

SOUTHWEST TENNESSEE COMMUNITY COLLEGE

SUBJECT: Litigation Hold Policy and Procedure

EFFECTIVE DATE: August 26, 2020.

POLICY AREA

General Policies

PURPOSE

This policy defines the general principles that should guide the actions of Southwest Tennessee Community College (“College”) employees in the implementation of a Litigation Hold Notice Procedure to comply with the Federal Rules of Civil Procedure provisions regarding the preservation of Electronically Stored Information.

APPLIES TO

This policy shall apply to all persons employed by the College, including but not limited to full-time, part-time, and/or temporary employees.

DEFINITIONS

Electronically Stored Information (“ESI”) - refers to all forms of electronic data and documents including, but not limited to, metadata, electronic mail, word processing documents, calendars, voice messages, videos, digital photographs, information in personal digital assistants (PDA) in any location where data may be stored.

Litigation Hold Procedure – is a process whereby the College, when sued in federal court or when reasonably anticipating federal litigation, issues a litigation hold notice communication suspending the normal operation of paper and electronic document destruction policies for particular records that are relevant to the federal litigation.

Litigation Hold Notice Letter – is the communication that is distributed to preserve information and prevent or suspend the destruction of paper documents and electronic data that must be retained during a litigation hold (attached as Exhibit 1).

Records Coordinator - refers to the individual(s) at the College who have been appointed by the President to serve as the College’s Records Coordinator/Official. The Records Coordinator(s) have the authority and responsibility to dispose of paper and electronic documents in accordance with approved records disposition authorizations under TBR Policy 1:12:01:00 Records Retention and Disposal of Records. Prior to the destruction of any records, the Records Coordinator(s) must determine if the action should be delayed due to audit or federal litigation hold requirements.

Evidence - refers to hard copy and electronic/digital recordings, videotapes, writings, material objects, photographs, drawings, diagrams, testimony, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

POLICY

I. Introduction

- A. Federal law requires parties to a lawsuit pending in federal court to preserve electronic data and documents pertaining to the lawsuit in conformance with the Federal Rules of Civil Procedure. There is a legal duty to preserve evidence (e.g., documents and things), including electronic documents, when the College has notice that the evidence is relevant to pending federal litigation.
- B. TBR Guideline G-075: Litigation Hold Notice (“TBR Guideline G-075”) explains that the College must develop a comprehensive written Federal Litigation Hold Notice Procedure (“Litigation Hold Procedure”) to retain Electronically Stored Information (“ESI”) evidence that is relevant to a federal lawsuit as required by the Federal Rules of Civil Procedure.
 - 1. The College’s Litigation Hold Procedure must include the components described in TBR Guideline G-075 pursuant to which the College intends to preserve and retain all evidence, including ESI that is relevant to pending federal litigation in order to avoid penalties for non-compliance with the Federal Rules of Civil Procedure.
- C. The penalties for non-compliance with federal law regarding electronic evidence retention in federal litigation are severe and potentially costly. The consequences for the College could include, but are not limited to:
 - 1. Monetary sanctions;
 - 2. Payment of the opposing party’s attorneys’ fees and costs;
 - 3. Preclusion of the College’s evidence at trial;
 - 4. Dismissal of the College’s claims and counterclaims; and
 - 5. Default judgments against the College.
- D. The College is solely responsible for payment of any monetary sanctions issued by the court resulting from the College’s non-compliance with electronic record retention requirements as required by federal law hence the importance of an institutional litigation hold procedure.

II. Litigation Hold Application

- A. The Litigation Hold Procedure shall apply to any evidence, paper or electronic documents and data or things, maintained by the College that is relevant to a federal lawsuit.

1. Such evidence shall be preserved and retained by the College pursuant to the provisions of the Litigation Hold Notice until the conclusion of both the litigation and the requisite time period after the litigation, as outlined in TBR Policy 1:12:01:00 Records Retention and Disposal of Records.
 2. Notwithstanding the records retention and disposition schedule outlined in TBR policy, upon issuance of a Litigation Hold Notice, the College must suspend routine purging, overwriting, re-using, deleting, or any other destruction of electronic information relevant to a federal law dispute, including electronic information wherever it is stored.
 3. This includes, but is not limited to, electronic information at a College's workstation, on a laptop, in a cellular phone, on a USB drive, at an employee's home, or any other electronic device capable of storing such information.
 4. The retention requirement includes all forms of attorney-client privileged and non-attorney-client privileged electronic documents.
 - a. In the context of federal litigation, although all information must be preserved, no data will be disclosed to the opposing party without first being reviewed to determine legal necessity, relevance, and privilege.
 - b. Privileged documents (e.g., attorney-client communications) will not be disclosed to the opposing party.
- B. The same preservation requirement exists for paper documents such that the College must suspend routine or intentional destruction of paper documents that are relevant evidence in a federal lawsuit as outlined in a Litigation Hold Notice.

