statute of limitations and the running of a statute of repose, as these statutes confer vested rights in defendants. In the event the Court departs from the rule in *Wilkes County*, the Court should nonetheless find a vested right in a repose period.

The Board explained in its opening brief that the Revival Window is unconstitutional in all applications, whether applied to claims barred by the statute of limitations or repose, since the Revival Window makes no distinction between these two types of time bars. This argument is necessary to the Court's

analysis because the Board is tasked with demonstrating the facial invalidity of the Revival Window in every application as part of its facial challenge.<sup>18</sup>

The distinction between statutes of limitation and statutes of repose is fundamental: A statute of limitation bars a remedy, but a statute of repose eliminates the claim itself. In other words, a statute that allows the filing of a claim barred by the statute of repose is not restoring a remedy but is *re-creating* a claim where none exists. In this sense, while the parties and courts refer to the statute at issue as the “Revival Provision,” it does not purport to revive claims by the statute of repose, but to re-create them.

The Revival Window attempts to revive claims that were extinguished through the passage of time (the three-year period in N.C.G.S. § 1-52(5)) and it also seeks to revive claims that never came into existence because they were not brought before the ten-year repose period in N.C.G.S. § 1-52(16). Contrary to their assertions, the repose period is applicable to the Board because it sets a ten-year outer limit when claims must be brought. Plaintiffs did not bring

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<sup>18</sup> The question of whether the Court may adopt a limiting principle to clarify its current constitutional doctrine is properly before the Court. The question before the Court as noted in the Board’s Notice of Appeal is: “Did the Court of Appeals err by overruling binding precedent in order to resurrect Plaintiff’s time-barred claims, when legislation retroactively reviving such claims ‘is inoperative and of no avail’ because it ‘takes away vested rights of defendants, and therefore is unconstitutional.’ *Wilkes Cnty. v. Forester*, 204 N.C. 163, 170, 167 S.E. 691, 695 (1933).” The contours of the vested rights doctrine in the context of time limitations is the issue before the Court, therefore the Court may consider how its doctrine applies to both modern-day time bars and may contemplate announcing a limiting principle in the modern application of the vested rights doctrine.

their claims within ten years and therefore they never came into existence. The operation of these two types of modern-day time bars (which were not at issue in this Court's precedents) is discussed at length in the Board's opening brief. (pp. 49–56).

The State and the Board have a common ground on a particularly salient point with respect to the operation of a statute of repose: that the claims barred by a statute of repose should not be revived (or re-created). This principle has not been enunciated by the Court before. However, if the Court were to adopt a limiting principle in its decision on the case at bar, this principle would provide clear direction to lower courts and the other branches on when revival of claims impairs a vested right and when it does not.

The precedents of this Court have made clear, as explained by the State, that “statutes of repose make the commencement of a claim within a certain time a ‘condition precedent to the maintenance of the action.’” State Br. 39–40 (quoting *Bolick*, 306 N.C. at 369). Adding that: “In this way, a statute of repose serves as ‘an unyielding and absolute barrier,’ potentially foreclosing a claim before a cause of action even accrues.” State Br. 40 (quoting *Black v. Littlejohn*, 312 N.C. 626, 633 (1985)).

## CONCLUSION

This Court returned constitutional analysis to one grounded in fundamental principles in *Harper v. Hall*. That analysis asks the key question:

What did the words mean when they were adopted? No matter how much plaintiffs attack this Court's prior rulings as "opaque," "antiquated," "rogue," and "misguided," the meaning of the Law of the Land Clause, and specifically the ability of the Legislature to resurrect claims, was clear in 1970 and it is clear today.

What plaintiffs demand is that this Court strip the People of their vested rights and allow the General Assembly to revive whichever claims they want whenever they want. The reasons offered for such a re-writing of North Carolina constitutional law are nothing but speculation, but the negative impacts are clear, dramatic, and undisputed.

The General Assembly was well-intentioned when it adopted the SAFE Child Act, and most of that statute is long overdue; but the Revival Window is neither constitutional nor just. The Court should fulfill its historic function of safeguarding the rights of the People and find that the Revival Provision is unconstitutional.

Respectfully submitted this the 26<sup>th</sup> day of January, 2024.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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## CERTIFICATE OF SERVICE

This is to certify that the undersigned counsel has this day served the forgoing document, which was filed using the N.C. Appellate Court electronic filing system, on all parties to this case via e-mail as follows:

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This the 26<sup>th</sup> day of January, 2024.

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# RECORDS RETENTION AND DISPOSITION SCHEDULE

## LOCAL EDUCATION AGENCIES



*Issued By:*

North Carolina Department of Cultural Resources  
Division of Archives and History  
Archives and Records Section  
Records Services Branch

February 19, 1999

EXHIBIT A
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NORTH CAROLINA DEPARTMENT OF CULTURAL RESOURCES

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*Secretary*

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*Deputy Secretary*

DIVISION OF ARCHIVES AND HISTORY

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*Director*

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*Deputy Director*

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*Chairman*

Alan D. Watson (2003)

*Vice-Chairman*

Millie M. Barbee (2003)

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Mary Hayes Holmes (1999)

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## LOCAL EDUCATION AGENCIES RECORDS RETENTION AND DISPOSITION SCHEDULE

The records retention and disposition schedule and retention periods governing the records series listed herein are hereby approved. In accordance with the provisions of Chapters 121 and 132 of the *General Statutes of North Carolina*, it is agreed that the records of each

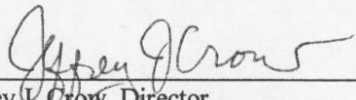
### Local Education Agency

do not and will not have further use or value for official business, research, or reference purposes after the respective retention periods specified herein. The North Carolina Department of Cultural Resources consents to the destruction or other disposition of these records in accordance with the retention and disposition instructions specified in this schedule and the

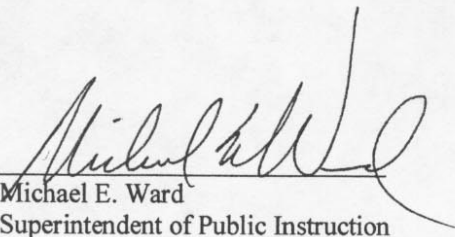
### Superintendent of Public Instruction

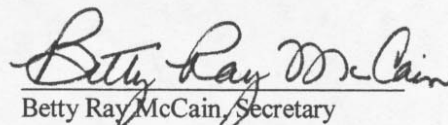
agrees to the provisions of this schedule as stated and endorses its use. This schedule is to remain in effect from the date of approval until it is reviewed and updated.

### APPROVAL RECOMMENDED

  
\_\_\_\_\_  
Jeffrey J. Crow, Director  
Division of Archives and History

### APPROVED

  
\_\_\_\_\_  
Michael E. Ward  
Superintendent of Public Instruction

  
\_\_\_\_\_  
Betty Ray McCain, Secretary  
Department of Cultural Resources

February 19, 1999

## ABOUT THIS PUBLIC RECORDS SCHEDULE

This records schedule identifies and provides retention and disposition instructions for many records that are produced and maintained in the offices of the local education agency. These records are defined under Chapter 132 of the *General Statutes of North Carolina* as “public records.” Chapter 121-5 mandates that these public records may be disposed of only in accordance with an official records retention schedule. Such schedules are written by the North Carolina Department of Cultural Resources in cooperation with the agency or governing body and include the official approval of these bodies, as required by law, for records disposition actions.

**INTERNET ACCESS TO PUBLIC RECORDS INFORMATION.** The Records Services Branch offers valuable information on the Internet at its Web site, which may be accessed at <http://www.ah.dcr.state.nc.us/sections/archives/rec/default.htm>. Local government agencies are encouraged to reference the site and its links to other data. The Web site offers much of the introductory information and many of the forms contained in this schedule, full text of G.S. §121 and §132, and contact information for the Records Services Branch.

**WHAT THE SCHEDULE IS.** This records retention and disposition schedule supersedes and replaces a similar schedule for offices of the superintendent of schools and board of education issued in 1982, which in turn superseded *The County Records Manual* published in 1970. The schedule contains a listing and brief description of the records maintained in school system offices and identifies the minimum period of time each record series shall be retained. Records normally should be disposed of at the end of the stated retention period. In effect, the schedule provides a comprehensive records disposition plan which, when followed, ensures compliance with G.S. §121 and §132. All provisions of this schedule remain in effect until the schedule is officially amended. Errors and omissions do not invalidate this schedule as a whole or render it obsolete. As long as the schedule remains in effect, destruction or disposal of records in accordance with its provisions shall be deemed to meet the provisions of G.S. §121-5(b) and be evidence of compliance of the law. **However, in the event that a legal requirement, statute, local ordinance, or federal program requires that a record be kept longer than specified in this schedule, the longer retention period shall be applied. All questions concerning the legal requirements for retaining a record should be referred to the county attorney.**

**PUBLIC RECORDS DEFINED.** Chapter 132-1 of the *General Statutes of North Carolina* states:

“Public record” or “public records” shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction or public business by any agency or North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the state or of any county, unit, special district or other political subdivision of government.

**NOT ALL PUBLIC RECORDS ARE OPEN TO THE PUBLIC.** Public records belong to the people. However, not all official public records are open to the public. Many records are protected from general access or casual reference by “need to know” restrictions, by federal or state laws, or by legal precedent and can be seen only by court order. Therefore, even though G.S. §132-6 and §132-9 provide for public access to most records, certain records should be considered confidential in order to protect the privacy rights of agency personnel and the public. It is the responsibility of each records custodian to be familiar with G.S. §115C and §153A, agency policy, and all other pertinent state and federal legislation and regulations in order to ensure the proper protection of restricted information. If in doubt, consult the Division of Archives and History or your agency’s attorney.

**DATA PROCESSING AND OTHER ELECTRONIC AND MACHINE READABLE RECORDS.** Many paper records are being eliminated when the information they provide has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in this schedule. For more information on the retention and disposition of records in machine readable form, see Standard-4 (page 19) of this schedule. Also see *Electronic Mail as a Public Record in North Carolina* on page x.

**CHANGING THE SCHEDULE.** You may request an addition, deletion, or change in a retention period by completing and sending Form RC-3C to the Division of Archives and History (copy of form included on page 51). See the instructions on the form for more information.

**EARLY DISPOSAL OR DISPOSAL OF UNSCHEDULED RECORDS.** Custodians desiring to dispose of records earlier than specified in this schedule or to dispose of records not listed in the schedule may use Form RSB-RC5 to obtain the concurrence of the Department of Cultural Resources (copy of form included on page 52 or available on the Internet). Permission must also be obtained from the governing body and included in its minutes.

**PERMANENT RECORDS.** Records scheduled for permanent preservation, even after being microfilmed, may not be destroyed without specific written permission of the Department of Cultural Resources.

**PROTECTING PUBLIC RECORDS.** Public records are public property. They should remain in the care of the government agency in which they were created or collected in the course of public business and then be disposed of only when and as specified in this records schedule.

## DESTRUCTION OF PUBLIC RECORDS

1. **AUTHORIZED PROCEDURES.** One of the following procedures shall be followed prior to the destruction of public records.
  - a) Records listed in this schedule, or added later by amendment, may be destroyed after the specified retention periods without further approval of the Department of Cultural Resources or the governing body providing:
    - (1) The Superintendent of Public Instruction has authorized the records listed herein for destruction to be destroyed by blanket approval of this retention and disposition schedule.
    - (2) The Director, Division of Archives and History, and Secretary, Department of Cultural Resources, have certified that such records in the retention and disposition schedule have no further use or value for research or reference by signing the same agreement sheet of this schedule.
  - b) One-time destruction of an accumulation of an unscheduled or a discontinued record series should be referred to the Department of Cultural Resources and the governing body for authorization.
  - c) In accordance with G.S. §121-5(b), it is recommended that the governing board of each school system approve the retention and disposition schedule and include a copy in the minutes of the meeting during which the guidelines are approved.
2. **DESTRUCTION OF ORIGINAL RECORDS THAT HAVE BEEN DUPLICATED.** Original records that have been duplicated on microfilm, microfiche, data processing or word processing equipment, or other form may be destroyed prior to the retention period specified in the records schedule without further approval from the Department of Cultural Resources, provided the following conditions are met:
  - a) The duplicate copy of the information contained in the original record is maintained for the specified time.
  - b) The original record has not been scheduled for permanent preservation.
  - c) The governing body has agreed to the destruction of the original paper records and the destruction is recorded in a permanent record, such as the minutes of the governing body.
3. **DESTRUCTION OF DATA PROCESSING RECORDS.** Computer printouts and other data processing input/output may be destroyed without specific authorization and recording, provided the following conditions apply:
  - a) The information is maintained on magnetic media (e.g., magnetic tape, diskettes, etc.), and the media are scheduled in a records retention and disposition schedule.
  - b) The output copy is not specifically listed and scheduled in this records retention and disposition schedule.

For more information on the retention and disposition of records in machine readable form, see Standard-4 (page 19) of the schedule. You may request the disposal of electronic data processing public records by submitting Form RC-MRR-1 to the Records Services Branch (copy of form included on page 53).



4. **METHODS OF DESTRUCTION.** Local government records provide documentation of the actions and processes of government at its most direct level. These records should remain in the custody and control of the agency that created them or received them pursuant to law until such time as they are eligible for disposition. When authorized by an approved records retention and disposition schedule, records should be destroyed in one of the following ways:

- a) Burned, shredded, or torn up so as to destroy the record content of the documents or materials concerned;
- b) placed in acid vats so as to reduce the paper to pulp and to terminate the existence of the documents or materials concerned;
- c) buried under such conditions that the record nature of the documents or materials will be terminated; or
- d) sold as waste paper, provided that the purchaser agrees in writing that the documents or materials concerned will not be resold as documents or records.

