

NEWBURYPORT PUBLIC SCHOOLS
POLICY GOVERNING
FINGERPRINT-BASED CRIMINAL HISTORY RECORD INFORMATION (CHRI) CHECKS
MADE FOR NON-CRIMINAL JUSTICE PURPOSES

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.

I. Requesting CHRI checks

Fingerprint-based CHRI checks will only be conducted as authorized by M.G.L. c. 71, §38R and 42 U.S.C. § 16962, in accordance with all applicable state and federal rules and regulations, and in compliance with M.G.L. c. 6, §§ 167-178 and 803 CMR §§ 2.00, *et seq.* 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 law. Such instruction will include information on the procedure for submitting fingerprints. In addition, the applicant or employee will be provided with all information needed to successfully register for a fingerprinting appointment [e.g., IdentGO web site address, Provider Identification Number]

Employees (new, current, and all substitutes) are nonnegotiable, they must have the fingerprinting done per the new act. All parties below will still be CORI in accordance with the state law and school committee policy.

- **Day/In classroom volunteers**
 - *Not* require day to day or in classroom volunteers complete and submit to the new Act Relevant to Background Checks with the understanding and in accordance with the law they will continue to submit a regular (annual) CORI check.
- **Field Trip Volunteers (overnight)**
 - *Require any* volunteer/chaperones participating in an overnight school related activity (i.e. field trip, Washington D.C., etc.) to complete a Background Check in accordance with the new Act Relevant to Background Checks beginning at the start of the next school year (September 2014)
- **Field Trip Volunteers (one day)**
 - *Require* chaperones participating in field trips which would only occur during the day under a regular staff employees supervision to complete a Background Check with the understanding and in accordance with the law that they will continue to submit a regular (annual) CORI check beginning at the start of the next school year (September, 2014).
- **Subcontractors – construction/maintenance related only**
 - *Not require* subcontractors/construction or maintenance related to complete a Background Check in accordance with the new Act Relevant to Background Checks and will be addressed in policy.

- **School Committee Members**
 - *Require* all school committee members to complete a Background Check in accordance with the new Act Relevant to Background Checks beginning at the start of the next school year (September, 2014).
- **Student Teachers/Student Observers/(Pre)Practicum Students**
 - *Require* all students completing an internship, practicum, and/or observations to complete a Background Check in accordance with the new Act Relevant to Background Checks.
- **Hardship Exceptions/Waivers**
 - No waivers or hardship exceptions will be granted
- **Superintendent background check review**
 - Appoint the school committee chair to process and review with the assistance of Human Resources Executive Assistant background check. The school committee chair will make a suitability determination and sign off on the form that may be required to be submitted to the Department of Elementary and Secondary Education.

II. 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. Title 28, U.S.C, § 534, Pub. L. 92-544 and Title 28 C.F.R. 20.33(b) 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.

III. 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. The CJIS Security Policy can be found here: <http://www.mass.gov/eopss/law-enforce-and-cj/cjis/fbi-cjis-security-policy.html> Each individual involved in the handling of CHRI is to familiarize himself/herself 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.

IV. 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 the Central Office Record Retention Room.

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 an employee of the Newburyport Public Schools.

IV. CHRI Training

An informed review of a criminal record requires training. Accordingly, all personnel authorized to receive and/or review CHRI at Newburyport Public Schools 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.

V. Determining Suitability

In determining an individual's suitability, the following factors will be considered:

- *In addition to CHRI, these factors 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.*

A record of the suitability determination will be retained. The following information will 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 employer, or to the individual, upon request of the individual for whom the school employer conducted a suitability determination.

VI. Relying on Previous Suitability Determination.

Newburyport Public Schools may want to include those circumstances, consistent with 603 CMR 51.06, where the employer will rely on a suitability determination made by another school employer. Relevant factors might include: date of previous suitability determination, type of organization that conducted the previous determination (public school district, private school), state of residence of subject of suitability determination.

VII. Adverse Decisions Based on CHRI

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

- Provide the individual with a copy of his/her 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 his/her 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 {30 days} to correct or complete the CHRI.

VIII. 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:

- (1) Subject Name;
- (2) Subject Date of Birth;
- (3) Date and Time of the dissemination;
- (4) Name of the individual to whom the information was provided;
- (5) Name of the agency for which the requestor works;
- (6) Contact information for the requestor; and
- (7) The specific reason for the request.

IX. Reporting to Commissioner of Elementary and Secondary Education

Pursuant to M.G.L. ch 71, § 71R and 603 CMR 51.07, if Newburyport Public Schools 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, Newburyport Public Schools 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 check results. Newburyport Public Schools shall notify the employee or applicant that it has made a report pursuant to 603 CMR 51.07(1) to the Commissioner.

Pursuant to M.G.L. ch 71, § 71R and 603 CMR 51.07, if Newburyport Public Schools 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 603 CMR 7.15(8)(a), Newburyport Public Schools shall report to the Commissioner in writing within 30 days of the discovery, regardless of whether Newburyport Public Schools retains or hires the educator as an employee. The report must include a copy of the criminal record check results. The school employer shall notify the employee or applicant that it has made a report pursuant to 603 CMR 51.07(2) to the Commissioner and shall also send a copy of the criminal record check results to the employee or applicant.