

## **File: ADDA - BACKGROUND CHECKS**

The HPS District requires by law that a state and national fingerprint criminal background check will be conducted to determine the suitability of full or part time current and prospective staff, who may have direct and unmonitored contact with students. Staff 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 students. The School Committee shall only obtain a fingerprint background check for current and prospective staff for whom the Committee has direct hiring authority. In the case of an individual directly hired by the Committee, the chair of the Committee shall review the results of the national criminal history check. The Superintendent shall also obtain a state and national fingerprint background check for any individual who regularly provides school related transportation to students. The Committee, Superintendent or Principal, as appropriate, may obtain a state and national fingerprint criminal background check for any volunteer, subcontractor or laborer commissioned by the Committee, school or employed by the town to perform work on school grounds, who may have direct and unmonitored contact with students. School volunteers and subcontractors/laborers who may have direct and unmonitored contact with students must continue to submit state CORI checks.

The fee charged by DCJIS for national fingerprint background checks will be \$55.00 for school staff subject to licensure by DESE and \$35.00 for other staff, which fee may from time to time be adjusted by the appropriate agency. The District shall continue to obtain periodically, but not less than every 3 years, from the department of criminal justice information services all available Criminal Offender Record Information (CORI) for any current and prospective staff member or volunteer within the District who may have direct and unmonitored contact with students.

Direct and unmonitored contact with students is defined in DESE regulations as contact with a student when no other staff who has received a suitability determination by the district is present. "Contact" refers to any contact with a student that provides the individual with opportunity for physical touch or personal communication.

This policy is applicable to any fingerprint-based state and national criminal history record check made for non-criminal justice purposes and requested under applicable federal authority and/or state statute authorizing such checks for licensing or employment purposes. Where such checks are allowable by law, the following practices and procedures will be followed.

### **Requesting CHRI (Criminal History Record Information) checks**

Fingerprint-based CHRI checks will 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 staff member is required to submit to a fingerprint-based state and national criminal history record check, they shall be informed of this requirement and instructed on how to comply with the law. Such instruction will include information on the procedure for submitting fingerprints. In

addition, the applicant or staff member will be provided with all information needed to successfully register for a fingerprinting appointment.

### **Access to CHRI**

All CHRI is subject to strict state and federal rules and regulations in addition to Massachusetts CORI laws and regulations. CHRI 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 CHRI.

### **Storage of CHRI**

CHRI 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 CJIS Security Policy have been implemented to ensure the security and confidentiality of CHRI. Each individual involved in the handling of CHRI is to familiarize themselves with these safeguards.

In addition to the above, each individual involved in the handling of CHRI will strictly adhere to the policy on the storage, retention and destruction of CHRI.

### **Retention and Destruction of CHRI**

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

Historical reference and/or comparison with future CHRI requests,

Dispute of the accuracy of the record,

Evidence for any subsequent proceedings based on information contained in the CHRI.

CHRI will be kept for the above purposes in a secure location in the office of the Superintendent. When no longer needed, CHRI and any summary of CHRI 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 CHRI by an outside vendor must be supervised by a staff member of the District.

### **CHRI Training**

An informed review of a criminal record requires training. Accordingly, all staff authorized to receive and/or review CHRI will review and become familiar with the educational and relevant training materials regarding SAFIS and CHRI laws and regulations made available by the appropriate agencies, including the DCJIS.

### **Determining Suitability**

In determining an individual's suitability, the following factors will be considered, including but not 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 will be retained. The following information will be included in the determination:

The name and date of birth of the staff member or applicant;

The date on which the District received the national criminal history check results; and,

The suitability determination (either "suitable" or "unsuitable").

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

### **Relying on Previous Suitability Determination.**

The District may obtain and may rely on a favorable suitability determination from a prior employer, if the following criteria are met:

The suitability determination was made within the last seven years; and

The individual has not resided outside of Massachusetts for any period longer than three years since the suitability determination was made; and either

The individual has been employed continuously by one or more school employers or has gaps totaling no more than two years in their employment for school employers; or

The individual works as a substitute employee, the individual is still deemed suitable for employment by the school employer who made a favorable suitability determination.

Upon request of another school employer, the initial school employer shall provide documentation that the individual is still deemed suitable for employment by the initial school employer.

### **Adverse Decisions Based on CHRI**

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

Provide the individual with a copy of their CHRI used in making the adverse decision;

Provide the individual with a copy of this CHRI Policy;

Provide the individual the opportunity to complete or challenge the accuracy of their CHRI;

and,

Provide the individual with information on the process for updating, changing, or correcting CHRI.