5. **DISPOSITION OF RECORDS NOT AUTHORIZED FOR DESTRUCTION BY THIS SCHEDULE.** Custodians with records not authorized for destruction or other disposition by this schedule may discard these records by following one of the procedures listed below:

- a) Address correspondence using Form RSB-RC-5 to the address indicated on the form (copy of form included on page 52 or available on the Internet)
- b) Custodians with records no longer in current use that are identified as permanent and not authorized for destruction by this schedule, or with paper records that have been microfilmed, are authorized and empowered to turn over such records to the Department of Cultural Resources. The Department of Cultural Resources is authorized, at its discretion, to accept custody of those records providing it has adequate space and staff in the State Archives. A written offer of the records should be made to the Assistant State Records Administrator, Records Services Branch, 109 E. Jones Street, Raleigh, North Carolina 27601-2807.

## **RECORDS MANAGEMENT WORKSHOPS**

**TECHNICAL AND PROFESSIONAL TRAINING.** Staff training helps to make a good agency records management program better. The records management workshops listed below are available to all governmental agencies and can be presented at your office. They are also available at periodic intervals in the State Records Center building in Raleigh.

An agency outside the Raleigh area may request a workshop held on its premises by telephoning (919) 733-3540. Although fifteen is an optimal number of participants for workshops, they are provided for any interested agency personnel.

**MICROGRAPHICS AND GOVERNMENT RECORDS.** The workshop presents the various microforms available in the industry today; micrographic principles, technology and production; state technical standards and procedures to ensure the legal admissibility of microforms; and micrographic systems and equipment. Also included are a basic introduction to micrographics, the advantages and limitations of microfilm, quality controls, suggested specifications for vendor services, state technical standards for in-house operations or micrographic services provided by vendors, and choosing and implementing a micrographic system. Normally this workshop is conducted in the State Records Center building in Raleigh. The workshop is shortened for presentation outside of our classroom.

State, county, and municipal government agencies with existing in-house systems, microfilm operators and supervisors who perform or supervise source document microfilming, and those interested in developing or maintaining micrographic systems would benefit from this training course designed to present the overall picture. The Raleigh workshop includes equipment demonstrations and operator maintenance tips on how to keep a microfilm system operating with a minimum of equipment failures.

**RECORDS AND INFORMATION MANAGEMENT FUNDAMENTALS.** Management methods and procedures for controlling active and inactive records in state, county, and municipal government offices through the use of records retention and disposition schedules are presented in the workshop. Included in the training session are pertinent laws, protecting essential records, determining historical and other record values, disposition procedures, and the relationship of disposition to other records management activities.

The training course is designed for all management, staff, and clerical levels in county, municipal, and state government agencies engaged in controlling records and information of all types.

**FILES AND FILING.** Step-by-step procedures for organizing and maintaining subject files in an efficient, easy-to-use system are presented in this workshop. The workshop includes: ordering and using the correct supplies; organizing files by their function; color coding files to increase retrieval speed and reduce misfiles; a single-point reference system with everything about a particular case, subject, person or location in one folder (case filing); eliminating "General" and "Miscellaneous" files; and creating a filing system in which anyone can locate a folder. The training course is designed for personnel who perform or supervise filing operations and are looking for something better than a straight alphabetical filing system.

**MANAGING ELECTRONIC PUBLIC RECORDS.** Electronic files in state, county, and municipal agencies include records stored in desktop computers. The workshop covers public access to electronic files; legal acceptance of electronic records; managing, storing, and retrieving electronic records; electronic mail; security of electronic files; and system backups.

## MICROFILM

**ADVANTAGES.** Microfilm is an economical and practical means of preserving a security copy of essential records, and it can be used by government agencies to eliminate the problem of excess paper.

**LEGAL AUTHORITY AND ACCEPTANCE.** Legal authority for microfilming county records is contained in **G.S. §153A-436**. This statute provides that the method of reproduction must give legible and permanent copies and the reproduction of the public records must be kept in a fire-resistant file, vault, or similar container.

G.S. §8-45 and §153A-436 provide that microfilm copies of public records shall be admissible as evidence in any judicial or administrative proceeding.

To ensure uniformity and legal acceptability in microfilmed records, certain forms, targets, and procedures should be used when microfilming public records. The Division of Archives and History has published *Micrographics: Technical and Legal Procedures* to aid state, county, and municipal agencies in producing good-quality microfilm that meets all legal requirements.

**TECHNICAL STANDARDS.** Specific technical standards are required to assure quality microforms that are readily reproducible and, where necessary, capable of permanent preservation. There are four basic groups of standards that establish criteria for microfilm to be of archival or permanent quality: standards for the manufacture of raw film; standards affecting the method of filming in order to produce good overall results; standards involved in processing (developing) microfilm; and standards for the storage of processed microfilm. Those standards are listed and explained in the Division of Archives and History's publication, *Micrographics: Technical and Legal Procedures*. The standards were compiled from national associations such as the American National Standards Institute (ANSI) and the Association for Information and Image Management (AIIM).

**SERVICES AVAILABLE.** The Division of Archives and History offers microfilming of minutes and other selected permanent records. An appointment to microfilm the records is necessary and may be made by calling (919) 733-3540. The records scheduled to be microfilmed must be delivered to Raleigh for filming. The silver original reel is stored for security in the State Archives' environmentally controlled vault. Duplicate reels may be obtained from the Records Services Branch for a small fee.

Micrographic feasibility studies are provided, on request, to help agencies determine the most cost-effective micrographic system to meet their needs. Evaluations of existing micrographic applications are performed to ensure that microfilm meets state technical standards and is of archival quality.

Agencies microfilming their own *permanent* records should send the silver (camera) film to the Division of Archives and History for storage in the vault, or to an off-site facility that meets microfilm storage criteria outlined in *Micrographics: Technical and Legal Procedures*. Duplicate film can be used in the office as the working copy.

## DISASTER ASSISTANCE IS AVAILABLE

Throughout our state's history, county and municipal records have been vulnerable to man-made and natural disasters. Even with modern facilities and improved security and protective measures, public records are still susceptible to fire and water damage, and several disasters involving public records have occurred in this state during recent years. One of the most common forms of disaster has been a fire (usually at night or during a weekend). In those instances, valuable and often irreplaceable records that escaped the flames were ruined by water and mud resulting from fire fighting. In most cases, records that were irreparably damaged might have been saved if state and local officials had known what to do with damaged records and acted promptly.

In order to help state, county, and municipal agencies cope with fires, floods, and other disasters involving records, the North Carolina Division of Archives and History has formed a Disaster Preparedness Team. Upon request, members of this team will advise local officials in the retrieval of damaged records. When possible, they will also provide further assistance upon request.

**What should you do when a disaster occurs?** The first and most important step to take is to notify the Division of Archives and History at (919) 733-3540 immediately. [During nights or weekends, call the local emergency management office.] Next, secure the area containing the damaged records as soon as possible. Until firefighters or other safety personnel confirm the safety of the area, no one should enter the facility. In the case of water-damaged records, the first step is to ventilate the area as much as possible to delay the growth of mold and facilitate later records-salvage efforts. Finally, and most important---**NO ONE SHOULD REMOVE OR ATTEMPT TO CLEAN RECORDS.** Damaged records are fragile, and attempts to move or clean them may cause unnecessary destruction. Trained personnel normally will be on the scene within hours, and they will direct recovery of the damaged records.

Information about disaster response is available on the Internet, on the Division of Archives and History's Web site, at <http://www.spr.dcr.state.nc.us>.

## **ELECTRONIC MAIL AS A PUBLIC RECORD IN NORTH CAROLINA**

### *Guidelines for Its Retention, Disposition, and Destruction*

Department of Cultural Resources  
Division of Archives and History

The Division of Archives and History assumes that every state agency or other political unit in the state of North Carolina sends and receives electronic mail ("e-mail") or will shortly have the capability of doing so. E-mail (unless it is personal in nature) contains information of value concerning, or evidence of, the administration, management, operations, activities, and business of an office. Like paper records--such as the memoranda, correspondence, reports, and the hundreds of other types of records received traditionally, for example, through interoffice or U.S. mail or other avenues---e-mail has administrative, legal, reference, and/or archival values. *The content of electronic mail is a public record* (according to G.S. 121.8 and 132.1) *and may not be disposed of, erased, or destroyed without specific guidance from the Department of Cultural Resources.* This regulation, along with a current records retention and disposition schedule, is intended to provide for that guidance.

Accordingly, agencies and their offices which use e-mail should normally retain or destroy e-mail by following the provisions of a current, valid records retention and disposition schedule listing the records maintained by a particular office, filing e-mail (whether in paper or electronic format) within existing records series on their schedules and handling it according to the disposition instructions assigned to each such records series. Because of the characteristics of the medium, however, electronic mail also possesses a dual identity. E-mail is also used to transmit and receive messages that may have reference or administrative value but which are simultaneously of an ephemeral, temporary, or transient nature. As such, e-mail of this kind functions in some ways like telephone calls or telephone messages. Such messages remain public records but may be treated as having a reference or administrative value that ends when the user no longer needs the information such a record contains. E-mail of ephemeral or rapidly diminishing value may be erased or destroyed when the user has determined that its reference value has ended.

Agencies and offices need, however, to pay particular attention to the sometimes complex requirements for the retention of e-mail for longer periods of time, i.e., e-mail of more than transient value. E-mail in this category may be retained in electronic or paper form (the latter may in some cases be the only means of providing for archival retention, for example through microfilming of paper copies), but must be retained for as long as the period specified in a valid records schedule. If retained in paper form, the copies must retain transmission and receipt data. If electronic mail is retained in electronic form, office administrators need to insure that their electronic environment (client server, mainframe computer in or outside their agency, or office personal computer) assures the retention of e-mail for the required period of time. Office administrators may need to contact relevant personnel at SIPS (State Information Processing Services), at their own agency computer systems unit, or any other personnel who operate computer units or systems immediately or remotely, to ensure that such systems process e-mail in accordance with records retention schedules and provide for backups, disaster recovery, physical and electronic security, and the general integrity of the system, its components, and the records it generates and maintains. Office administrators may also need to assure that office filing systems adequately provide for the proper classification of electronic files (including e-mail) in the same manner as currently provided for paper-based files.

Office administrators, department or unit heads, and all other state employees who use e-mail should regularly and consistently retain or delete e-mail in accord with the records series and disposition instructions, and other instructions, provided above. Retention of e-mail or any other records, whether in electronic or paper format, for longer than provided in a valid records retention and disposition schedule leads to inefficiency and waste and may subject the affected unit to legal vulnerabilities.

**STANDARD-1. ADMINISTRATION AND MANAGEMENT RECORDS.** Records concerning the authority, operating philosophy, purposes, methods, and primary functions of the local education agency.

1. **ACCIDENT REPORTS (EMPLOYEES) FILE.** Records concerning accidents involving local education agency employees that result in personal injury. File includes accident reports and other related records.

DISPOSITION INSTRUCTIONS:

- a) Transfer records resulting in workers' compensation claims to Workers' Compensation Program Claims File (item 33) in Standard-6, Personnel Records.
- b) Destroy in office remaining records after 3 years if no litigation, claims, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

2. **ACCIDENT REPORTS (STUDENTS) FILE.** Records concerning accidents involving students that result in personal injury. File includes accident reports and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office remaining records after 3 years if no litigation, claims, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

3. **AGENDAS FILE.** Agendas used for meetings.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

4. **ASSOCIATIONS AND COMMITTEES FILE.** Records concerning various associations and committees. File includes correspondence, lists of members, newsletters, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

5. **BULLETINS FILE.** Administrative notices issued by authorized agency officials.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

6. **BUSINESS LICENSES FILE.** Records concerning companies authorized to conduct business with the local education agency. File includes copies of business licenses, applications, fee schedules, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office 5 years after expiration.

7. **CONFERENCES AND WORKSHOPS FILE.** Records concerning conferences and workshops conducted or attended by local education agency employees. File includes correspondence, agendas, programs, reports, training records, handouts, reservation forms, critiques, questionnaires, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

8. **CORRESPONDENCE/MEMORANDUMS FILE.** Administrative and management correspondence/memorandums written or received by office.

DISPOSITION INSTRUCTIONS:

- a) Transfer correspondence with obvious historical value to Histories File (item 19) after 3 years.
- b) Destroy in office remaining records after 3 years.

9. **DEEDS FILE.** Deeds providing evidence of local education agency ownership of property.

DISPOSITION INSTRUCTIONS: Retain in office permanently.

10. **DIRECTIVES FILE.** Official policy statements and directives concerning or affecting the local education agency.

DISPOSITION INSTRUCTIONS:

- a) Retain in office one copy permanently.
- b) Destroy in office remaining records when superseded or obsolete.

11. **DONATIONS AND SOLICITATIONS FILE.** Documents concerning donations and solicitations made by office personnel. File includes lists of participating organizations, rosters of participating employees, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

12. **EMERGENCY MANAGEMENT FILE.** Records concerning preparations for disasters and emergency management operations. File includes plans and procedures, lists of personnel roles and responsibilities in disaster situations, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

13. **EVACUATION PLANS FILE.** Emergency evacuation plans for local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

14. **FACILITY CONSTRUCTION RECORDS.** Records concerning the construction of new local education agency buildings and addition(s) to existing buildings. File includes blueprints formerly maintained by the Department of Public Instruction, construction change order records, architect's field order reports, design

records, performance bonds, insurance certificates, observation reports, inspections, completion certificates, specifications, correspondence, shop drawings and other related records.