III. Purpose of a Litigation Hold Notice

- A. There will be instances in which the College must implement a Litigation Hold Notice that requires the retention of certain paper and electronic records for an indefinite period of time due to pending federal litigation.
- B. A Litigation Hold Procedure is the process whereby the College, when sued in federal court, sends a Litigation Hold Notice suspending the normal operation of document destruction policies for particular records that are relevant to the federal litigation.
- C. Notwithstanding the applicable records retention schedule, documents that are subject to a particular Litigation Hold Notice must be retained until the hold is removed.

- D. The Records Coordinator(s) of the College, or a designee, shall be responsible for implementing the Litigation Hold Procedure upon notice of the need for a Litigation Hold Notice to preserve relevant ESI and paper documents.
 - E. Identifying instances in which a Litigation Hold Notice is required and its subsequent implementation requires the collaboration of multiple individuals at the College, including the College's Legal Counsel.
 - F. The Litigation Hold Notice Procedure that results in the issuance of a Litigation Hold Notice Letter is outlined in this section. The implementation of the College's Litigation Hold Notice requires adherence to the process established in this policy, which incorporates the components of the procedure outlined in TBR Guideline G-075.
- IV. College's Notification of Federal Litigation
- A. Responsible Party: All Employees
 - 1. All employees have an affirmative duty to inform the College's Records Coordinator(s) when they receive official notification of federal litigation against the College.
 - B. Official Notice Federal Litigation
 - 1. Employees are considered to be in receipt of official notice of federal litigation when they receive a complaint, summons, and/or other official documents related to a federal lawsuit.
 - C. Employee's Notification of Federal Litigation to Records Coordinator(s)
 - 1. Responsible Party: All Employees
 - a. Based on the factors outlined in Section IV. B. of this guideline, employees who have official notice of federal litigation against the College must inform the College's Records Coordinator(s), in writing, of the matter within two (2) business days of their receipt of notification.
 - D. Records Coordinator's Issuance of Litigation Hold Notice Letter
 - 1. Responsible Party: Records Coordinator(s)
 - a. The College's Legal Counsel, or the College's Records Coordinator(s) or its designee under the direction of the College's Legal Counsel, will issue an Official Litigation Hold Notice Letter

regarding the matter to the appropriate individuals within five (5) business days of receipt of notification of pending federal litigation.

- b. The Litigation Hold Notice Letter must state the categories of electronic and paper documents, including ESI, that must be retained until further notice and that electronic information must be preserved in its original electronic form, so that all information contained within it, whether visible or not, is also available for inspection.
 - i. It is not sufficient to retain only a paper copy of ESI. A Model Litigation Hold Notice Letter is attached to this guideline as Exhibit 1.
 - ii. The College's Records Coordinator(s), or designee(s), must obtain approval from the College's Legal Counsel prior to issuing a Litigation Hold Notice Letter.

E. Employees' Compliance with the Litigation Hold Notice Letter

1. Responsible Party: Employee recipients of the Litigation Hold Notice Letter
 - a. In response to an official Litigation Hold Notice Letter issued by the College's Records Coordinator(s), or designee(s), all individuals who receive the notice must compile paper and electronic documents and data (including e-mails, voicemails, videos, etc.) as instructed in the notice letter.
 - b. Electronic records must be retained in the original electronic format (e.g., USB, burned to a CD, saved in a secure folder on the system server that is not subjected to unannounced deletion, etc.). See Exhibit 2 for tips on Searching for Electronic Documents.
 - c. It is not sufficient to print paper copies of electronic records, as they must be maintained in their original electronic format.
 - d. It is the responsibility of individuals to whom the litigation hold notice is issued to retain all records that are responsive to the notice until they receive written notification indicating otherwise.

V. Assessment of the Litigations Hold Notice

- A. The Records Coordinator(s), in conjunction with the appropriate administrator(s) and the College's Legal Counsel, shall assess the effectiveness of the College's

Litigation Hold Notice Procedure on a periodic basis, as deemed necessary by the College.

- B. The Records Coordinator(s) shall make certain that necessary revisions to the Litigation Hold Notice Procedure are made at the time of the review to address any changes in the College's organization that may affect the implementation and effectiveness of the Procedure.

VI. Publication of the Litigation Hold Notice Procedure

- A. To promote uniform compliance with the Litigation Hold Procedures by all personnel employed by the College and to achieve the College's duty to preserve and retain relevant paper and electronic evidence in federal litigation, the College shall, at a minimum, display and distribute its Litigation Hold Notice Procedure in accordance with its standard distribution methods.
- B. The College's current Litigation Hold Notice Procedure shall be available upon request for review and copy at all times during normal business hours.

SOURCE

Authority

T.C.A. § 49-8-203; Federal Rules of Civil Procedure; TBR Guideline G-075: Litigation Hold Notice; TBR Policy 1:12:01:00: Records Retention and Disposal of Records.

History

Source: Approved _____.

RELATED EXHIBITS

[Exhibit 1 – Litigation Hold Notice Sample.](#)

[Exhibit 2 – Tips on Searching for Electronic Documents.](#)