

POLICY RELATING TO PERSONNEL MANAGEMENT

BACKGROUND CHECKS

1. Purpose

This policy brings together the policy on requirements regarding Criminal Offender Record Information (CORI) checks and a statutory requirement that people who have direct and unmonitored contact with students, whether they be employees, volunteers or under contract, shall not work with students unless the Superintendent or his/her designee has made a determination as to their suitability to work in the District's schools on the basis of a state and national fingerprint background check (FBC).

2. Scope

The requirement that background checks be made as part of the process for hiring employees, contracting for services (including transport services) or accepting volunteer service shall apply to all District employees including, but not be limited to, any apprentice, intern, or student teacher or individuals in similar positions, who may have direct and unmonitored contact with children.

Direct and unmonitored contact with children is defined in Department of Elementary and Secondary Education (DESE) regulations as contact with a student when no other employee who has received a suitability determination by the school or District is present. "Contact" refers to any contact with a student that provides the individual with opportunity for physical touch or personal communication.

3. CORI Requirements

The District shall obtain all available CORI from the criminal history systems board of prospective employee(s) or volunteer(s) of the school district, including any individual who regularly provides school related transportation to students, who may have direct and unmonitored contact with students prior to hiring the employee(s) or to accepting any person as a volunteer. CORI data shall also be obtained for employees of contracted taxicab companies that provide transportation to students.

The Superintendent or his/her designee shall periodically, but not less than every three years, obtain all available CORI from the criminal history systems board on all employees, individuals who regularly provide school related transportation to students, including taxicab company employees, and volunteers who may have direct and unmonitored contact with students during their term of employment or volunteer service.

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The Superintendent or his/her designee may also have access to CORI for any subcontractor or laborer who performs work on school grounds and who may have direct and unmonitored contact with students, and shall notify them of this requirement and comply with the appropriate provisions of this policy.

“Direct and unmonitored contact with children” means contact with a child when no other CORI cleared employee of the school or District is present. A person having only the potential for incidental unsupervised contact with children in commonly used areas of the school grounds, such as hallways, shall not be considered to have the potential for direct and unmonitored contact with children. These excluded areas do not include bathrooms and other isolated areas (not commonly utilized and separated by sight or sound from other staff) that are accessible to students.

All current and prospective employees, volunteers, and persons regularly providing school related transportation to students of the District shall sign a form authorizing receipt by the District of all available CORI data from the criminal history system board. In the event that a current employee has questions concerning the signing of the request form, he/she may meet with the Superintendent or his/her designee. However, failure to sign the CORI request form may result in referral to local counsel for appropriate action. Completed acknowledgement forms must be kept in secure files. The School Committee (in the case of the Superintendent), or Superintendent or his/her designee certified to obtain information under the policy, shall prohibit the dissemination of school information for any purpose other than to further the protection of students.

CORI is not subject to the public records law and must be kept in a secure location, separate from personnel files and may be retained for not more than three years. CORI may be shared with the individual to whom it pertains, upon his or her request, and in the event of an inaccurate report the individual should contact the criminal history systems board.

Access to CORI material must be restricted to those individuals certified/authorized to receive such information. In the case of prospective employees or volunteers, CORI material should be obtained only where the Superintendent or his/her designee has determined that the applicant is qualified and may forthwith be recommended for employment or volunteer duties.

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The hiring authority, subject to applicable law, reserves the exclusive right concerning any employment decision. In making an employment decision the following factors may be considered when reviewing CORI: the type and nature of the offense as well as the date of the offense and whether the individual has been subsequently arrested, as well as any other factors the employer deems relevant.

The Superintendent shall ensure that on the application for employment and/or volunteer form there is a statement that as a condition of employment or volunteer service the District is required by law to obtain CORI for any employee, individual who regularly provides school related transportation, or volunteer who may have direct and unmonitored contact with students. Current employees, persons regularly providing school related transportation, and volunteers also shall be informed in writing by the Superintendent prior to the periodic obtaining of their CORI.