DISPOSITION INSTRUCTIONS:

- a) Retain in office permanently final plans/blueprints and plumbing, electrical, and construction design specifications for approved and constructed facilities.
- b) Destroy in office remaining records 6 years after construction is completed.

15. **FIRE AND SAFETY FILE.** Records concerning office safety measures. File includes correspondence, inspection reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

16. **GOALS AND OBJECTIVES FILE.** Local education agency goals and objectives.

DISPOSITION INSTRUCTIONS:

- a) Transfer records with obvious historical value to the Histories File (item 19) after 3 years.
- b) Destroy in office remaining records after 3 years.

17. **GRANTS PROPOSALS FILE.** Proposals submitted for grants. File also includes applications, correspondence, and other related records. . (See also **STANDARD-2. BUDGET AND FISCAL RECORDS, FEDERAL GRANTS: APPLICATION RECORDS FILE** (item 26), page 11.)

DISPOSITION INSTRUCTIONS:

- a) Transfer records concerning approved grants to Grants File (item 18) immediately.
- b) Destroy in office rejected or withdrawn grant proposals when reference value ends.

18. **GRANTS FILE.** Records concerning approved grants administered by the local education agency. File includes administrative procedures, applications, reports, regulations and guidelines, correspondence, audit reports, and other related records. (See also **STANDARD-2. BUDGET AND FISCAL RECORDS, FEDERAL GRANTS: FINANCIAL RECORDS FILE** (item 27), page12.)

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

19. **HISTORIES FILE.** Records concerning the history of the organization and its employees.

DISPOSITION INSTRUCTIONS: Retain in office permanently.



20. **INDEX FILE.** Location listings of specific information or records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

21. **INSURANCE POLICIES FILE.** Insurance policies listing specific terms and conditions of coverage for buildings, liabilities, fire, vehicles, workers' compensation, and other related activities or property.

DISPOSITION INSTRUCTIONS: Destroy in office 10 years after expiration of policy.

22. **LITIGATION CASE FILE.** Correspondence and legal records concerning cases in which the local education agency is a party. (Comply with applicable provisions of G.S. §132-1.1 regarding confidentiality of legal records.)

DISPOSITION INSTRUCTIONS: Transfer to Litigation File (item 10) in Standard 3, Legal Records, when reference value ends.

23. **MANAGEMENT STUDIES FILE.** Internal studies conducted by administrators.

DISPOSITION INSTRUCTIONS:

- a) Transfer studies with obvious historical value to the Histories File (item 19) after 3 years.
- b) Destroy in office remaining records after 3 years.

24. **MEETINGS FILE.** Notes, memorandums, electronic tape recordings, and all other records (excluding minutes and agendas) for all types of meetings.

DISPOSITION INSTRUCTIONS: Destroy in office after approval of official minutes.

25. **MINUTES FILE.** Official copies of minutes of committees, commissions, and boards. (This is an essential agency record.)

DISPOSITION INSTRUCTIONS:

- a) Transfer all unmicrofilmed, signed minutes to the State Records Center to be microfilmed for security and returned.
- b) Transfer official signed photocopies of future minutes to the State Records Center after each meeting to be microfilmed for security.
- c) Retain in office original minutes permanently.

26. **ORGANIZATION CHARTS FILE.** Charts indicating administrative lines of responsibility.

DISPOSITION INSTRUCTIONS:

- a) Transfer official copy to Histories File (item 19) when superseded or obsolete.
- b) Destroy in office all other copies when superseded or obsolete.

27. **PETITIONS FILE.** Petitions signed by citizens requesting action by the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office after resolution of issue.

28. **PLANNING AND DEVELOPMENT FILE.** Records concerning the planning and development of special projects and programs. File includes proposals, development and implementation plans, schedules, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Transfer records with obvious historical value to Histories File (item 18) when administrative value ends.
- b) Destroy in office remaining records when administrative value ends.

29. **POLICIES AND PROCEDURES FILE.** Policies and procedures concerning or affecting the local education agency.

DISPOSITION INSTRUCTIONS:

- a) Retain in office permanently official copy of local education agency initiated policies and procedures.
- b) Destroy in office reference copies and copies of policies and procedures initiated by outside agencies 1 year after superseded or obsolete.

30. **PROJECT FILE.** Correspondence, drafts, proposals, and other records concerning active or proposed projects.

DISPOSITION INSTRUCTIONS: Destroy in office 1 year after project ends.

31. **PROPERTY AND EQUIPMENT INVENTORY FILE.** Inventories of all local education agency owned equipment and property.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

32. **REFERENCE FILE.** Records concerning subjects of interest to office. File includes brochures, articles, publications, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

33. **REPORTS FILE.** Administrative reports submitted to or produced by the local education agency. File includes biennial, annual, monthly, periodic, quarterly, and other related reports. (See also **STANDARD-7. PROGRAM OPERATIONAL RECORDS**)

DISPOSITION INSTRUCTIONS:

- a) Retain in office 1 copy of biennial and annual reports permanently.
- b) Destroy in office all other reports after 3 years.

34. **RESEARCH AND STUDIES FILE.** External research and studies concerning office programs. File also includes publications, brochures, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

35. **RESOLUTIONS AND ORDINANCES FILE.** Resolutions and ordinances concerning various aspects of local education agency administration and business. Resolutions and ordinances list effective dates, issues or policies involved, approval signatures, and other related information. (This is an essential agency record.)

DISPOSITION INSTRUCTIONS:

- a) Transfer all unmicrofilmed, signed copies to the State Records Center to be microfilmed for security and returned.
- b) Transfer official signed photocopies of future resolutions and ordinances to the State Records Center to be microfilmed for security.
- c) Retain in office original records permanently.

36. **STATE AND/OR OTHER COUNTY PROGRAMS FILE.** Resource materials, program information, and other related records concerning other state or county programs.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

37. **TEMPORARY RECORDS FILE.** Records of a transient nature, which are created and maintained in the course of routine day-to-day local education agency operations. File consists of telephone messages, announcements, acknowledgements, confirmation of travel reservations, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends

**STANDARD-2. BUDGET AND FISCAL RECORDS.** Records created and accumulated incident to the managerial control, budgeting, disbursement and collection, and accounting of local education agency individual, local, and state school funds.

1. **ANNUAL BUDGET FILE.** Records concerning the budget process for the completed fiscal year. File includes lists of estimated federal, state, and county funding resources; allocation reports; revenue summaries; and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

2. **AUDIT REPORTS FILE.** Audit reports listing annual reconciliation of accounts of agency's financial activities.

DISPOSITION INSTRUCTIONS:

- a) Retain in office permanently 1 copy of each audit.
- b) Destroy in office other copies when reference value ends.

3. **AUTHORIZATION FORMS FILE.** Authorization forms for the purchase of materials or supplies.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

4. **BANK STATEMENTS, CANCELED CHECKS, DEPOSIT SLIPS, AND RECONCILIATIONS FILE.** Daily transaction records for all bank accounts maintained by the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

5. **BIDS FOR PURCHASE FILE.** Requests for cost quotations for equipment, supplies, or services. File includes advertisements for bids, request for proposals, bid tabulations, bid bonds, cost estimates, accepted bids, guidelines and requirements for submitting proposals, award letters and correspondence, copies of purchase orders, and related materials. (File is used in purchasing contract items or services for which the cost must be known before purchase orders are issued.)

DISPOSITION INSTRUCTIONS: Destroy in office bids for purchase of materials, equipment and supplies after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

6. **BIDS FOR DISPOSAL OF PROPERTY FILE.** Requests for cost quotations to dispose of surplus local education agency property.

DISPOSITION INSTRUCTIONS: Destroy in office after recording in governing board minutes.

7. **BILLING/CLAIMS FILE.** Records concerning billings and claims for services rendered. File includes bills, claim reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

8. **BONDS AND COUPONS FILE, COUNTY.** Bonds, notes, and interest coupons purchased by the county which the local education agency serves. (See G.S. §142-13 and §159-139.)

DISPOSITION INSTRUCTIONS: Comply with G.S. §159-139.

9. **BOND PRINCIPAL AND INTEREST DUE, NOTICES OF.** Notices of bond principal and interest due.

DISPOSITION INSTRUCTIONS: Destroy in office after 4 years.

10. **BOND REGISTER FILE.** Register listing bonds and coupons destroyed by local education agency officials.

DISPOSITION INSTRUCTIONS: Retain in office permanently.

11. **BUDGET FILE.** Records concerning the budget of the local education agency. File includes budget reports, requests for budget changes, budget authorizations, internal budgetary records, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office end-of-year (June 30) budget reports when reference value ends.
- b) Destroy in office remaining records after 5 years or when released from all audits, whichever occurs later.

12. **BUDGET CORRESPONDENCE FILE.** Correspondence concerning budget matters.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

13. **BUDGET ORDINANCES FILE.** Estimates of revenues and proposed expenditures for the coming year. File also includes amendments.

DISPOSITION INSTRUCTIONS:

- a) Record official copy in minutes of the governing board to be retained permanently.
- b) Destroy in office remaining copies after 3 years.

14. **CASH RECEIPTS FILE.** Cash receipts issued by agency.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

15. **CHECK REGISTER FILE, VARIOUS FUNDS.** Check registers for various funds. Registers list unit code, clerk number, date, amount, and other related information.

**DISPOSITION INSTRUCTIONS:**

- a) Destroy in office computerized check register when released from all audits.
- b) Destroy in office all other registers after 3 years.

16. **CONTRACT BUDGET AND EXPENDITURE REPORTS FILE.** Reports detailing local education agency budget transactions for contracted services or projects.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

17. **CREDIT CARD USE FILE.** Records concerning the use and possession of credit cards by local education agency employees. File includes receipts, lists of credit card numbers and to whom assigned, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office when released from all audits.

18. **DAILY CASH REPORTS FILE.** Daily cash reports listing amounts received, disbursements, cash and invested balances, and other related information.

**DISPOSITION INSTRUCTIONS:** Destroy in office when released from all audits.

19. **DAILY DETAIL REPORTS FILE.** Daily reports listing details of all financial transactions.

**DISPOSITION INSTRUCTIONS:** Destroy in office when administrative value ends but within 6 years.

20. **DAILY JOURNAL AND LEDGER ENTRY UPDATE PRINTOUTS FILE.** Records concerning the posting of business transactions on a daily basis. File includes computer printouts listing daily journal and ledger entry updates.

**DISPOSITION INSTRUCTIONS:** Destroy in office when released from all audits.

21. **DETAIL REPORT FILE (FINANCIAL RECORDS FOR GENERAL FUND OR GENERAL LEDGER).** Reports listing detail transactions and balances for the period in each account.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office after 1 year and when released from all audits, whichever occurs later.
- b) Retain in office annual detail report (June 30th report) permanently.

22. **EMPLOYEE BENEFITS REGISTER FILE.** Monthly computer printout listing benefits paid to local education agency employees.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

23. **EMPLOYEE EARNING RECORDS FILE.** Earning records of local education agency employees. (See also item 42, Payroll File.)

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

24. **EXPENDITURE REPORTS FILE.** Reports summarizing monthly requests for reimbursement of agency expenditures.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

25. **FACILITY SERVICE AND MAINTENANCE AGREEMENTS FILE.** Records concerning services for local education agency facilities/assets. File includes maintenance agreements, facility/asset depreciation schedules, cost of space summaries, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office depreciation schedules 3 years after asset is fully depreciated or disposed.
- b) Destroy in office remaining records after 3 years and when released from all audits, whichever occurs later.

26. **FEDERAL GRANTS: APPLICATION RECORDS FILE.** Records concerning federal money applied for by a local education agency for Chapter I – VI projects and similar federal educational programs. File includes background application information, filing guidelines, grant applications, program amendments, approval letters, correspondence, contracts, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

27. **FEDERAL GRANTS: FINANCIAL RECORDS FILE.** Records documenting federal money spent by a local education agency for Chapter I – VI and similar federal educational programs. File includes audit reports, statistical reports, final expenditure reports, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Retain in office permanently one copy of all audit reports.
- b) Destroy all financial records, supporting documentation, statistical records, and all other pertinent records 5 years from the date of submission of the final expenditure report. For awards that are renewed quarterly or annually, destroy in office 5 years from the date of the submission of the quarterly or annual financial report. If litigation, claim, audit, or other official action involving the records has been initiated, destroy in office after completion of action and resolution of issues involved.
- c) Destroy in office records for real property and equipment acquired with federal funds 5 years after final disposition.

28. **FINANCIAL JOURNALS AND LEDGERS FILE.** Financial journals and ledgers used for posting specific types of transactions as they occur each business day.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

29. **FISCAL CORRESPONDENCE FILE.** Correspondence concerning changes in budgets, budget codes, transfer of funds, request for additional or revised allotments, and other related topics.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

30. **INCREMENTS FILE.** Records concerning incremental increases in an employee's salary. File includes salary histories, authorization forms, and other related records. (See also item 42, Payroll File.)

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

31. **INSURANCE FILE.** Records concerning insurance coverage for each employee and his/her dependents. File includes descriptions of coverage and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

32. **INTERNAL REVENUE SERVICE (IRS) TAX FORMS FILE.** Completed IRS tax forms for agency and employees.

DISPOSITION INSTRUCTIONS: Destroy in office after 4 years.