A final adverse decision based on an individual's CHRI 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 CHRI.

If the District receives criminal record information from the state or a national fingerprint-based background check that includes no disposition or is otherwise incomplete, the District may request that an individual, after providing them a copy of said background check, provide additional information regarding the results of the criminal background checks to assist the District in determining the applicant's suitability for direct and unmonitored contact with students, notwithstanding the terms of General Laws chapter 151B, S. 4,( 9,9 ½). Furthermore, in exigent circumstances, the District may, pursuant to the terms of DESE regulations (see specific regulations in legal references), hire a staff member on a conditional basis without first receiving the results of a national criminal background check. After exhausting several preliminary steps as contained in the above referenced regulation the District may require an individual to provide information regarding the individual's history of criminal convictions; however, the individual cannot be asked to provide information about juvenile adjudications or sealed convictions. The Superintendent is advised to confer with legal counsel whenever they solicit information from an individual concerning their history of criminal convictions.

### **Secondary Dissemination of CHRI**

If an individual's CHRI 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 will 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.

### **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 staff member 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 a staff member. The report must include a copy of the criminal record check results. The District shall notify the staff member or applicant that it has made a report pursuant to regulations to the Commissioner and shall also send a copy of the criminal record check results to the staff member or applicant.

### **C.O.R.I. REQUIREMENTS**

The District will obtain all available Criminal Offender Record Information (CORI) from the department of criminal justice information services of prospective staff, volunteers, or individuals who regularly provide school related transportation to students, who may have direct and unmonitored contact with students, (State law requires that school districts obtain CORI data for employees of taxicab companies that have contracted with the schools to provide transportation to students. - repeated below).

The Superintendent, Principal, or certified designees shall periodically, but not less than every three years, obtain all available Criminal Offender Record Information from the department of criminal justice informational services on all staff, individuals who regularly provide school related transportation to students, including taxicab company staff, and volunteers who may have

direct and unmonitored contact with students, during their term of employment or volunteer service.

The Superintendent, Principal, or certified designees may also have access to Criminal Offender Record Information 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.

Pursuant to a Department of Education regulation, "i. 1/2 Direct and unmonitored contact with children" means contact with students when no other staff, for whom the employer has made a suitability determination of 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. The school employer may determine when there is potential for direct and unmonitored contact with children by assessing the circumstances and specific factors including but not limited to, whether the individual will be working in proximity with students, the amount of time the individual will spend on school grounds, and whether the individual will be working independently or with others. An individual shall not be considered to have the potential for direct and unmonitored contact with children if the individual has only the potential for incidental unsupervised contact in commonly used areas of the school grounds."

In accordance with state law, all current and prospective staff, volunteers, and persons regularly providing school related transportation to students shall sign an acknowledgement form authorizing receipt by the District of all available CORI data from the department of criminal justice information services. In the event that a current staff member has a question concerning the signing of the acknowledgement form, they may meet with the Principal or Superintendent; however, failure to sign the CORI acknowledgement form may result in a referral to local counsel for appropriate action. Completed acknowledgement forms must be kept in secure files. The School Committee, Superintendent, Principals or their designees 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 shall be shared with the individual to whom it pertains, pursuant to law, regulation and the following model policy, and in the event of an inaccurate report the individual should contact the department of criminal justice informational services.

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

The hiring authority, subject to applicable law and the model policy, reserves the exclusive right concerning any employment decision.

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

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

The Superintendent shall revise contracts to require a signed statement that the provider has met all legal requirements of the state of Massachusetts relative to criminal background checks for staff and others having direct and unmonitored contact with students.

LEGAL REFS.: [M.G.L.6:167-178](#); [15D:7-8](#); [71:38R](#), [151B](#), [276:100A](#)

[P.L. 92-544](#); Title 28 U.S.C. § 534; Title 28 C.F.R. 20.33(b)

[42 U.S.C. § 16962](#)

[603 CMR 51.00](#)

[803 CMR 2.00](#)

[803 CMR 3.05](#) (Chapter 149 of the Acts of 2004)

[FBI Criminal Justice Information Services Security Policy](#)

[Procedure for correcting a criminal record](#)

[FAQ - Background Checks](#)

*This policy was updated and approved by the Hingham School Committee on: 5/10/21 // 5/23/22*