Employment applications shall include questions concerning criminal records that the Massachusetts Commission Against Discrimination has determined may be legally asked of prospective employees. Any employment application that seeks information concerning prior arrests or convictions of the applicant shall include the following statement: An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' to an inquiry herein relative to prior arrests or criminal court appearances or convictions. In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of service, which did not result in a complaint transferred to the superior court for criminal prosecution.

Records sealed pursuant to law shall not operate to disqualify a person in an examination, appointment or application for public service on behalf of the Commonwealth or any political subdivision thereof.

The Superintendent shall ensure that contracts with special education schools and other providers require a signed statement that the provider has met all the legal requirements of the state where it is located relative to criminal background checks for employees and others having direct and unmonitored contact with students.

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4. State and National Fingerprint Background Checks (FBCs)

Requirement

A state and national FBC shall be obtained to determine the suitability of full or part time current and prospective school employees, who may have direct and unmonitored contact with children. School employees shall include, but not be limited to, any apprentice, intern, or student teacher or individuals in similar positions who may have direct and unmonitored contact with children.

Responsibility

The school committee shall obtain a FBC for current and prospective employees for whom the school committee has direct hiring authority. In the case of an individual directly hired by the school committee, the chair of the school committee shall review the results of the national criminal history check.

The Superintendent shall obtain a state and national FBC for all other groups of employees and contracted services employees and any individual who regularly provides school related transportation to children. The Superintendent or designee may obtain a state and national fingerprint criminal background check for any volunteer, or a subcontractor or laborer commissioned by the school committee, school or employed by a town to perform work on school grounds, who may have direct and unmonitored contact with children.

Fingerprinting fees

Fees charged by the provider for national FBCs are the responsibility of the prospective employee, contractor or volunteer. For volunteers, the fee may be paid by the District at the discretion of the superintendent in cases of significant financial hardship.

Implementation

FBCs shall only be conducted as authorized by state and federal law, in accordance with all applicable state and federal rules and regulations. If an applicant or employee is required to submit to a fingerprint-based state and national criminal history record check, he/she shall be informed of this requirement and instructed on how to comply with the

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law. Such instruction will include information on the procedure for submitting fingerprints. In addition, the applicant or employee shall be provided with all information needed to successfully register for a fingerprinting appointment.

Access to FBC reports

All reports are subject to strict state and federal rules and regulations in addition to Massachusetts CORI laws and regulations. The reports cannot be shared with any unauthorized entity for any purpose, including subsequent hiring determinations. All receiving entities are subject to audit by the Massachusetts Department of Criminal Justice Information Services (DCJIS) and the FBI, and failure to comply with such rules and regulations could lead to sanctions. Federal law and regulations provide that the exchange of records and information is subject to cancellation if dissemination is made outside of the receiving entity or related entities. Furthermore, an entity can be charged criminally for the unauthorized disclosure of FBCs.

Storage of FBC Reports

Reports shall only be stored for extended periods of time when needed for the integrity and/or utility of an individual's personnel file. Administrative, technical, and physical safeguards, which are in compliance with the most recent DCJIS security policy shall be implemented to ensure the security and confidentiality of reports. Each individual involved in the handling of reports shall familiarize himself/herself with these safeguards. Each individual involved in the handling of FBC reports shall strictly adhere to the policy on the storage, retention and destruction of such reports.

Retention and Destruction of FBC Reports

Federal law prohibits the repurposing or dissemination of a FBC report beyond its initial requested purpose. Once an individual's background check report is received, it shall be securely retained in internal agency documents for the following purposes *only*:

- Historical reference and/or comparison with future criminal history record information (CHRI) requests,
- Dispute of the accuracy of the record
- Evidence for any subsequent proceedings based on information contained in the FBC report(s).

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FBC reports shall be kept for the above purposes in a secure location in the office of the Superintendent. When no longer needed, reports and any summary of background check report data must be destroyed by shredding paper copies and/or by deleting all electronic copies from the electronic storage location, including any backup copies or files. The shredding of paper copies of FBC reports by an outside vendor must be supervised by an employee of the District.