33. **INVESTMENT RECORDS FILE.** Records concerning investments made by the local education agency. File includes descriptions of investments, lists of returns, and other related records.



DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

34. **INVENTORIES OF PROPERTY AND EQUIPMENT FILE.** Inventories of property and equipment owned by the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

35. **INVOICES FILE.** Invoices for the procurement of goods and services for the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

36. **JOURNAL VOUCHERS FILE.** Record of vouchers issued on the local education agency treasury for payment of bills and claims approved by the board of county commissioners.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

37. **JOURNAL AND LEDGERS FILE.** Record of adjusted entries into the local education agency's books of account. Entries include general ledger number, account, debit, credit, transaction date reference, description, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

38. **LOCAL GOVERNMENT COMMISSION FINANCIAL STATEMENTS FILE.** Copies of financial reports forwarded to the Local Government Commission in compliance with G.S. §159-33 and §159-33.1.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

39. **LOCAL GOVERNMENT EMPLOYEES RETIREMENT SYSTEM MONTHLY REPORTS FILE.** Reports listing the retirement deductions from employees' salaries.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

40. **MONTHLY BUDGET REPORTS FILE.** Monthly reports listing budget balances, transactions, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

41. **PAID CHECKS, PAID BILLS/VOUCHERS FILE.** Records concerning individual account transactions. File includes paid bills and vouchers, canceled checks, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

42. **PAYROLL FILE.** Records listing earnings, withholdings, and other related information for permanent and temporary employees.

**DISPOSITION INSTRUCTIONS:**

- a) Transfer administrative records documenting personnel actions to appropriate individual personnel file when action is approved.
- b) Destroy in office remaining records after 3 years and when released from all audits, whichever occurs later.

43. **PAYROLL DEDUCTIONS FILE.** Records concerning deductions from each employee's salary. File includes deduction authorizations for insurance, parking, and other obligations, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

44. **PRICE QUOTATIONS FILE.** Price quotations from suppliers of goods and services.

**DISPOSITION INSTRUCTIONS:** Destroy in office when superseded or obsolete.

45. **PROCUREMENTS AND PURCHASING FILE.** Records concerning procurements and purchases for the local education agency. File includes purchase orders and requests, correspondence, shipping information, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

46. **PURCHASING REPORTS FILE.** Reports listing purchase order numbers, amounts spent on purchases, and other related information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 1 year.

47. **RECIPIENT CHECK AND CANCELLATION REGISTERS FILE.** Cancellation registers providing verification that checks have been cashed.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

48. **RETIREMENT FILE.** Listings of retirement deductions, anticipated benefits, interest accrued, and other related topics.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

49. **SALES TAX FILE.** Records concerning the collection of sales and use taxes from various sources in an agency. File includes ledgers or journals, computer printouts listing amounts collected, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

50. **TELEPHONE LOGS (BILLINGS) FILE.** Logs used to record telephone calls, charges, and costs.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

51. **TIME REPORTS FILE.** Reports detailing time spent on program elements of the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends but within 6 years.

52. **TRAVEL REIMBURSEMENTS FILE.** Requests for reimbursement for travel and related expenses.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

53. **TRAVEL REQUESTS FILE.** Requests for travel authorization and related correspondence.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

54. **VEHICLE MAINTENANCE FILE.** Records concerning the use and maintenance of agency vehicles. File includes maintenance schedules, mileage logs, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when released from all audits.

55. **VOUCHER REGISTERS FILE, GENERAL EXPENSE AND PERSONAL SERVICE.** Voucher registers listing payment of funds for general expenses or personal services.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

56. **VOUCHERS FILE, VARIOUS FUNDS.** Vouchers providing verification of payments from various funds.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

57. **WITHHOLDING TAX FILE.** Forms detailing payroll withholding exemptions (state and federal) for each employee.

DISPOSITION INSTRUCTIONS:

- a) Transfer official copies to appropriate individual personnel file when action is taken.
- b) Destroy in office remaining records after 3 years and when released from all audits, whichever occurs later.

58. **WORK PAPERS FILE.** Working (internal) records concerning accounting, the budget, financial operations, internal audits, and other related activities or topics.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends but within 6 years.

**STANDARD-3. LEGAL RECORDS.** Legal records created or accumulated to substantiate the rights, obligations, or interests of the local education agency or an individual employee.

1. **CIVIL RIGHTS FILE.** Records concerning each civil rights case opened under Section 1983 of the Civil Rights Act. File includes petitions, writs, judgments, transcripts, and other related records.

**DISPOSITION INSTRUCTIONS:**

- a) Retain in office permanently all legal records, including court petitions, court orders, etc.
- b) Destroy in office remaining records such as working papers after completion of action and resolution of issues involved.

2. **COMPLAINTS (DISCRIMINATION) FILE.** Records concerning formal discrimination complaints and allegations filed against the local education agency. File includes complaints, summaries of findings, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

3. **CONTRACTS/AGREEMENTS FOR CONSTRUCTION, EQUIPMENT, AND SUPPLIES FILE.** Contracts and agreements, with supporting documents, entered into by the local education agency for construction projects, equipment, and supplies.

**DISPOSITION INSTRUCTIONS:** Destroy in office 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

4. **CONTRACTS/AGREEMENTS FOR PURCHASE OF SERVICES, SPECIAL PROGRAMS, AND PROJECTS FILE.** Contracts and agreements, with supporting documents, entered into by the local education agency for the purchase of services, special programs, and projects.

**DISPOSITION INSTRUCTIONS:** Destroy in office 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

5. **CORRESPONDENCE (LEGAL) FILE.** Correspondence concerning legal matters of the local education agency. (Comply with applicable provisions of G.S. §132-1.1 regarding confidentiality of legal correspondence.)

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years.

6. **EASEMENTS FILE.** Records concerning the county's right to limited use of private property. File includes copies of easements, correspondence, and other related records.

**DISPOSITION INSTRUCTIONS:** Retain in office permanently.

7. **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) FILE.** Records concerning local education agency compliance with federal EEOC regulations. File includes rules and regulations, compliance reports, correspondence, and other related records. (Information in file does not relate to specific legal cases.)

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years.

8. **INSURANCE POLICIES FILE.** Insurance policies entered into by the local education agency for coverage for buildings, liabilities, fire, vehicles, workers' compensation, and other related topics.

**DISPOSITION INSTRUCTIONS:** Destroy in office 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

9. **LEASES FILE.** Leases, with supporting documents, entered into by the local education agency.

**DISPOSITION INSTRUCTIONS:** Destroy in office 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

10. **LITIGATION FILE.** Records concerning litigation in which agency is a party. File includes legal opinions and briefs, correspondence, affidavits, photographs, medical reports, records of appeals, and other related records used in preparing proceedings. (Portions of file may be considered confidential in accordance with G.S. §132-1.1.)

**DISPOSITION INSTRUCTIONS:**

- a) Retain in office official copy permanently.
- b) Destroy in office reference or duplicate copies 3 years after case is closed.

11. **OATHS OF OFFICE FILE.** Oaths of office taken by agency officials.

**DISPOSITION INSTRUCTIONS:**

- a) Transfer official copy to clerk of superior court immediately.
- b) Destroy in office reference copies 3 years after official termination.

12. **ORDINANCES FILE.** Reference copies of ordinances adopted by the governing board.

DISPOSITION INSTRUCTIONS: Destroy in office 1 year after termination of ordinances.

13. **OWNERSHIP RECORDS (DEEDS, TITLES) FILE.** Deeds and titles for land that has been acquired by the local education agency and board of education.

DISPOSITION INSTRUCTIONS: Retain in office permanently.

14. **VEHICLE TITLES FILE.** Titles of state-owned vehicles used by agency.

DISPOSITION INSTRUCTIONS: Dispose of in accordance with instructions of State Property Office upon disposition of vehicle.

15. **WARRANTIES FILE.** Warranties accompanying equipment or commodities purchased by agency.

DISPOSITION INSTRUCTIONS: Destroy in office 1 year after expiration of warranty.

**STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.** This standard applies to any electronic data, information, or word processing, as well as other machine readable records in the physical and legal custody of the local education agency. Such records may exist on mainframe computer systems, supermini and minicomputer systems, microcomputers linked in a local area network, or individual personal computers (PCs). If there are any questions concerning the public status of machine readable records that local education agency officials wish to destroy or erase, they should seek the advice of legal counsel and the N.C. Division of Archives and History.

The N.C. Division of Archives and History has created guidelines for establishing methods and procedures in the preparation of records produced by information technology systems. These guidelines apply not only to optical disk and CD ROM systems but also to more established media such as micrographic and magnetic disk or tape. Implementation of these guidelines should increase the reliability and accuracy of records regardless of the storage media employed, thereby enhancing their admissibility and acceptance by the courts as trustworthy. A copy of *North Carolina Guidelines for Managing Public Records Produced by Information Technology Systems* is available to any public agency and can be obtained by contacting the N.C. Division of Archives and History at (919) 733-7305 or by accessing the Internet.

Custodians of machine readable and electronic public records should familiarize themselves with the revised Public Records Law (G.S. §132). Provisions of this statute require public agencies to create an index of computer databases and outline requirements for providing copies of public records kept in various formats. To assist agencies in developing the index mentioned above, *Public Database Indexing Guidelines and Recommendations* has been established by the N.C. Division of Archives and History. A copy of this publication can be obtained by calling the number or accessing the Internet.

This standard is unique in that it identifies records by format. If a record exists only in machine readable form, the records custodian is advised to check the other sections of this schedule to see if the record under consideration is listed under a functional heading. If the record is listed in another section of this schedule, follow the minimum retention period listed to determine when the record may be deleted, erased, or destroyed. If the record is not listed in another section of this schedule, follow the disposition instructions listed below for machine readable records.

In many cases the same or similar official public records will exist in both machine readable and hard copy form. In this situation, the disposition instructions included here should be used in conjunction with disposition instructions included elsewhere in this schedule. For example, if payroll information is kept in both machine readable and hard copy format, first determine which format constitutes the official public record (it may be determined that both formats are official or that the paper copy is a duplicate working copy, or that the computer record is the duplicate working copy). Once it has been determined which format constitutes the official payroll record, follow the general instructions below which apply to the handling of computer records and/or the specific instructions for payroll records included in Standard-2, Budget and Fiscal Records. Whatever the format, when a specific retention period for a particular record series is included within a section of this schedule the record series must be retained for that time.

1. **MASTER FILES.** Electronic data processing, information processing, and word processing public records, produced by various computer system applications used in the local education agency. Master files may reside on magnetic tapes, magnetic disks, floppy diskettes, or optical disk.

**DISPOSITION INSTRUCTIONS:**

- a) Duplicate copies may be erased/destroyed at the discretion of the agency.
- b) Back-up by copying all official master files containing public records and store the copy at a secure, protected, off-site location. Public records custodians should update these back-up files periodically by erasing and/or exchanging the tapes or disks, etc., as



necessary.

- c) Erase electronic mail public records when reference value ends except those that specifically concern an agency's policies, procedures, directives, regulations, rules, and other information that might provide the public with evidence of the organization, functions, and accomplishments of the agency. Print to hard copy records that fit this description and follow the disposition instructions listed under Standard 1, Administration and Management Records. (For additional information, see *Electronic Mail as a Public Record in North Carolina* on page xi.)
- d) The erasure or destruction of any other machine readable master file containing public records which is not listed above or by function elsewhere in this schedule is not authorized by this public records retention and disposition schedule. Public records custodians with unlisted or unscheduled machine readable master files of no further value to the agency should either complete and submit Form **RC-MRR-1** (copy of form on page 53) to the Department of Cultural Resources for approval for the master files' erasure/destruction or arrange with the Division of Archives and History to inventory, appraise, and schedule in a jointly approved document all such master files containing public records.

2. **PROCESSING FILES.** Machine readable processing files used in the preparation of, or in conjunction with, master files for various computer system applications operated by local education agency.

DISPOSITION INSTRUCTIONS:

- a) Duplicate copies may be erased/destroyed at the discretion of the agency.
- b) Erase and/or update official copies of processing files when the final master file is created, if agency need has ended. The Department of Cultural Resources and the Department of State Auditor recommend that processing files be retained for three (3) cycles [son, father, grandfather].

3. **SYSTEMS DOCUMENTATION.** Machine readable records or paper documentation used and needed to run master or processing files.

DISPOSITION INSTRUCTIONS:

- a) Duplicate copies may be erased/destroyed at the discretion of the agency.
- b) Erase and/or destroy in office official copies when agency value ends except systems documentation concerning master files as described in paragraph 1d on this page. Public records custodians should either complete and submit Form **RC-MRR-1** (copy of form on page 53) to the Department of Cultural Resources for concurrence in the master files' erasure/destruction or arrange with the Division of Archives and History to inventory, appraise, and schedule in a jointly approved document all master file documentation.

**STANDARD-5 OFFICE ADMINISTRATION RECORDS.** Records created and accumulated in the performance of routine office administration tasks by the local education agency.

1. **ASBESTOS MANAGEMENT PLAN FILE.** Plans and records concerning a local education agency's efforts to manage facilities either containing asbestos building materials or believed to contain asbestos building materials. File includes surveillance reports and other records showing school name, construction date, sample number, percent, type, original condition, any change, recommendations, and signature of person doing inspection.

DISPOSITION INSTRUCTIONS: Retain in office for life of structure, or destroy in office 10 years after abatement if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

2. **BUILDING SPACE AND MAINTENANCE FILE.** Records concerning maintenance and repair services conducted for each building and facility. File includes correspondence, maintenance schedules and agreements, space need studies, contracts, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office maintenance agreements and contracts 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.
- b) Destroy in office remaining records when administrative value ends.

