



Do You Need a Record-Saving Policy?

This case provides a clear answer.

BY MELANIE L. HERMAN

Teach the World¹ is a community-based nonprofit that operates a school. During a typical school year, 20 teachers are on the organization's payroll. The school has been operating since 1970. On September 1, 2001, the principal of the school was served with a summons and complaint alleging that a former teacher, Mr. X, had sexually molested the plaintiff while she was a fourth grader in 1991. The plaintiff's complaint seeks \$1 million in damages for injuries caused by the alleged molestation.

The Investigation

The insurer appointed a law firm to represent the school and investigate the allegations. The attorneys began by reviewing records of Mr. X's employment. They discovered that in April, 1992, a student alleged that Mr. X made an inappropriate comment during history class. The teacher was offered the opportunity to resign, which he did in May, 1992. The records revealed no reports or suspicions of sexual misconduct.

The Outcome

Teach the World kept excellent records on all personnel and maintained its records in perpetuity. Without records on this employee, it

would have been difficult or impossible to determine whether any accusations had been made or action taken.

Sometimes it's not the lack of records that gets an organization into trouble. Detailed records can be problematic when they document a nonprofit's failure to respond appropriately. For example, if the records showed that the teacher was accused of molesting a child, yet no report was filed with a local law enforcement agency, the nonprofit could have been held liable for failing to report the allegations.

In this case, the detailed personnel file clarified the teacher's history and the events leading to his departure. After reviewing the information uncovered by the defense team, the plaintiff's attorney advised his client to drop the suit against Teach the World.

Loss Prevention Analysis

This claim illustrates the importance of good records when a nonprofit faces allegations of wrongdoing. In this case, detailed records stopped a lawsuit in its tracks, before substantial costs were incurred defending the nonprofit. Without records to substantiate the school's denial of wrongdoing, the case could have dragged on for years.

A typical nonprofit produces and stores countless documents, including personnel files, client files, accounting records, board minutes, staff reports, and other informational documents—some useful, some of no apparent value.² Without an effective document-retention program, a nonprofit can become lost in a sea of paper and electronic records. Operating efficiency decreases because staff can't locate important information, critical client needs are unmet due to the burden of paperwork, and valuable office space is allocated to file storage. Nonprofit managers are starting to pay greater attention to the importance of document retention in managing the organization.

An organization retains files for a number of reasons. First, some documents may have historical significance. Others must be retained for specific time periods due to regulatory or statutory requirements. The Internal Revenue Service has numerous retention requirements for income tax returns, employment tax payments, and informational tax returns (Form 990). The Fair Labor Standards Act and other employment laws require nonprofits to maintain

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payroll and other personnel information. All these records must be available for inspection and verification.³

Risk Management Strategies

Every nonprofit should carefully consider its needs and resources in developing a record-retention program. It is far better to retain documents by design than by accident. The goal of a record-retention program is to ensure that appropriate records are maintained to meet legal and statutory requirements as well as the organization's information needs. In this case, Teach the World's decision to retain its employment files in perpetuity turned out to be an excellent one.

Every nonprofit should develop and disseminate guidelines indicating what files will be saved and what information will be contained in those files. For example, one nonprofit may decide that client files will contain paperwork from the initial intake interview, correspondence with the client and other caregivers, social workers' monthly reports, incident reports, and other items. Each organization will have its own approach for client files and other pertinent records such as donor information, volunteer files, personnel files, payroll records, accounting files, and corporate records. As you create your documentation guidelines, ask yourself these questions:

1. What will your retention requirements be? For most organizations, it makes sense to base each decision on the type of document. For example, corporate documents such as bylaws, articles of incorporation, and tax returns should be retained in perpetuity. You may establish other retention timeframes for documents such as personnel and client files. The first step in making this decision is to research legal and statutory requirements. The next step

is to identify who is responsible for assigning the retention requirement and destruction date.

2. How and where will you store documents, including electronic records? Will certain documents require special protection from fire and theft? For example, you may decide to store your corporate documents in a fireproof safe or safety deposit box.

3. What procedure will you use to catalog and inventory your stored records? You'll need to be able to retrieve documents as they are required for specific uses or for scheduled destruction.

4. How will you destroy files? Your record-saving program should indicate how you intend to get rid of various files. Files with confidential information should be shredded or incinerated. It's also important to have a knowledgeable employee review all files before destruction to ensure that there are no reasons for retaining any file.

5. How will you document your record-retention activities? Beware of activities that the public might perceive as the destruction of evidence.

6. How often will you review your retention guidelines? Plan to do so once a year for legal or statutory changes. At the same time, confirm that the record destruction is occurring as planned or modify the schedule.

The Lesson

Every nonprofit relies on a wide range of documents to operate effectively. These records can prove invaluable if the nonprofit faces litigation alleging wrongdoing. Other documents that a typical nonprofit may keep are unnecessary and create

a needless burden. A record-retention program can help your organization operate efficiently. Like many other risk management strategies, it takes some time to establish the program but long-term rewards should make the initial investment worthwhile. ■

Footnotes

¹ The name of this organization is fictional, but the factual description of the claim is based on an actual claim at the Nonprofits' Insurance Alliance of California (NIAC).

² For more information on keeping such records, see these *Nonprofit World* articles: "Budgetary Control Reports" (Vol. 7, No. 1), "If It's Not in the Minutes, Did It Happen?" (Vol. 14, No. 6), and "Protect Yourself Against Employee Lawsuits" (Vol. 15, No. 2).

³ See "Is the Fair Labor Standards Act a Concern?" (Vol. 3, No. 4), "New Gift and Record Keeping Rules" (Vol. 7, No. 2), and "IRS 990 Return: It's More Important than You Think" (Vol. 16, No. 2) in *Nonprofit World*.

These resources are available from the Society's Resource Center, 608-274-9777, Ext. 221, www.danenet.org/snpo.

This column is dedicated to helping readers understand typical claims filed against nonprofit organizations and the risk management steps that could have made a difference in each instance. The scenarios featured in this column are adapted from actual claims files at the Nonprofits' Insurance Alliance of California (NIAC) and the Alliance of Nonprofits for Insurance, Risk Retention Group (ANI-RRG). NIAC and ANI-RRG are part of a group of 501(c)(3) insurers owned and governed by nonprofits. For more information, visit www.insurancefornonprofits.org or call 800-359-6422.

Melanie Herman is executive director of the Nonprofit Risk Management Center, 1001 Connecticut Avenue, NW, Washington, DC 20036, www.nonprofitrisk.org, 202-785-3891). The Center, an independent nonprofit resource center, provides free technical assistance, practical publications, risk assessment software, customized training, and competitively priced consulting services.