Training

An informed review of a criminal record requires training. Accordingly, all personnel authorized to receive and/or review FBC reports at the District shall review and become familiar with the educational and relevant training materials regarding relevant laws and regulations made available by the appropriate agencies, including the DCJIS.

Determining Suitability

In determining an individual's suitability, the factors considered may include, but not necessarily be limited to: the nature and gravity of the crime and the underlying conduct, the time that has passed since the offense, conviction and/or completion of the sentence, nature of the position held or sought, age of the individual at the time of the offense, number of offenses, any relevant evidence of rehabilitation or lack thereof and any other factors deemed relevant by the District.

A record of the suitability determination shall be retained. The following information shall be included in the determination:

- a) the name and date of birth of the employee or applicant;
- b) the date on which the school employer received the national criminal history check results; and,
- c) the suitability determination (either "suitable" or "unsuitable").

A copy of an individual's suitability determination documentation must be provided to another school(s)/school district employer, or to the individual, upon request of the individual for whom the school employer conducted a suitability determination.

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Relying on Previous Suitability Determination

The District shall not rely upon the determination of suitability made by other districts due to the potential liability issues that may arise from such a reliance.

Adverse Decisions Based on a FBC

If inclined to make an adverse decision based on an individual's CHRI, the District shall take the following steps prior to making a final adverse determination:

- a) provide the individual with a copy of his/her FBC used in making the adverse decision;
- b) provide the individual with a copy of this policy;
- c) provide the individual the opportunity to complete or challenge the accuracy of his/her FBC; and
- d) provide the individual with information on the process for updating, changing, or correcting FBC.

A final adverse decision based on an individual's FBC will not be made until the individual has been afforded a reasonable time depending on the particular circumstances not to exceed thirty days to correct or complete the FBC.

Secondary Dissemination of FBC

If an individual's FBC is released to another authorized entity, a record of that dissemination must be made in the secondary dissemination log. The secondary dissemination log is subject to audit by the DCJIS and the FBI. The following information shall be recorded in the log:

- Subject Name;
- Subject Date of Birth;
- Date and Time of the dissemination;
- Name of the individual to whom the information was provided;
- Name of the agency for which the requestor works;
- Contact information for the requestor; and
- The specific reason for the request.

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Reporting to Commissioner of Elementary and Secondary Education

Pursuant to state law and regulation, if the District dismisses, declines to renew the employment of, obtains the resignation of, or declines to hire a licensed educator or an applicant for a Massachusetts educator license because of information discovered through a state or national criminal record check, the District shall report such decision or action to the Commissioner of Elementary and Secondary Education in writing within 30 days of the employer action or educator resignation. The report shall be in a form requested by the Department and shall include the reason for the action or resignation as well as a copy of the criminal record checks results. The Superintendent shall notify the employee or applicant that it has made a report pursuant to the regulations to the Commissioner.

Pursuant to state law and regulation, if the District discovers information from a state or national criminal record check about a licensed educator or an applicant for a Massachusetts educator license that implicates grounds for license action pursuant to regulations, the Superintendent shall report to the Commissioner in writing within 30 days of the discovery, regardless of whether the District retains or hires the educator as an employee. The report must include a copy of the criminal record check results. The Superintendent shall notify the employee or applicant that he(s)he has made a report pursuant to regulations to the Commissioner and shall also send a copy of the criminal record check results to the employee or applicant.

LEGAL REFS.: M.G.L.6:167-178; 15D:7-8; 71:38R, 151B, 276:100A; Chapter 385 of the Acts of 2002

603 CMR 51.00

803 CMR 2.00

803 CMR 3.05 (Chapter 149 of the Acts of 2004)

804 CMR 3.02 (Reference Chart Regarding Permissible Inquiries)

DESE Advisory on C.O.R.I. Law (Revised May 7, 2007)

MASC 2014 Policies on Background Checks and DCJIS Model CORI Policy

FBI Criminal Justice Information Services Security Policy

www.mass.gov/eopss/docs/chsb/cori-process-correcting-criminal-record-2012.pdf

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