3. **CALENDAR OF EVENTS FILE.** Listings of upcoming agency events.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

4. **COURIER SERVICE FILE.** Records concerning courier service. File includes courier directories, mailing instructions, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

5. **EMERGENCY NOTIFICATION FILE.** Records concerning the notification of personnel in the event of an emergency. File includes duty rosters, emergency notification forms, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

6. **EQUIPMENT FILE.** Records concerning local education agency equipment and supplies. File includes operating manuals, warranties, service contracts, inventories, accounting records, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office operating manuals and warranties upon final disposition of equipment.

- b) Destroy in office service contracts 3 years after superseded or obsolete if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.
- c) Destroy in office accounting records after disposition of equipment and when released from all audits, whichever occurs later.
- d) Destroy in office remaining records when superseded or obsolete.

7. **FACILITY ACCESSIBILITY RECORDS FILE.** Records concerning a local education agency's efforts to comply with the Americans with Disabilities Act (ADA). File includes surveys of local education agency schools and other buildings to determine accessibility to the physically handicapped, copies of federal regulations, proposals for compliance, correspondence, resolutions, and measures taken to solve access problems.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

8. **FUEL OIL AND STORAGE TANK RECORDS FILE.** Records concerning the testing and maintenance of local education agency fuel oil, heating oil, and/or propane storage systems. File includes leak detection test results, repair and upgrade reports, performance claims, tightness test results, and closure records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office closure records 3 years after completion of permanent closure in accordance with G.S. §280.32 and 280.72.
- b) Destroy in office performance claims and tank tightness tests completed every 5th year after 5 years.
- c) Destroy in office maintenance reports, repair and upgrade reports, product inventory measuring charts, tank tightness tests completed on a yearly schedule, and all other test and related records after 1 year.

9. **FUND DRIVE RECORDS FILE.** Records concerning fund drives sponsored by the local education agency. File includes lists of events and participating organizations, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

10. **MAILING LISTS FILE.** Mailing lists of individuals/agencies receiving materials from the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

11. **MOTOR POOL LOGS FILE.** Motor pool logs listing name of driver, trip dates, places of travel, odometer readings, amount of mileage charge, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

12. **OFFICE ADMINISTRATION CORRESPONDENCE FILE.** Correspondence concerning daily operating functions and routine performance of duties of the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when agency value ends but within 3 years.

13. **OFFICE SECURITY RECORDS FILE.** Records concerning security of the local education agency. File includes security-related procedures, lists of designated security officers, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

14. **PARKING FILE.** Correspondence and memorandums concerning parking assignments for local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

15. **PRINTING REQUEST FILE.** Requisitions for printing jobs.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

16. **PUBLICATIONS RECEIVED FILE.** Publications received by the local education agency.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends but within 2 years.

17. **READING FILE.** Copies of outgoing correspondence.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends, but within 1 year.

18. **RECORDS MANAGEMENT FILE.** Records concerning records management for the local education agency. File includes records retention and disposition schedules, state guidelines, file plans, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

19. **SURPLUS PROPERTY FILE.** Records concerning surplus property and its disposition. File includes inventories, records of disposal, accounting records, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office 3 years after disposition of property and when released from all audits, whichever occurs later.

20. **VEHICLE REQUEST FILE.** Completed forms used to request local education agency vehicles.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

21. **WORK ORDERS (EQUIPMENT REPAIR) FILE.** Work orders submitted for the repair of equipment.

DISPOSITION INSTRUCTIONS: Destroy in office 1 year after completion of work.

**STANDARD-6. PERSONNEL RECORDS.** Records created and accumulated incident to the employment, qualifications, training, and pay status of local education agency employees.

1. **ABOLISHED POSITION FILE.** Records concerning positions that have been abolished. File includes position descriptions for abolished positions and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

2. **ADDRESSES FILE.** Listing of employees' addresses and telephone numbers.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

3. **AFFIRMATIVE ACTION FILE.** Records concerning local education agency compliance with federal affirmative action regulations. File includes plans, outlines, timetables, goals and objectives, compliance reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

4. **APPLICATIONS/RESUMES FILE.** Completed application forms for employment. File also includes resumes and other related records. (Comply with applicable provisions of G.S. §153A-98, §115C-319, 320, and 321 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS:

- a) Transfer applications of individuals hired to appropriate personnel file when individual accepts position.
- b) Destroy in office applications that are unsolicited and for individuals not hired 2 years after date of receipt, if no charge of discrimination has been filed. If charge has been filed, destroy in office 1 year after resolution of charge.

5. **CORRESPONDENCE/MEMORANDUMS FILE.** Correspondence and memorandums concerning personnel related matters.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

6. **DEFERRED COMPENSATION FILE.** Records concerning the deferred compensation program for employees. File includes payroll deduction authorization forms, lists of compensation options, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

7. **DISABILITY SALARY CONTINUATION CLAIMS FILE.** Completed forms submitted by disabled employees applying for salary continuation benefits.

DISPOSITION INSTRUCTIONS:

- a) Transfer original forms to Teachers' and State Employees' Retirement System for action when received.
- b) Destroy in office reference copies after 1 year.

8. **DRUG AND ALCOHOL PROGRAMS RECORDS FILE.** Records concerning a local education agency's drug and alcohol use prevention programs. File includes testing and equipment calibration records, driver evaluations and referrals, collection logbooks, and technician training records. (49 CFR 382.401D)

DISPOSITION INSTRUCTIONS:

- a) Destroy in office positive test results, refusals to take tests, equipment calibration records, driver evaluations and referrals, and annual calendar year summaries after 5 years.
- b) Destroy in office records concerning the drug and alcohol collection process, collection logbooks, and technical training records after 2 years.
- c) Destroy in office negative and canceled test results, and test results with concentrations of less than 0.02 after 1 year.

9. **DUAL EMPLOYMENT FILE.** Records concerning employees engaged in dual employment. File includes summaries of dual employment activities.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

10. **EDUCATIONAL LEAVE/REIMBURSEMENT FILE.** Records concerning educational leave and/or tuition reimbursement. File includes requests for leave/reimbursement, authorizations, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office records concerning approved requests when released from all audits.
- b) Destroy in office records concerning disapproved requests 6 months after disapproval.

11. **EMPLOYEE SUGGESTIONS (ES) FILE.** Information concerning suggestions of employees received through the ES System.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office adopted suggestions after 2 years.
- b) Destroy in office non-accepted suggestions after 1 year.

12. **EQUAL EMPLOYMENT OPPORTUNITY FILE.** Records concerning local education agency compliance with federal Equal Employment Opportunity Commission (EEOC) regulations. File includes regulations, guidelines, policies, compliance reports, correspondence, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

13. **FRINGE BENEFITS FILE.** Records concerning fringe benefits available to employees. File includes descriptions of benefits, participation registration forms, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when reference value ends.

14. **GRIEVANCE FILE.** Records concerning disputed employee grievances. File includes letters of grievance, hearing records, and other related records. (File is considered part of employee's official personnel file and is considered confidential in accordance with G.S. §153A-98, §115C-319, 320, and 321, and §132-1.1.)

DISPOSITION INSTRUCTIONS: Destroy in office 3 years after resolution of grievance.

15. **HEALTH CERTIFICATES FILE.** Certificate from a licensed physician verifying that the employee does not have any communicable disease or any disease, physical or mental, which would impair the ability of the employee to perform his/her duties effectively. (G.S. §115C.323)

DISPOSITION INSTRUCTIONS: Destroy in office 1 year after employee terminates service.

16. **INITIAL CERTIFICATION PROGRAM FILE.** Records used to observe and evaluate teachers during their initial certification period. File includes classroom observation forms and logs, in-task documentation forms, recommendation forms, and professional development plans. (Comply with applicable provisions of G.S. §115C-319, 320, 321, and G.S. §153A-98 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS: Destroy in office 5 years from date of initial employment if not made part of employee's permanent personnel file.

17. **INSURANCE DEDUCTIONS PRINTOUTS FILE.** Computer printouts showing insurance payroll deductions for each local education agency employee.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

18. **INTERVIEWS FILE.** Interviewers' comments concerning individuals applying for employment. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

DISPOSITION INSTRUCTIONS:

- a) Transfer records concerning individuals hired to appropriate personnel file when individual accepts employment.
- b) Destroy in office records concerning individuals not hired 2 years after date of receipt, if



no charge of discrimination has been filed. If charge has been filed, destroy in office 1 year after resolution of charge.

19. **JOB EVALUATION DESCRIPTION FILE.** Completed forms used to evaluate and describe the primary purpose of a job.

**DISPOSITION INSTRUCTIONS:** Destroy in office when administrative value ends.

20. **LEAVE FILE.** Records concerning leave by office personnel. File includes leave requests, monthly leave reports, yearly leave recapitulations, correspondence, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

21. **LONGEVITY PAY REQUESTS FILE.** Records concerning employees eligible for longevity pay. File includes longevity pay requests and authorization forms, correspondence, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office when released from all audits.

22. **MERIT FILE.** Records used by supervisors to evaluate employees being considered for a merit increase. File includes listings of merit increase criteria, evaluations, and other related records. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

**DISPOSITION INSTRUCTIONS:** Destroy in office after 2 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

23. **PERFORMANCE PLANNING AND EVALUATIONS FILE.** Records concerning employees' goals and primary tasks. File includes work plans, performance evaluations, and other related records. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

24. **PERSONNEL RECORDS FILE.** Personnel file for each local education agency employee. File includes or concerns records relating to individual's aggregate service history, applications, selection or non-selection, promotions, transfers, leave, salary, suspension, disciplinary actions, and termination of employment. (Comply with applicable provisions of G.S. §153A-98 and §115C-319, 320, and 321 regarding confidentiality of personnel records.)

**DISPOSITION INSTRUCTIONS:** Retain in office permanently.

25. **POLICIES AND PROCEDURES FILE.** Personnel rules, regulations, or guidelines established by the State Personnel Commission, Office of State Personnel, county, or local education agency.

**DISPOSITION INSTRUCTIONS:**

- a) Retain in office permanently official copy of internal agency personnel policies.
- b) Destroy in office reference copies and external policies and procedures when superseded or obsolete.

26. **POSITION CLASSIFICATION AND POSITION CLASSIFICATION - POSITION HISTORY (PD-118R) FILE.** Classification records and complete histories of salaried positions within the local education agency and board of education.

**DISPOSITION INSTRUCTIONS:** Retain in office permanently.

27. **POSITION CONTROL FILE.** Index cards or computerized databases concerning personnel actions and position control, status of each established permanent/temporary full-time or part-time position, and other related topics.

**DISPOSITION INSTRUCTIONS:** Destroy in office when reference value ends.

28. **SERVICE AWARDS FILE.** Listings of employees eligible for and receiving service awards.

**DISPOSITION INSTRUCTIONS:** Destroy in office 5 years from date of award.

29. **TEACHERS' CERTIFICATES FILE.** Certificate issued when the teacher achieves a passing score on the standard examination, which determines his/her academic and professional preparation to teach. (G. S. §115C-296)

**DISPOSITION INSTRUCTIONS:** Return to teacher upon termination of employment

30. **TRAINING RECORDS FILE.** Records concerning courses taught by the local education agency to improve competency of personnel. File includes schedules, course curricula, attendance rosters, names of instructors, course materials, brochures announcing and describing courses offered, and other related records. (See also **TRAINING RECORDS (PERSONNEL) FILE**).

**DISPOSITION INSTRUCTIONS:** Destroy in office when superseded or obsolete.

31. **TRAINING RECORDS (PERSONNEL) FILE.** Records documenting the training of local education agency personnel to improve competency in specific areas. File includes teacher resource and computer training center certificates, competency records describing courses taken, completed, and credit earned, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Transfer original records to the central office to be incorporated into official personnel file upon completion of training.
- b) Destroy in office reference copies when administrative value ends.

32. **WORKERS' COMPENSATION PROGRAM ADMINISTRATIVE FILE.** Records concerning the administration of workers' compensation programs or policies. File includes regulations, guidelines, policies, reports, correspondence, reference material, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

33. **WORKERS' COMPENSATION PROGRAM CLAIMS FILE.** Records concerning workers' compensation claims by local education agency employees. File includes accident and medical reports, affidavits, medical bills, photographs, legal briefs, court documents, transcripts, legal opinions, appeals, and other related records. (Portions of file may be considered confidential in accordance with G.S. §97-92(b).)

DISPOSITION INSTRUCTIONS:

- a) Transfer official copies to Industrial Commission in accordance with G.S. §97-92 when claim is filed.
- b) Destroy in office remaining records 5 year after claim is closed.

**STANDARD-7. PROGRAM OPERATIONAL RECORDS.** Records created or received in the offices of the local education agency and used to manage and monitor all federal, state, and local school programs.

**A. EDUCATIONAL PROGRAM RECORDS.** Records used for the administration of various educational programs.

**1. ACADEMICALLY OR INTELLECTUALLY GIFTED CHILDREN'S PROGRAMS.** Records concerning educational programs for academically or intellectually gifted children.

**a) CLASSES AND LISTS FILE.** Lists of classes available to gifted children and due process lists of academically or intellectually gifted children's programs.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

**b) GROUP EDUCATION PLAN FILE.** Consent for evaluation form, summary of evaluation results, student information sheet, consent for placement form, aptitude and achievement tests, performance records and reports, and records describing a student's interest and degree of motivation.

