

Criminal History Record Information Checks (CHRI)

It shall be the policy of the Nashoba Regional School District that, as required by law, a state and national fingerprint criminal background check **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. The School Committee shall only obtain a fingerprint background for current and prospective employees for whom the School Committee has direct hiring authority. In the case of an individual directly hired by a school committee, the chair of the school 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 children. The school 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 school committee, school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children. School volunteers and subcontractors/laborers who may have direct and unmonitored contact with children must continue to submit state CORI checks.

The fee charged by the provider to the employee and the educator for national fingerprint background checks will be \$55.00 for school employees subject to licensure by DESE and \$35.00 for other employees, which fee may from time to time be adjusted by the appropriate agency. The employer 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 employee or volunteer within the school district who may have direct and unmonitored contact with children.

Direct and unmonitored contact with children is defined in 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.

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, 200. Those subject to these requirements include prospective and current employees, subcontractors/laborers commissioned by schools to perform work on school grounds and individuals who regularly provide school-related transportation of children as well as any person who may have direct and unmonitored contact with children (i.e.; student teacher). Volunteers are not required to be fingerprinted but the District May require a CHRI check if the volunteer has or will

have direct and unmonitored contact with students. 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. The fees set by the state for CHRI is the responsibility of the individual, not the District.

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. Federal and State 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.

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 Human Resource Department.

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 Nashoba Regional School District.

V. CHRI Training

An informed review of a criminal record requires training. Accordingly, all personnel authorized to receive and/or review CHRI at the Nashoba Regional School District 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.

VI. Determining Suitability

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

- Nature and gravity of the crime – does it pertain to children?
- When did it occur? How long ago? Has enough time passed to show that it won't occur again?
- How many offenses are reported?
- Any repetitiveness?
- What position is being sought within the District?

Once suitability has been determined, a record of suitability will be retained. The following information will be included in the determination:

- The name and date of birth of the employee 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 the 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. The District will retain the suitability determination for the duration of the employee's employment or for seven years, whichever is longer.

VI. Relying on Previous Suitability Determination

The Nashoba Regional School District shall rely on the suitability determination made by another Prek-12 Public School District in Massachusetts if:

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

- (b) The individual has not resided outside Massachusetts for any period longer than three years since the suitability determination was made; and **either**
- (c) The individual has been employed continuously for one or more school employers or has gaps totaling no more than two years in his or her employment for school employers; or
- (d) If 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.

In order to consider this outside suitability determination, Human Resources Department must receive:

- (a) A copy of the documentation received from the school employer **or agency** that made the relied-upon suitability determination, and
- (b) Documentation establishing that the individual met the criteria of 603 CMR 51.06 (3) (a), (b), and **either** (c) or (d).

If the individual was deemed unsuitable by another school employer and claims that the information on which that decision was made was incorrect, Nashoba may require that individual to obtain a new national criminal history check. If Nashoba chooses to perform a new national criminal history check on an individual rather than rely on a previous favorable suitability determination, Nashoba shall bear the cost of a **new** check.

VII. Adverse Decisions Based upon CHRI

If inclined to make an adverse decision based on an individual's CHRI, the Nashoba Regional School District 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, no more than 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 SCJIS 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 the Commissioner of Elementary and Secondary Education

Pursuant to M.G.L. Ch 71, 71R and 603 CMR 51.07, if the Nashoba Regional School 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 Nashoba Regional School 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 check results. The Nashoba Regional School District 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 the Nashoba Regional School 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 603 CMR 7.15(8)(a), the Nashoba Regional School District shall report to the Commissioner in writing within 30 days of the discovery, regardless of whether the Nashoba Regional School District retains or hires the educator as an employee. The report must include a copy of the criminal record check results. The District 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.

References:

603 CMR 51.00 – Education Law and Regulation; Criminal History Checks for School Employees; Board of Elementary and Secondary Education; December 17, 2013

M.G.L. C 71; 38R, C6, 167-178B – Massachusetts General Law; Criminal Background Checks for Public School Employees, etc.

U.S.C. 16962: School SAFE Act; “Schools Safely Acquiring Faculty Excellence Act of 2006”

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