DISPOSITION INSTRUCTIONS: Destroy in office 5 years after student leaves the educational program for a academically or intellectually gifted children.

**2. DRIVER EDUCATION PROGRAMS.** Records concerning driver education programs.

**a) APPLICATION FOR APPROVAL TO TEACH DRIVER EDUCATION FILE.** Applications and approvals to teach driver education. File also includes Division of Motor Vehicles or Department of Public Instruction certifications.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

**b) AUTO LOAN OR LEASE AGREEMENTS FILE.** Auto loans or lease agreements.

DISPOSITION INSTRUCTIONS: Destroy in office 3 years after termination or expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

**c) CAR RECORDS FILE.** Daily checklist showing condition of car and record of car repair expenditures prepared by teachers.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years and when released from all audits, whichever occurs later.

**d) DRIVER ELIGIBILITY FILE.** Records concerning students' eligibility to obtain learner's permits or provisional drivers licenses. Files includes driving eligibility certificates, driving eligibility hardship request forms and supporting documents, permit or license revocation letters, driver education completion certificate, and other related records.

DISPOSITION INSTRUCTIONS:

a) Transfer driver education completion certificate to student's North Carolina cumulative record when issued.

- b) Destroy in office remaining records when student reaches 18 years of age or obtains a high school diploma or its equivalent, whichever occurs first.

- e) **MONTHLY REPORTS ON DRIVER TRAINING AND SAFETY EDUCATION FILE.** Monthly reports listing numbers of students participating in driver training and safety education programs and other statistical information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 2 years.

- f) **PERSONAL SERVICE AND GENERAL EXPENSE AND SUMMARY VOUCHER REGISTERS FILE.** Records concerning payment for contract driver education instructors and expenditures made by instructors. File includes general expense and summary voucher registers, payment records for instructors, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

- g) **PROPOSED PLANS OF OPERATION AND BUDGETS FILE.** Proposed operational and budgetary plans for driver education programs.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 2 years.

- h) **STUDENT AND CLASS RECORDS FILE.** Students' class attendance and driving grade records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years.

- i) **TIME SHEETS FILE.** Records summarizing students' time behind the wheel.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years.

3. **EDUCATIONAL PROGRAMS FOR CHILDREN WITH DISABILITIES.** Records concerning educational programs for children with disabilities.

- a) **CONFIDENTIAL RECORDS OF CHILDREN WITH DISABILITIES FILE.** Records concerning children with disabilities who are in educational programs. File includes achievement results; intelligence, eligibility, and physical test results; medical reports if the student is physically or mentally impaired; individual education plans (IEPs) and forms; multidisciplinary team reports; and screening, placement, referral, and parental consent and notification forms. (Comply with applicable provisions of G.S. §115C-114 and 115C-402 regarding confidentiality and expunction of records of students with special needs.)

**DISPOSITION INSTRUCTIONS:** Destroy in office 5 years after student leaves the education program for children with disabilities if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

\*The parent, guardian, surrogate parent, or eligible student must be notified prior to destruction of personally identifiable information so copies of records can be provided if desired. Information must also be destroyed at the request of the parents if no longer needed to provide educational services to the child. This does not apply to such information as the student's name, address and phone number, grades, attendance records, classes attended, grade level completed, and year

completed. This information may be maintained permanently. (See Appendix I on page 45 regarding federal legislation affecting the destruction and amendment of student records.)

- b) **PROGRAMMATIC PLANS OF OPERATION FILE**. Operating plans for educational programs for children with disabilities.

**DISPOSITION INSTRUCTIONS**: Destroy in office after 2 years.

- c) **TEXTBOOKS AND OTHER EQUIPMENT FILE**. Inventories of textbooks and special equipment needed for students participating in educational programs for children with disabilities.

**DISPOSITION INSTRUCTIONS**: Destroy in office after 2 years.

4. **VOCATIONAL EDUCATION RECORDS**. Records concerning vocational education programs.

- a) **ACTIVITY, CLASS, AND WORK SCHEDULES FILE**. Activity, class, and work schedules.

**DISPOSITION INSTRUCTIONS**: Destroy in office after 5 years.

- b) **COOPERATIVE AND PREPARATORY TRAINING FORMS**. Cooperative agreements between local education agency and businesses that outline program rules and policies, expectations for students, and other related information.

**DISPOSITION INSTRUCTIONS**: Destroy in office after 5 years.

- c) **INSTRUCTIONAL PERSONNEL FILE (RECORDS AND REPORTS OF)**. Certificates, board appointments, and other related records concerning instructional personnel.

**DISPOSITION INSTRUCTIONS**: Destroy in office after 5 years.

- d) **INVENTORIES OF EQUIPMENT FILE**. Inventories of supplies and equipment used in vocational education programs.

**DISPOSITION INSTRUCTIONS**: Destroy in office when superseded or obsolete.

- e) **NORTH CAROLINA BOARD OF EDUCATION ALLOTMENTS OF TEACHING POSITIONS FILE**. Records indicating the allotment of instructional personnel for vocational education programs as determined by the state board of education. File also includes waivers and allotment adjustments.

**DISPOSITION INSTRUCTIONS**: Destroy in office after 5 year.

- f) **STUDENT ENROLLMENT AND FOLLOW-UP RECORDS FILE**. Follow-up studies of former students of vocational education programs.

**DISPOSITION INSTRUCTIONS**: Destroy in office after 5 years.

- g) **VOCATIONAL COMPETENCY ACHIEVEMENT TRACKING SYSTEM (VOCATS) (ELECTRONIC) FILE**. VOCATS is an electronic data processing record used by the local education agency to manage statistics and generate reports concerning vocational education students' pre-test, post-test, mastery, and gain for skills and performance standards established by the North Carolina Board of Education.

**DISPOSITION INSTRUCTIONS:** General guidelines for disposing of machine readable and electronic data processing records may be found in **STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.**

VOCATS data and statistics should be retained in electronic form for 5 years after applicable statistical reports are produced and then erased or deleted.

- h) **VOCATIONAL EDUCATION INFORMATION SYSTEM (VEIS) (ELECTRONIC) FILE.** VEIS is an electronic data processing record used by the local education agency to manage statistics and produce reports concerning student enrollment in vocational education programs. It is also used to track performance standards established by the North Carolina Board of Education.

**DISPOSITION INSTRUCTIONS:** General guidelines for disposing of machine readable and electronic data processing records may be found in **STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.**

VEIS data and statistics should be retained in electronic form for 5 years after applicable statistical reports are produced and then erased or deleted.

- i) **VOCATIONAL PLACEMENT RECORDS FILE.** Records concerning the placement of students enrolled in a local education agency's vocational and technical programs. File includes apprenticeship and cooperative placement records and reports showing name of student, company by whom employed, job title, percentage of students placed, and other related information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years.

- j) **VOCATIONAL PLANS FILE.** Plans and records concerning the development of a local education agency's vocational and technical programs. File includes comprehensive descriptions of programs which list courses taught, levels of enrollment by program and school, funds spent, comparative testing data, placement data, outlines of objectives for future improvement, requests for funds and teaching positions for upcoming academic year, and other related information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years and when administrative value ends, whichever occurs first.

- k) **VOCATIONAL PROGRAMS OF STUDY GUIDES FILE.** Guides published by the Department of Public Instruction to assist the local education agency in planning effective and comprehensive vocational education programs. Guides list information concerning planning, required resources, program curricula, instructional guidelines, and specific program area offerings such as agricultural, business, health occupations, marketing, and technology education.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years.

- l) **VOCATIONAL STATISTICAL REPORTS FILE.** Reports produced by the Vocational Education Information System (VEIS) (Electronic) and Vocational Competency Achievement Tracking System (VOCATS) (Electronic) files. File includes reports and similar records showing student enrollment in vocational programs at each school within a local education agency by course, gender, race, and future educational or employment goals. Information found in reports is used to develop a local education agency's vocational plan.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years.

**B. FOOD SERVICE RECORDS.** Records used to manage food service programs.

1. **FOOD SERVICE PROGRAMS FILE.** Records concerning food service programs. File includes daily, weekly, and monthly reconciliation reports; daily meal production records; commodity inventory reports; receipt reports; analysis reimbursement/claim reports; verification reports; and other related records created according to U.S. Department of Agriculture regulations. (Records may be maintained at the individual school or at the central office.)

**DISPOSITION INSTRUCTION:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

2. **FOOD SERVICE REPORTS FILE.** Quarterly report sent to the Department of Public Instruction listing total receipts and expenditures from food service programs. Reports list debits, credits, account numbers, account descriptions, and other related information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

3. **FREE AND REDUCED MEALS APPLICATIONS FILE.** Applications for free and reduced price meals completed by sponsor of applying student(s). Applications list names of household members, monthly income statements, signature and social security number of sponsor, and other related information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.

C. **INDIVIDUAL SCHOOLS' AND CENTRAL OFFICE ADMINISTRATIVE RECORDS.** Records created and maintained by teachers, guidance counselors, principals, and central office staff in the performance of job-related activities.

1. **ANNUAL DROPOUT REPORTS FILE.** Annual reports concerning students who have dropped out of school and their demographic information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years.

2. **ATHLETIC PROGRAM RECORDS FILE.** Records concerning athletics programs. File includes student eligibility records, physical exams, parental consent forms, waivers, application forms, entry forms, schedules, participation requirement forms, and related records. File also includes handbooks and forms produced by the North Carolina High School Athletic Association.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 2 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

3. **CURRICULUM RECORDS FILE.** Records used to establish course requirements in the various areas of study such as vocational and technical programs, English, foreign language, mathematics, social sciences, fine and performing arts, and healthful living. File includes records concerning philosophy and scope of programs and courses, approved instructional resources, objectives, methods of evaluation, handbooks, curriculum course guides, assessment guides, and testing guides.

**DISPOSITION INSTRUCTIONS:** Destroy in office when superseded or obsolete.

4. **DATA ENTRY RECORDS FILE.** Records used by data managers to input information into the Student Information Access System, Transportation Information Management System, Vocational



Education Information System, Vocational Competency Tracking System, or similar computer system.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

5. **EXCEPTIONAL CHILDREN HEADCOUNT REPORTS FILE**. Biannual reports listing statistics concerning exceptional children. Reports are used as a basis for federal funding and individualized student funding.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

6. **FIELD TRIP AUTHORIZATIONS FILE**. Records concerning the approval or disapproval for students to leave school on field trips. Authorizations list date of trip, purpose of trip, trip destination, trip itinerary, and other related information. File may also include parental consent forms.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

7. **FIRE DRILL AND INSPECTION REPORTS FILE**. Fire drill and facility inspection reports (G.S. §115C-288(d)) prepared by five marshals or inspectors and sent to the central office.

DISPOSITION INSTRUCTIONS: Destroy in office after 1 year.

8. **GUIDANCE RECORDS FILE**. Records concerning counseling sessions held with students. File includes guidance and counseling records, parental consent forms to release information, scholarship and award information, records concerning student's grades and course selection, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

9. **ONCE A YEAR REPORTS ON GRADE, RACE, AND SEX FILE**. Annual reports concerning the race and sex of students in each grade.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

10. **PARENT CONFERENCE RECORDS FILE**. Records concerning conferences between parents, teachers, and/or other school officials. File includes correspondence, parent conference forms outlining reason(s) for conference and actions, if any, taken, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

11. **PRINCIPAL'S MONTHLY REPORTS FILE**. Monthly report prepared by each school's principal and sent to the central office. Monthly reports list total number of student enrollments and withdrawals for given month; date and time report was run; and school's name, address, and phone number.

DISPOSITION SCHEDULE: Destroy in office after 5 years or when administrative value ends, whichever occurs later.

12. **REGIONAL ARTICULATION PLACEMENT RECORDS FILE**. Records used to report a student's completion of course work, which could be used for credit at an area college or university. Reports list student's name, address, phone number, social security number, high school attended, description of course(s) taken along with final grade, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office 2 years after graduation.

13. **RESIDENCE VERIFICATION FILE**. Completed forms and supporting documents verifying students residence.

DISPOSITION INSTRUCTIONS: Destroy in office after 8 years.

14. **SCHOLARSHIP PROGRAM RECORDS FILE.** Records concerning student scholarships and honor societies. Files include scholarship applications, lists of eligible students, lists of winners and alternates, teacher evaluations and comments, and lists of students selected for National Honor Society membership.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

15. **SCHOOL ACTIVITY REPORTS FILE.** Annual reports concerning students and their classroom assignments, students' classroom settings, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

16. **SCHOOL LIBRARY/MEDIA CENTER RECORDS FILE.** Records concerning the management of school libraries. File includes library material accession records, circulation records; holding catalogs; patron assistance, request, and complaint procedures; collection shelf lists; and records concerning payments made for late, damaged, or lost library materials.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

17. **SCHOOL REPORTS AND STUDENT LISTS FILE.** Reports and lists prepared by various programs. File includes school activity reports, principal's and teacher's monthly reports, membership by grade/ethnic/sex code reports, individual pupil reports, academic progress reports, homeroom lists, counselor lists, study hall lists, student rosters, exceptional children rosters, class lists, grade point average ranking lists, honor roll lists, and similar records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years or when superseded, obsolete, or administrative value ends, whichever occurs first.

18. **SCHOOL SANITATION MONTHLY REPORTS FILE.** Reports outlining sanitation grades at schools.

DISPOSITION INSTRUCTIONS: Destroy in office after 2 years.

19. **SCHOOL VIOLENCE REPORTS FILE.** Reports on school violence completed by each principal and sent to the Department of Public Instruction in accordance with G.S. §115C-12(21) and §115C-47(36). Reports list name of school, type of school, number of incidents reported, number of offenders and victims, actions taken by number and type, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years and when administrative value ends, whichever occurs later.

20. **SECOND MONTH REPORTS FILE.** Reports filed with the North Carolina Board of Education at the end of the second month of each school year (G.S. §115C-301(f)). Reports list the organization for each school, teachers' duty loads, class sizes, and other related information.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

21. **STATISTICAL REPORTS FILE.** Reports prepared by the Department of Public Instruction and used by a local education agency for planning and long range tracking of programs. Reports include state of the state, SAT, ABC's of public education, block schedule achievement, report card, alternative learning evaluation, student performance, behavior survey, testing results reports, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends, but within 5 years.

22. **STUDENT HANDBOOK FILE.** Handbooks or similar records supplied to students at the beginning of each school year. Handbooks list attendance policy, disciplinary policies and procedures, graduation requirements, academic policies, and general school rules and regulations.

DISPOSITION INSTRUCTIONS:

- a) Retain 1 copy in office permanently.
- b) Destroy remaining copies when administrative value ends.

23. **TEACHER LESSON PLANS FILE.** Records used by teachers for the classes or subjects they are instructing. File includes worksheets, discussion notes, problem-solving materials, and other related records used to obtain an instructional objective.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

24. **TEACHER SCHEDULING RECORDS FILE.** Records and reports documenting teachers' course schedules and timetables. File includes teacher timetables reports, room timetables reports, course load by teacher reports, teacher directories and similar records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years or when superseded, obsolete, or administrative value ends, whichever occurs first.

- D. **STUDENT RECORDS.** Records concerning students in the schools administered by the local education agency.

Custodians of records containing student identifiable information should be familiar with **20 USCA 1232g**, the **Family Educational and Privacy Rights Act**. Provisions of this act governing access to students' records and release of information from them should be applied along with applicable state statutes. Other legislation may exist that affects the maintenance, amendment, and/or disposition of student records. Custodians should educate themselves about such legislation in order to protect against unauthorized or improper disclosure.

1. **EXAMINATION MATERIALS FILE.** Records used to administer local or state standardized examinations and tests that measure students' performance or level of acquired knowledge. File includes all testing materials and student answer documents. (Comply with applicable provisions of G.S. §115C-174.13 regarding the confidentiality of records containing the identifiable scores of individual students.)

DISPOSITION INSTRUCTIONS: Destroy in office student answer documents for all tests containing responses and modified versions six months after the return of a student's test scores.

\*Test coordinators should contact the Department of Public Instruction, Division of Accountability Services, Testing Section for procedures for recycling and destroying all other test materials.

2. **EXAMINATION REPORTS FILE.** Records concerning the administration of a standardized examination. File includes class record sheets, summary goal reports, individual reports and class roster reports, and other related records. (Comply with applicable provisions of G.S. §115C-174.13 regarding the confidentiality of records containing the identifiable scores of individual students.)

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years provided test scores are posted to student's North Carolina cumulative record.

3. **HEALTH RECORDS FILE.** Health-related records for students.

- a) **DIAGNOSTIC AND SUMMARY REPORTS.** Reports from physicians documenting a student's chronic health condition. (Records may be retained as part of student's cumulative record or separately. If retained separately records should be merged with student's cumulative record upon student's departure from school system but prior to microfilming.)

**DISPOSITION INSTRUCTIONS:** Retain permanently in student's cumulative records file.

- b) **INJURY REPORT FORMS.** Injury report forms describing medical attention provided to a student on campus by school officials for injuries deemed serious.

**DISPOSITION INSTRUCTIONS:** Destroy in office when student reaches 29 years of age and has not received services within the last 10 years, if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

- c) **KINDERGARTEN HEALTH ASSESSMENT FORMS.** Initial immunization records and results of physical examinations necessary for a student to enter kindergarten. (Comply with applicable provisions of G.S. §130A-441 regarding confidentiality of records.)

**DISPOSITION INSTRUCTIONS:** Retain in cumulative records file until elementary school is completed, then destroy in office, or retain permanently if the form contains the only doctor-signed, clinic-stamped immunization record.

- d) **MEDICATION AND PROCEDURES LOG.** Yearly log documenting medication administration and performance of skilled procedures provided to student by school nurses and/or designated school staff.

**DISPOSITION INSTRUCTIONS:** Destroy in office when student reaches 29 years of age and has not received services within the last 10 years, if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

- e) **PERMANENT HEALTH RECORD CARDS FILE.** Card providing information on student's medical history/status while in the public school system. Card includes immunization information, vision/hearing screening results, health status including chronic illness, seizures, allergies, etc., special health considerations, and narrative notes entered by the nurses or other school officials.

**DISPOSITION INSTRUCTIONS:** Retain permanently in student's cumulative records file.

- f) **PHYSICIAN'S AUTHORIZATION FORMS FILE.** Authorization forms including physician's orders to administer prescribed medicine, physician's orders for medical treatment and/or invasive health care procedures to be performed on the student, and physician's order for "do not resuscitate." Parent signs each type of form. (G.S. §115C-307)

**DISPOSITION INSTRUCTIONS:** Destroy in office when student reaches 29 years of age and has not received services within the last 10 years, if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

- g) **STANDARD ACTION PLANS OR INDIVIDUALIZED ACTION PLANS FILE.** Plans for students with life-threatening and/or chronic health conditions that describe procedures to be performed by school staff on the student throughout the year. The plan should be attached to the

student's permanent health record card while in use.

**DISPOSITION INSTRUCTIONS:** Retain in student's cumulative file until superseded or obsolete and then destroy. Note on permanent health record card when plan is discontinued.

4. **NORTH CAROLINA CUMULATIVE RECORDS FILE.** Cumulative record of students' elementary and secondary educational career. File includes personal and family data; health and immunization information; attendance reports; standardized test dates and results; elementary, middle, and high school inserts or grade sheets; copies of birth certificates; and driver education certificates. File may also include photographs, correspondence to and from parents and/or guardians and school personnel, and court order documents such as birth date and name change verification. File also includes references to dates of separation due to graduation, withdrawal, or expulsion. (Comply with applicable provisions of G.S. §115C-402 regarding confidentiality of student records.)

**DISPOSITION INSTRUCTIONS:** Destroy in office worksheets when administrative value ends. Destroy in office suspension or expulsion notices in accordance with G.S. §115C-402. Retain in office remaining records permanently. [It is recommended that permanent records be microfilmed 2 years after the student graduates or otherwise leaves the school system. Records should be microfilmed to state standards established by the Division of Archives and History. Paper records that have been microfilmed may be destroyed if the microfilm has been verified and quality control procedures completed. Retain microfilm copy of records permanently.]

5. **STUDENT ABSENTEE REPORTS FILE.** Daily reports or bulletins listing names of students absent from school the previous day, reason for absence, whether absence is excused or unexcused. File includes student's name grade, sex, homeroom number, teacher's name, and reason for absence. File may also include student's social security number.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 1 year or when administrative value ends, whichever occurs first.

6. **STUDENT ATTENDANCE (CLASSROOM) FILE.** Records completed by teachers showing each student's daily, weekly and monthly class attendance. File includes attendance sheets, books, and/or cards listing student's name and whether absent, present, or tardy.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 1 year. (See also **STUDENT ATTENDANCE (SCHOOL) FILE**).

7. **STUDENT ATTENDANCE (SCHOOL) FILE.** Records showing each student's daily, weekly, monthly, and/or yearly school attendance. File includes individual pupil reports compiled from student's classroom attendance records. Reports list student's name, address, school attended, homeroom code, grade, sex, race, birth date, and total number of absences by day. (Files may be maintained in addition to a student's cumulative record.)

**DISPOSITION INSTRUCTION:** Destroy in office after 5 years provided appropriate information has been posted to student's cumulative record.

8. **STUDENT CHECK IN/OUT LOGS FILE.** Daily logs or records showing when students arrived late or left school early. Logs list student's arrival, departure, and re-admit times; student's name; teacher's name; and other related information.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 2 years and when administrative value ends, whichever occurs later.

9. **STUDENT CLASSWORK RECORDS FILE.** Records created and/or used by teachers and students in the classroom. File includes non-standardized test materials, term papers, completed homework assignments, assignment books, notebooks, and other class work or tutoring-related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 1 year and when administrative value ends, whichever occurs later, if not returned to student.

10. **STUDENT DISCIPLINE RECORDS FILE.** Records used to report and review adverse student behavior. File includes violent incident reports; discipline profile reports; disciplinary action plans; classroom detention notices; in-school and out-of-school suspension records; correspondence between parents and/or guardians and school personnel; supporting records describing student's behavior, facts and circumstances surrounding incident, and actions taken by school officials and/or law enforcement officers. File also includes school violence reports and suspension reports when used as required by G.S. §115C-391.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years and when administrative value ends, whichever occurs later.

11. **STUDENT DROPOUT RECORDS FILE.** Records used to track student withdrawals from school. File includes student data forms showing age, race, gender, grade level, date of withdrawal, reason for withdrawal, suspension data, family data, intervention/prevention profiles, and monthly summaries of all dropouts.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years.

12. **STUDENT ENTRY/WITHDRAWAL RECORDS FILE.** Records and/or logs showing when students enter or withdraw from school. File includes student information sheets and withdrawal forms listing student's name, family data, identification numbers, entry/withdrawal codes, reason for withdrawal or transfer, current grade level, grades and absences to date, and signatures of school personnel. (Records are often maintained only at the school level).

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when administrative value ends, whichever occurs later.

13. **STUDENT GRADE RECORDS (CLASSROOM) FILE.** Teachers' records showing individual student's grades. File includes teacher grade books, progress reports, bubble sheets, and/or grade reports for each six or nine week grading period for the school year. (Grades are used to compute semester and yearly averages for each student by subject.)

**DISPOSITION INSTRUCTIONS:** Destroy in office after 1 year provided appropriate information has been posted to student's cumulative record. (See also **STUDENT GRADE RECORDS (SCHOOL) FILE.**)

14. **STUDENT GRADE RECORDS (SCHOOL) FILE.** Schools' records showing individual student's grades. Records list grades by subject for each six or nine week grading period, semester or midterm averages, student's final grades, and whether promoted or held back. File also includes student report cards and marks gathering forms.

**DISPOSITION INSTRUCTION:** Destroy in office after 5 years provided appropriate information has been posted to student's cumulative record.

**15. STUDENT INFORMATION ACCOUNTABILITY SYSTEM (SIAS) (ELECTRONIC) FILE.**

SIAS is an electronic data processing record used by the local education agency to manage various types of student records and generate reports. Students' names, dates of birth, parents' names, grade level, students' status as academically gifted or exceptional, attendance data, course selection and verification, academic progress information and grades, honor roll designations, and other related data are entered into this electronic file. Programs within SIAS enable the local education agency to generate reports concerning vocational education programs, student demographics, annual dropouts, exceptional students, human resource management, transportation activities, and other related subjects. [Individual schools within the local education agency enter data into SIAS. That data is transmitted to the central office where it is compiled and transmitted as countywide data to the Department of Public Instruction. (While a local education agency is not required to use the system provided by the Department of Public Instruction, it should follow the same disposition instructions as those listed in this schedule for any electronic data processing system used.)]

DISPOSITION INSTRUCTIONS: General guidelines for disposing of machine readable and electronic data processing records may be found in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

- a) Back-up by copying all electronic files to magnetic tape, disk, or other machine readable medium and storing the copy at a secure, protected, off-site location. Update those back-up files periodically by erasing and/or exchanging them with media containing more current data.
- b) Erase or delete in office student specific information when administrative value ends, but within 5 years, provided it has been posted to student's cumulative record.
- c) Erase or delete in office information used to generate reports according to disposition instructions for those specific reports. For reports not specifically listed in this standard, erase or delete in office information used to generate those reports according to guidelines in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

**16. STUDENT ORGANIZATION RECORDS FILE.** Records concerning student organizations at each school. File includes membership lists, records of activities, scrapbooks, student newspapers, minutes (when kept), and other related records.

DISPOSITION INSTRUCTIONS:

- a) Transfer records with obvious historical value to the Histories File (Standard – 1, item 19).
- b) Destroy in office remaining records when superseded, obsolete, or reference value ends.

**17. STUDENT SCHEDULING RECORDS FILE.** Records and reports documenting a student's course selection and timetables. File includes course load by student reports, timetable reports, course selection and verification reports and slips, student scheduling reports and similar records.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends, but within 5 years.

**18. STUDENT TRANSFER RECORDS FILE.** Records concerning the transfer of students within or out of district schools. File includes transfer forms listing students' and parents' names, addresses, grade level, school names, and reason for transfer; correspondence; tuition receipts; statement of board approval or denial; and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years and when released from all audits, whichever occurs later.

E. **TEXTBOOK RECORDS.** Records concerning the selection and purchase of textbooks.

1. **ROUTINE REPORTS (TEACHERS, PRINCIPALS, AND SUPERINTENDENTS) FILE.** Reports summarizing inventories from individual schools or the central office, invoices for books, and requests from schools to order books.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 5 years.

2. **SUMMARY SHEETS FILE.** Records concerning specific books compiled from the individual school inventories.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 2 years or when superseded and obsolete.

F. **TRANSPORTATION RECORDS.** Records concerning the transportation of students.

1. **ACCIDENT REPORTS AND TORT CLAIMS FILE.** Copies of accident reports, plaintiff's affidavits, and notices of tort claims. (See G.S. §143-300.1)

**DISPOSITION INSTRUCTIONS:** Destroy in office 7 years after settlement of claim.

2. **ANNUAL TRANSPORTATION REPORTS FILE.** Summary reports listing the activities of a local education agency's transportation department. Reports include number of days fleet was in operation, total number of miles buses were driven, number of buses operated, salaries paid to drivers and other transportation personnel, number of personnel employed, list of local expenditures, transportation policy questionnaires, inventory data, and other related information. Copies of report are sent to the central office and the Department of Public Instruction.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years.

3. **BUS INSPECTION REPORTS FILE.** Inspection reports of school buses or school transportation service vehicles.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years.

4. **CONTRACT TRANSPORTATION FOR CHILDREN WITH DISABILITIES AND OTHER CONTRACTED SERVICES FILE.** Records concerning contracted transportation services for children with disabilities or other pupils, or other groups. File includes contracts, bus driver routes, salary schedules, refund reports, school bus passenger reports, annual transportation reports, inspection reports, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.

5. **COST OF TRANSPORTATION FILE.** Records concerning the operation, maintenance, replacement, and insurance of school buses or other school transportation service vehicles. File includes requisitions, expenditure reports, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years and when released from all audits, whichever occurs later.



6. **SCHOOL BUS INVENTORY AND MAINTENANCE FILE.** Records compiled from the State Vehicle Fleet Management System (SVFMS) file that concern the maintenance of school buses or school transportation service vehicles. File includes 30-day inspection worksheets, oil filter reports, fuel receipts, preventative maintenance charge tickets, bus fleet inventories, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years if no litigation, claim, audit, or other official action involving the records has been initiated.

7. **SCHOOL BUS ROUTES FILE.** Records concerning routes taken by school buses. File includes descriptions of routes, passenger lists, bus run reports, and other related records.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years.

8. **SELT BELT FILE.** Records concerning the use and installation of seat belts and other restraint systems in school buses. File includes consent forms and similar records showing student's name, bus number, date system requested, type of system requested, and signatures of school's principal and student's parent and/or guardian.

**DISPOSITION INSTRUCTIONS:** Destroy in office when superseded or obsolete.

9. **STATE VEHICLE FLEET MANAGEMENT SYSTEM (SVFMS) (ELECTRONIC) FILE.** SVFMS is a electronic data processing record used by the local education agency to track inventory and maintenance of school buses or school transportation service vehicles. Preventative maintenance information and inventories of buses are entered into this electronic file.

**DISPOSITION INSTRUCTION:** General guidelines for disposing of machine readable and electronic data processing records may be found in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

SVFMS inventory and maintenance information should be retained in electronic form for 3 years after applicable inventories and maintenance reports are produced and then erased or deleted.

10. **TRANSPORTATION INFORMATION MANAGEMENT SYSTEM (TIMS) (ELECTRONIC) FILE.** TIMS is an electronic data processing record concerning the management of school transportation services. Bus scheduling and routing information, students' addresses, bus maintenance schedules, mileage of buses, and other related data are entered into this electronic file.

**DISPOSITION INSTRUCTIONS:** General guidelines for disposing of machine readable and electronic data processing records may be found in STANDARD-4. MACHINE READABLE AND ELECTRONIC RECORDS.

TIMS data and statistics should be retained in electronic form for 3 years after applicable statistical reports are produced and then erased or deleted.

11. **TRANSPORTATION RECORDS FILE.** Records documenting school bus maintenance and use. File includes number of hours driven, refund and materials received report, and transportation charge. File also includes summaries, reports, transportation audits, and similar records generated by the Transportation Management System (TIMS) and/or received from the N.C. Department of Public Instruction.

**DISPOSITION INSTRUCTIONS:** Destroy in office after 3 years or when superseded, obsolete, or administrative value ends, whichever occurs first.

12. **VEHICLE INSPECTIONS FILE**. Records concerning inspections as required by the Department of Transportation, Division of Motor Vehicles, Enforcement Section. File includes inspection certificates, monthly summary lists, and receipts and statements for vehicle inspection certificates.

**DISPOSITION INSTRUCTIONS:** Transfer original records to the Department of Transportation, Division of Motor Vehicles, Enforcement Section when generated. Destroy duplicates in office after 18 months and when released from all audits, whichever occurs later.

## APPENDIX I: STUDENT EDUCATION RECORDS

The following federal legislation contains requirements that may affect the retention periods of student educational records. They are provided to assist record custodians in the maintenance of student educational records. "Records" as defined in Section 99.3 of the Family Educational Rights and Privacy Act (34 CFR 99.3) regulations means any information or data recorded in any medium, including but not limited to, handwriting, print, tapes, film, microfilm, and microfiche. Educational records means records which (1) are directly related to the student and are maintained by an agency or institution or (2) by a party acting for the party or institution.

### I. Section 99.20 *The Family Educational Rights and Privacy Act of 1974* (34 CFR 99.20)

#### REQUEST TO AMEND RECORDS

- (a) The parent of a student or an eligible student who believes that information contained in the educational records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution that maintains the records amend them.
- (b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.
- (c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request, it shall so inform the parent of the student or the eligible student of the refusal and advise the parent or the eligible student of the right to a hearing under Section 99.21 (34 CFR 99.21).

### II. Section 300.573 *Education of Individuals With Disabilities Education Act* (34 CFR 300.573)

#### DESTRUCTION OF INFORMATION

- (a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.
- (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Comment: Under Section 300.573, the personally identifiable information of a handicapped child may be retained permanently unless the parents request it be destroyed. Destruction of records in accordance with an approved retention schedule is the best protection against improper and unauthorized disclosure. However, the records may be needed for other purposes. When informing parents of their rights under this section, educational agencies should remind them the information contained in the records may be needed by the child or the parents to qualify for future services or benefits. If the parents still request the information be destroyed, the educational agency may retain information described in (b).

**STANDARD-8. PUBLIC RELATIONS RECORDS.** Records created and accumulated by public information programs operated by local education agency.

1. **ADVERTISEMENTS FILE.** Records concerning advertisements for local education agency. File includes correspondence, marketing research reports, surveys, studies, master copies of advertisements, billing records, contracts, and other related records.

DISPOSITION INSTRUCTIONS:

- a) Destroy in office contracts 3 years after expiration if no litigation, claim, audit, or other official action involving the records has been initiated. If official action has been initiated, destroy in office after completion of action and resolution of issues involved.
- b) Destroy in office billing and other financial records when released from all audits.
- c) Transfer records with obvious historical value to Histories File (Standard-1, item 19) when reference value ends.
- d) Destroy in office remaining records when reference value ends, but within 5 years.

2. **AGENCY PUBLICATIONS FILE.** Publications created at local education agency expense.

DISPOSITION INSTRUCTIONS:

- a) Retain one copy in office permanently.
- b) Destroy in office remaining copies when administrative value ends.

3. **AUDIO TAPES FILE.** Audio tape recordings produced by agency.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File (Standard-1, item 18) when administrative value ends.
- b) Destroy in office remaining records when administrative value ends.

4. **BIOGRAPHICAL DATA FILE.** Biographical sketches, news releases, newsclippings, and photographs of various local education agency officials.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File (Standard-1, item 19) when reference value ends.
- b) Destroy in office remaining records when reference value ends.

5. **CORRESPONDENCE/MEMORANDUMS FILE.** Correspondence and memorandums concerning

public relations matters.

DISPOSITION INSTRUCTIONS: Destroy in office after 3 years.

6. **FILMS FILE.** Films produced by agency for public or departmental use.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File (Standard-1, item 19) when administrative value ends.
- b) Destroy in office remaining films when administrative value ends.

7. **MAILING LISTS FILE.** Mailing lists of individuals receiving information from public relations office.

DISPOSITION INSTRUCTIONS: Destroy in office when superseded or obsolete.

8. **NEWSCLIPPINGS FILE.** Clippings from newspapers concerning the local education agency or its officials.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File (Standard-1, item 19) when reference value ends.
- b) Destroy in office remaining items when reference value ends.

9. **NEWS AND PRESS RELEASES FILE.** News and press releases issued concerning programs, activities, and services of local education agency.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File (Standard-1, item 19) when administrative value ends.
- b) Destroy in office remaining items when administrative value ends.

10. **PHOTOGRAPHS FILE.** Photographs and negatives used in publicizing programs, services, and other related matters.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File. (Standard-1, item 19) when administrative value ends.
- b) Destroy in office remaining items when administrative value ends.

11. **PUBLIC RELATIONS FILE.** Records concerning overall public relations of local education agency. File includes procedures, correspondence, and other related records.

DISPOSITION INSTRUCTIONS: Destroy in office after 5 years.

12. **SLIDES FILE.** Slides produced by public relations offices concerning programs, services, and other related agency matters.

DISPOSITION INSTRUCTIONS:

- a) Transfer items of obvious historical value to Histories File (Standard-1, item 19) when administrative value ends.
- b) Destroy in office remaining items when administrative value ends.

13. **SPEECHES FILE.** Speeches made by the director or other local education agency officials.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File (Standard-1, item 19) when administrative value ends.
- b) Destroy in office remaining items when administrative value ends.

14. **VIDEO TAPES FILE.** Video tapes produced by local education agency.

DISPOSITION INSTRUCTIONS:

- a) Transfer items with obvious historical value to Histories File (Standard-1, item 19) when administrative value ends.
- b) Destroy in office remaining items when administrative value ends.

15. **VISUAL AIDS FILE.** Slides, charts, transparencies, and other related records used in presentations.

DISPOSITION INSTRUCTIONS: Destroy in office when administrative value ends.

www.ncdcr.gov/archives

4615 Mail Service Drive, Raleigh, NC 27699

919-807-7350

**REQUEST FOR CHANGE IN RECORDS SCHEDULE**

**TO** Assistant Records Administrator  
Division of Archives and Records  
Government Records Section  
4615 Mail Service Center  
Raleigh, NC 27699-4615

**FROM** Name \_\_\_\_\_  
County \_\_\_\_\_  
Agency or department \_\_\_\_\_  
Mailing address \_\_\_\_\_  
Phone or email \_\_\_\_\_

**INSTRUCTIONS**

Use this form to request a change in the records retention and disposition schedule governing the records of your agency. Submit the signed original, and keep a copy for your file. A proposed amendment will be prepared and submitted to the appropriate state and local officials for their approval and signature. Copies of the signed amendment will be sent to you for insertion in your copy of the schedule.

**CHANGE REQUESTED**

- |   |                       |            |                   |
|---|-----------------------|------------|-------------------|
| <input type="checkbox"/> Add a new item             | Standard Number _____ | Page _____ | Item Number _____ |
| <input type="checkbox"/> Delete an existing item    | Standard Number _____ | Page _____ | Item Number _____ |
| <input type="checkbox"/> Change an retention period | Standard Number _____ | Page _____ | Item Number _____ |

**TITLE OF RECORDS SERIES IN SCHEDULE OR PROPOSED TITLE**

**INCLUSIVE DATES OF RECORDS** \_\_\_\_\_ **APPROXIMATE VOLUME OF RECORDS** \_\_\_\_\_

**DESCRIPTION OF RECORDS****PROPOSED RETENTION PERIOD**

Requested by: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Signature Title Date

## REQUEST FOR DISPOSAL OF UNSCHEDULED RECORDS

**TO** Assistant Records Administrator  
Division of Archives and Records  
Government Records Section  
4615 Mail Service Center  
Raleigh, NC 27699-4615

**FROM** Name \_\_\_\_\_  
County \_\_\_\_\_  
Agency or department \_\_\_\_\_  
Mailing address \_\_\_\_\_  
Phone or email \_\_\_\_\_

In accordance with the provisions of G.S. 121 and 132, approval is requested for the destruction of records listed below. These records have no further use or value for official or administrative purposes.

RECORDS TITLE	DESCRIPTION	INCLUSIVE DATES	QUANTITY	MICROFILMED? (YES OR NO)	RETENTION PERIOD

Requested by: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Signature Title Date

Approved by: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Signature (Requestor's supervisor) Date

Concurred by: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(except as indicated) Signature Assistant Records Administrator State Archives of North Carolina Date





www.ncdcr.gov/archives

4615 Mail Service Drive, Raleigh, NC 27699

919-807-7350

**Request for Disposal of Original Records Duplicated by Electronic Means**

*If you have questions, call (919) 807-7350 and ask for the Records Management Analyst assigned to your agency.*

This form is used to request approval from the Department of Cultural Resources to dispose of non-permanent paper records which have been scanned, entered into databases, or otherwise duplicated through digital imaging or other conversion to a digital environment. This form does not apply to records which have been microfilmed or photocopied, or to records with a permanent retention.

<b>Agency Contact Name:</b>		<b>Date (MM-DD-YYYY):</b>
<b>Phone (area code):</b>	<b>Email:</b>	
<b>County/Municipality:</b>	<b>Office:</b>	
<b>Mailing address:</b>		

Record Series Title A group of records as listed in records retention schedule	Description of Records Specific records as referred to in-office	Inclusive Dates (1987-1989; 2005-present)	Approx. Volume of Records (e.g. "1 file cabinet," "5 boxes")	Retention Period As listed in records retention schedule

Requested by: \_\_\_\_\_  
Signature Requestor Date

Approved by: \_\_\_\_\_  
Signature Requestor's Supervisor Date

Concurred by: \_\_\_\_\_  
Signature Assistant Records Administrator  
State Archives of North Carolina Date

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